
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 10, 2022 (February 9, 2022)

BRC Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

001-41275
(Commission
File Number)

87-3277812
(IRS Employer
Identification No.)

1144 S. 500 W
Salt Lake City, UT 84101
(Address of principal executive offices, including Zip Code)

(801) 874-1189
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions *see* General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbols	Name of each exchange on which registered
Class A common stock, \$0.0001 par value	BRCC	New York Stock Exchange
Redeemable warrants, each whole warrant exercisable for one share of Class A common stock at an exercise price of \$11.50	BRCC WS	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Introductory Note

The Business Combination

As previously announced, BRC Inc., a Delaware public benefit corporation (the "Company" or "PubCo"), previously entered into a Business Combination Agreement, dated as of November 2, 2021, as amended by the First Amendment to Business Combination Agreement, dated as of January 4, 2022 (as so amended, the "Business Combination Agreement"), each by and among the Company, SilverBox Engaged Merger Corp I, a Delaware corporation ("SilverBox"), SBEA Merger Sub LLC, a Delaware limited liability company and wholly-owned subsidiary of PubCo ("Merger Sub 1"), BRCC Blocker Merger Sub LLC, a Delaware limited liability company and wholly-owned subsidiary of SilverBox ("Merger Sub 2"), Authentic Brands LLC, a Delaware limited liability company ("Authentic Brands") and the parent company of Black Rifle Coffee Company LLC, a Delaware limited liability company ("BRCC"), and Grand Opal Investment Holdings, Inc., a Delaware corporation and holder of equity interests in Authentic Brands ("Blocker").

As previously reported on the Current Report on Form 8-K filed by SilverBox with the Securities and Exchange Commission (“SEC”) on February 3, 2022, SilverBox held a special meeting (the “Special Meeting”), at which SilverBox’s stockholders voted to approve the proposals outlined in the proxy statement filed by SilverBox with the SEC on January 13, 2022 (the “Proxy Statement/Prospectus”), including, among other things, the adoption of the Business Combination Agreement and approval of the other transactions contemplated by the Business Combination Agreement.

On February 9, 2022 (the “Closing Date”), as contemplated by the Business Combination Agreement and as described in the section titled “Proposal No. 1—The Business Combination Proposal” beginning on page 128 of the Proxy Statement/Prospectus, (i) SilverBox merged with and into Merger Sub 1 (the “SilverBox Merger”), with Merger Sub 1 surviving the SilverBox Merger as a direct wholly-owned subsidiary of PubCo, and (ii) immediately following the SilverBox Merger, Merger Sub 2 merged with and into Blocker (the “Blocker Merger”) and, together with the SilverBox Merger and all other transactions contemplated by the Business Combination Agreement, the “Business Combination”), with Blocker surviving as a wholly-owned subsidiary of Merger Sub 1. On February 10, 2022, Blocker was merged with and into Merger Sub 1, with Merger Sub 1 surviving the merger, as contemplated by the Business Combination Agreement.

The foregoing description of the Business Combination does not purport to be complete and is qualified in its entirety by the full text of the Business Combination Agreement, which is attached hereto as Exhibits 2.1 and 2.2 to this Current Report on Form 8-K (this “Current Report”) and is incorporated herein by reference.

The Consideration

At closing of the Business Combination (the “Closing”), pursuant to the terms of the Business Combination Agreement and after giving effect to the redemptions of PubCo Class A Common Stock (as defined below) by public shareholders of SilverBox, the following occurred:

- (w) Each share of SilverBox’s Class A common stock, par value \$0.0001 per share (the “SilverBox Class A Common Stock”), outstanding immediately prior to the effectiveness of the SilverBox Merger has been converted into one share of PubCo’s Class A common stock, par value \$0.0001 per share (the “PubCo Class A Common Stock”), or an aggregate of 7,629,317 shares of PubCo Class A Common Stock with an aggregate value of \$76,293,170 (at a deemed value of \$10.00 per share), (x) each share of SilverBox’s Class C common stock, par value \$0.0001 per share (the “SilverBox Class C Common Stock”), outstanding immediately prior to the effectiveness of the SilverBox Merger has been converted into one share of PubCo Class A Common Stock, or an aggregate of 30,000,000 shares of PubCo Class A Common Stock with an aggregate value of \$300,000,000 (at a deemed value of \$10.00 per share), (y) each share of SilverBox’s Class B common stock, par value \$0.0001 per share (the “SilverBox Class B Common Stock”), outstanding immediately prior to the effectiveness of the SilverBox Merger has been converted into the right to receive a combination of shares of PubCo Class A Common Stock, or an aggregate of 5,244,993 shares of PubCo Class A Common Stock with an aggregate value of \$52,449,930 (at a deemed value of \$10.00 per share), and PubCo’s Class C common stock, par value \$0.0001 per share (the “PubCo Class C Common Stock”), or an aggregate of 1,241,250 shares of PubCo Class C Common Stock with an aggregate value of \$12,412,500 (at a deemed value of \$10.00 per share), which shares of PubCo Class C Common Stock are subject to performance-based vesting conditions equivalent to the Restricted Common Units (as defined below) and restricted from transfer (subject to limited customary exceptions), and (z) each warrant of SilverBox outstanding immediately prior to the effectiveness of the SilverBox Merger has been converted into the right to receive one warrant of PubCo, with PubCo assuming SilverBox’s obligations under the existing warrant agreement;
- the aggregate shares of common stock of Blocker outstanding immediately prior to the effectiveness of the Blocker Merger have been converted into a combination of (x) shares of PubCo Class A Common Stock, or an aggregate of 1,035,564 shares of PubCo Class A Common stock with an aggregate value of \$10,355,640 (at a deemed value of \$10.00 per share), (y) shares of PubCo Class C Common Stock, or an aggregate of 146,875 shares of PubCo Class C Common Stock with an aggregate value of \$1,468,750 (at a deemed value of \$10.00 per share) and (z) cash; and
- certain existing members of Authentic Brands (collectively, the “Continuing Unitholders”) received a combination of cash consideration and an aggregate of 139,106,323 common units in Authentic Brands (the “Common Units”) and a corresponding number of shares of PubCo’s Class B common stock, par value \$0.0001 per share (the “PubCo Class B Common Stock”), representing an aggregate value of \$1,391,063,230 (at a deemed value of \$10.00 per share), which shares of PubCo Class B Common Stock have no economic rights but entitle the holders thereof to vote on all matters on which stockholders of PubCo are entitled to vote generally, and 21,241,250 restricted common units in Authentic Brands (the “Restricted Common Units”), which are subject to performance-based vesting conditions as described herein and as set forth in the Third Amended and Restated Limited Liability Company Agreement of Authentic Brands (the “A&R LLCA”) entered into upon Closing, and restricted from transfer (subject to limited customary exceptions).

Item 1.01. Entry into a Material Definitive Agreement.

A&R LLCA

On February 9, 2022, in connection with the Closing, the existing Second Amended and Restated Limited Liability Company Agreement of Authentic Brands was further amended and restated in its entirety to become the A&R LLCA.

Rights of the Units

Following the Closing, the Common Units are entitled to share in the profits and losses of Authentic Brands and to receive distributions as and if declared by the Company, as the managing member of Authentic Brands, and have no voting rights.

The Restricted Common Units will vest and become Common Units, and holders of such Restricted Common Units will receive one share of PubCo Class B Common Stock for each Common Unit received as a result of such vesting and conversion, as follows: (i) 50% of the Restricted Common Units shall vest on the first day on which the VWAP (as defined in the A&R LLCA) of the PubCo Class A Common Stock is greater than or equal to \$15 over any 20 trading days within any 30 trading day period commencing at any time on or after the Closing Date; *provided*, that, if such vesting event has not occurred by the fifth anniversary of the Closing Date, such number of Restricted Common Units shall be cancelled and extinguished for no consideration; (ii) the remaining 50% of the Restricted Common Units shall vest on the first day on which the VWAP of the PubCo Class A Common Stock is greater than or equal to \$20 over any 20 trading days within any 30 trading day period commencing at any time on or after the Closing Date; *provided*, that, if such vesting event has not occurred by the seventh anniversary of the Closing Date, all of the remaining Restricted Common Units shall be cancelled and extinguished for no consideration; *provided, further*, that each dollar threshold included in clauses (i) and (ii) shall be decreased by the aggregate amount of dividends per share paid by the Company; and (iii) all Restricted Common Units shall vest upon the consummation of a qualifying change of control or liquidation of Authentic Brands.

The incentive units of Authentic Brands (“Incentive Units”) represent interests in the profits and losses, but not the capital, of Authentic Brands. The participation threshold for the Incentive Units (“Participation Threshold”) is subject to adjustment from time to time, as reasonably determined by the managing member of Authentic Brands, including in respect of any changes to the capital structure, to the extent necessary so that the Incentive Units may be treated as “profits interests” under applicable tax law. For any Incentive Units subject to the Participation Threshold, if such Participation Threshold is not fully met, no distribution will be made to such Incentive Units and any amounts

otherwise distributable to such Incentive Units will be made to the Common Units or other Incentive Units with a Participation Threshold that has been fully met. Each holder of Incentive Units will be entitled during the five-day period immediately following the end of any fiscal quarter from and after the Closing to surrender vested Incentive Units to Authentic Brands in exchange for the delivery to such holder a number of Common Units determined by an exchange ratio that is based on the per Common Unit equity value of Authentic Brands at the time of such exchange.

The A&R LLCA contains provisions which require that a one-to-one ratio is maintained between interests held by the Company in Authentic Brands and the common stock outstanding in the Company, subject to certain exceptions (including in respect of management equity which has not been settled in Company common stock). In addition, the A&R LLCA permits the Company, in its capacity as the managing member, to take actions to maintain such ratio, including in connection with stock splits, combinations, recapitalizations and exercises of the exchange rights of the parties to the A&R LLCA (described below).

The Company, as the managing member of Authentic Brands, has the authority to create new equity interests in Authentic Brands, and establish the rights and privileges of such interests.

Management

The Company, as the managing member of Authentic Brands following the Closing, has the sole authority to manage the business and affairs of Authentic Brands in accordance with the A&R LLCA and applicable law. The business, property and affairs of Authentic Brands will be managed solely by the managing member, and the managing member cannot be removed or replaced except by the incumbent managing member.

Tax Distributions

The A&R LLCA provides for quarterly tax distributions to each of its members based on each member's allocable share of net taxable income of Authentic Brands (calculated under certain assumptions) multiplied by an assumed tax rate. The assumed tax rate for this purpose is generally the higher of the then applicable (a) highest effective marginal combined U.S. federal, state, and local income tax rate applicable to an individual residing in Salt Lake City, Utah or (b) highest effective marginal combined U.S. federal corporate income tax rate and the highest combined marginal effective U.S. state and local corporate income tax of any state in which Authentic Brands does business.

Transfer Restrictions

The A&R LLCA contains restrictions on transfers of units. No member may transfer all or a portion of its units, except for (i) certain transfers to permitted transferees under certain conditions, (ii) exchanges of Common Units for PubCo Class A Common Stock after the Lock-up Period (as defined below) pursuant to the Investor Rights Agreement (as defined below) has expired and (iii) by a member to the Company or any of its wholly-owned subsidiaries. The "Lock-up Period" is the period commencing on the date of Closing and ending on the date that is six months following the date of Closing, or August 9, 2022.

Exchange of Common Units for PubCo Class A Common Stock

From and after the Lock-Up Period and subject to the terms of the A&R LLCA, the Continuing Unitholders will be able to exchange all or any portion of their Common Units, together with the cancellation of an equal number of shares of PubCo Class B Common Stock, for a number of shares of PubCo Class A Common Stock equal to the number of exchanged Common Units by delivering a written notice to Authentic Brands, with a copy to the Company. Notwithstanding the foregoing, the Company may, as determined solely by the Company's board of directors and subject to the terms of the A&R LLCA, in lieu of delivering shares of PubCo Class A Common Stock for any Common Units surrendered for exchange, pay an amount in cash per Common Unit equal to the 20-day VWAP of the PubCo Class A Common Stock ending on the last full trading day immediately prior to the applicable exchange date.

Restrictions on Exchange

The Company may limit the rights of Continuing Unitholders to exchange their Common Units under the A&R LLCA if such exchange could (as determined in the sole discretion of the Company) cause Authentic Brands to be treated as a "publicly traded partnership" under applicable tax laws and regulations.

Expenses

Authentic Brands will reimburse all of the Company's expenses in connection with its ownership and management of Authentic Brands and its business (other than certain expenses, such as income taxes and payment obligations under the Tax Receivable Agreement (as defined below)).

This summary is qualified in its entirety by reference to the text of the A&R LLCA, which is included as Exhibit 10.1 to this Current Report and is incorporated herein by reference.

Tax Receivable Agreement

On February 9, 2022, in connection with the Closing, the Company entered into a Tax Receivable Agreement with Authentic Brands and Sterling New Investment Holdings LLC, as agent (the "Tax Receivable Agreement").

Pursuant to the Tax Receivable Agreement, the Company will be required to pay to the Continuing Unitholders 85% of the tax savings that the Company realizes as a result of increases in tax basis in Authentic Brands' assets resulting from the redemption of existing preferred units of Authentic Brands (other than those held by Blocker) and a portion of the Common Units for the consideration paid pursuant to the Business Combination Agreement, the future exchange of Common Units for shares of PubCo Class A Common Stock (or cash) pursuant to the A&R LLCA and certain pre-existing tax attributes of the Blocker, as well as certain other tax benefits related to entering into the Tax Receivable Agreement, including tax benefits attributable to payments under the Tax Receivable Agreement. The term of the Tax Receivable Agreement will continue until all such tax benefits have been utilized or expired unless the Company exercises its right (with the consent of a majority of its disinterested directors and of the Agent under the Tax Receivable Agreement) to terminate the Tax Receivable Agreement for an amount representing the present value of all forecasted future payments that would have otherwise been made under the Tax Receivable Agreement or certain other acceleration events occur.

This summary is qualified in its entirety by reference to the text of the Tax Receivable Agreement, which is included as Exhibit 10.2 to this Current Report and is incorporated herein by reference.

Investor Rights Agreement

On February 9, 2022, in connection with the Closing, the Company entered into the Investor Rights Agreement with certain stockholders (the “Investor Rights Agreement” and such parties, the “IRA Parties”).

Director Appointment

Under the Investor Rights Agreement, subject to certain step-down provisions, Engaged Capital, LLC (“Engaged Capital”), on behalf of investment funds and accounts managed by Engaged Capital (such investors, the “Engaged Capital Investors”), has the right to nominate up to two board members (each, an “Engaged Director”) and Evan Hafer (the “Founder”) has the right to nominate up to three board members (including himself) (each, a “Founder Director”).

Voting

From the Closing Date until the fifth anniversary of the Closing Date, or February 9, 2027 (the “Voting Period”), certain stockholders party to the Investor Rights Agreement have agreed to vote all of their respective shares of PubCo Class A Common Stock and PubCo Class B Common Stock, as applicable, as directed by the Founder or, solely in the event that no such direction is provided by the Founder after inquiry, as recommended by the board of directors of the Company, in each case with respect to the election and removal of directors to the board of directors of the Company.

In addition, for the duration of the Voting Period, the IRA Parties are required to vote all of their respective shares of PubCo Class A Common Stock and PubCo Class B Common Stock, as applicable, in favor of the Engaged Directors and Founders Directors recommended by the board of directors of the Company.

Registration Rights

Under the Investor Rights Agreement, within 30 business days of the Closing Date, the Company is required to file a registration statement on Form S-1 registering the resale of securities held by the parties to the Investor Rights Agreement under the Securities Act of 1933, as amended (the “Securities Act”). Certain of the IRA Parties (the “Special Holders”) are entitled to request to sell all or any portion of their registrable securities in a registered underwritten offering, so long as such demand is for at least \$30,000,000 in shares of PubCo Class A Common Stock. Subject to certain customary exceptions, if any time after the Closing, the Company proposes to file a registration statement under the Securities Act with respect to its securities, the Company will give notice to the Special Holders as to the proposed filing and offer such security holders an opportunity to register the sale of such number of PubCo Class A Common Stock as requested by such security holders in writing, subject to customary cutbacks in an underwritten offering. The Company has customary rights to postpone any registration statements for certain events. If the registration is through an underwritten offering, certain of the Company’s security holders will agree to lockup restrictions on the same basis as the Company’s directors and executive officers.

Under the Investor Rights Agreement, the Company will agree to indemnify the security holders and each underwriter and each of their respective controlling persons against any losses or damages resulting from any untrue statement or omission of a material fact in any registration statement or prospectus pursuant to which they sell shares of PubCo Class A Common Stock, unless such liability arose from their misstatement or omission, and the security holders will agree to indemnify the Company and its officers and directors and controlling persons against all losses caused by their misstatements or omissions in those documents.

The Investor Rights Agreement terminated the original Registration Rights Agreement that was entered into by SilverBox, SilverBox Engaged Sponsor LLC (the “Sponsor”) and Engaged Capital on February 25, 2021 in connection with the initial public offering of SilverBox’s securities.

Lock-Up

Under the Investor Rights Agreement, the IRA Parties are not permitted to transfer shares of the Company beneficially owned or otherwise held by them prior to the termination of Lock-Up Period, subject to certain customary exceptions including (a) transfers to permitted transferees, such as an affiliate of such person, a member of the person’s immediate family or to a trust, the beneficiary of which is a member of the person’s immediate family and (b) to a charitable organization, by the by the laws of descent and distribution upon death, or pursuant to a qualified domestic relations order.

Transfers

The IRA Parties will not be able to transfer shares beneficially owned or otherwise held by them prior to the termination of the Lock-up Period, subject to certain customary exceptions including transfers to certain permitted transferees, such as an affiliate of such person, a member of the person’s immediate family or a trust, the beneficiary of which is a member of the person’s immediate family or an affiliate of such person.

Termination

The director appointment rights under the Investor Rights Agreement will terminate as to a party when such party, together with its permitted transferees, has less than certain ownership thresholds (with respect to Engaged Capital (on behalf of the Engaged Capital Investors), 33% of the economic interests in the Company that the Engaged Capital Investors beneficially owned immediately after the Closing, and with respect to the Founder, 15% of the economic interests in the Company that the Founder beneficially owned immediately after the Closing). The registration rights in the Investor Rights Agreement will terminate as to each holder of shares of the Company’s common stock when such holder ceases to hold any such shares of common stock of the Company or securities exercisable or exchangeable for such shares of common stock.

This summary is qualified in its entirety by reference to the text of the Investor Rights Agreement, which is included as Exhibit 10.3 to this Current Report and is incorporated herein by reference.

Indemnification Agreements

Concurrently with the Closing, the Company entered into indemnification agreements with Evan Hafer, Mathew Best, Thomas E. Davin, Gregory J. Iverson, Toby Johnson, Andrew J. McCormick, Kathryn P. Dickson, George Muñoz, Roland C. Smith, Glenn Welling and Steven Taslitz, each of whom became or continued as an executive officer, Section 16 officer and/or director of the Company at Closing. Each indemnification agreement provides that, subject to limited exceptions, the Company will indemnify the director or executive officer to the fullest extent permitted by law for claims arising in his or her capacity as our director or officer.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by the terms and conditions of the indemnification agreement, a form of which is filed as Exhibit 10.4 to this Current Report and is incorporated herein by reference.

Waiver under the Business Combination Agreement

On February 9, 2022, pursuant to a waiver under the Business Combination Agreement, (i) SilverBox and Authentic Brands agreed that Authentic Brands shall repay in full outstanding borrowings under its revolving promissory note on the Closing Date; provided, that, such revolving promissory note shall remain in place from and after the Closing Date and (ii) SilverBox waived certain indebtedness covenants of Authentic Brands and corresponding closing condition under the Business Combination Agreement which required Authentic Brands to terminate its revolving credit facility on the Closing Date after its repayment in full. The waiver also provided for SilverBox’s consent to the

grant of transaction bonuses to certain stakeholders of Authentic Brands in an aggregate amount of up to \$350,000.

The foregoing description of the waiver under the Business Combination Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the waiver, a form of which is filed as Exhibit 10.5 to this Current Report and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the “Introductory Note” above is incorporated into this Item 2.01 by reference.

On the trading day following the Closing, SilverBox Class A Common Stock ceased trading, and PubCo Class A Common Stock and warrants to purchase PubCo Class A Common Stock began trading on the New York Stock Exchange (“NYSE”) under the symbols “BRCC” and “BRCC WS,” respectively.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a shell company, as SilverBox was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, the Company is providing the information below that would be included in a Form 10 if the Company were to file a Form 10. Please note that the information provided below relates to the Company following the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Forward-Looking Statements

This Current Report contains forward-looking statements. Forward-looking statements provide the Company’s current expectations or forecasts of future events. Forward-looking statements include statements about the Company’s expectations, beliefs, plans, objectives, intentions, assumptions and other statements that are not historical facts. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Examples of forward-looking statements in this Current Report include, but are not limited to, statements regarding the Company’s disclosure concerning the Company’s operations, cash flows, financial position and dividend policy. The risks and uncertainties include, but are not limited to:

- Negative publicity impacting the Company’s brand and reputation, which may adversely impact the Company’s operating results;
- Failure by the Company to maintain its message as a supportive member of the veteran and military communities and any other factors which may negatively impact the perception of the Company’s brand;
- the Company’s limited operating history, which may make it difficult to successfully execute its strategic initiatives and accurately evaluate future risks and challenges;
- Failed marketing campaigns, which may cause the Company to incur costs without attracting new customers or realizing higher revenue;
- Failure to attract new customers or retain existing customers;
- Risks related to the use of social media platforms, including dependence on third-party platforms;
- Failure to provide high-quality customer experience, which may impact the Company’s brand;
- Decrease in success of the direct to consumer revenue channel;
- Loss of one or more of co-manufacturers;
- Failure to effectively manage or distribute the Company’s products through the Company’s wholesale business partners;
- Failure by third parties involved in the supply chain of coffee, store supplies or merchandise to produce or deliver products;
- Changes in the market for high-quality Arabica coffee beans and other commodities;

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- Fluctuations in costs and availability of real estate, labor, raw materials, equipment, transportation or shipping;
 - Loss of confidential data from customers and employees, which may subject the Company to litigation, liability or reputational damage;
 - Failure to successfully compete with other producers and retailers of coffee;
 - Failure to successfully open new retail coffee shops;
 - Failure to properly manage the Company’s rapid growth and relationships with various business partners;
 - Failure to protect against software or hardware vulnerabilities;
 - Failure to build brand recognition using the Company’s intellectual properties;
 - Shifts in consumer spending, lack of interest in new products or changes in brand perception upon evolving consumer preferences and tastes;
 - Failure to adequately maintain food safety or quality and comply with food safety regulations;
 - Failure to successfully integrate into new domestic and international markets;

- Risks related to leasing space subject to long-term non-cancelable leases and with respect to real property;
- Failure of the Company's franchise partners to successfully manage their franchise;
- Failure to raise additional capital to develop the business;
- Risks related to the COVID-19 pandemic, including supply chain disruptions;
- The loss of one or more of the Company's executive officers and other key employees;
- Failure to hire and retain qualified employees;
- Failure to meet the Company's goal of hiring 10,000 veterans;
- Risks related to unionization of employees;
- Failure to comply with federal state and local laws and regulations;
- The expected benefits of the Business Combination; and
- Other risks and uncertainties indicated in the Proxy Statement/Prospectus, including those set forth under the section titled "Risk Factors."

The forward-looking statements contained in this Current Report are based on the Company's current expectations and beliefs concerning future developments and their potential effects on the Business Combination and the Company. There can be no assurance that future developments affecting the Company will be those that the Company has anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond the Company's control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "Risk Factors" in the Proxy Statement/Prospectus. Should one or more of these risks or uncertainties materialize, or should any of the assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. The Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

Business and Properties

The business and properties of the Company is described in the Proxy Statement/Prospectus in the section titled "Information About BRCC" beginning on page 191 thereof, which is incorporated herein by reference.

Risk Factors

The risks associated with the Company are described in the Proxy Statement/Prospectus in the section titled "Risk Factors" beginning on page 50 thereof, which is incorporated herein by reference.

Financial Information

Selected Historical Financial Information

The selected historical consolidated financial information and other data for the nine months ended September 30, 2021 and 2020 and the years ended December 31, 2020 and 2019 for Authentic Brands is included in the Proxy Statement/Prospectus in the section titled "Selected Historical Financial Information of Authentic Brands" beginning on page 45 thereof, which is incorporated herein by reference.

Unaudited Interim Consolidated Financial Statements

The unaudited interim consolidated financial statements as of and for the nine months ended September 30, 2021 and 2020 of Authentic Brands have been prepared in accordance with U.S. generally accepted accounting principles and pursuant to the regulations of the SEC and are included in the Proxy Statement/Prospectus beginning on page F-68 thereof, which are incorporated herein by reference.

These unaudited condensed financial statements should be read in conjunction with the audited consolidated financial statements of Authentic Brands as of and for the years ended December 31, 2020 and 2019 and the related notes included in the Proxy Statement/Prospectus beginning on page F-38 thereof, which are incorporated herein by reference.

Unaudited Pro Forma Condensed Combined Financial Information

The unaudited pro forma condensed combined financial information of Authentic Brands as of September 30, 2021 and for the year ended December 31, 2020 and the nine months ended September 30, 2021 is set forth in Exhibit 99.1 hereto and is incorporated herein by reference.

Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's Discussion and Analysis of Financial Condition and Results of Operations of Authentic Brands is included in the Proxy Statement/Prospectus in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations of Authentic Brands" beginning on page 219 thereof and is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of voting securities of the Company upon the Closing of the Business Combination by:

- each person known by the Company to be the beneficial owner of more than 5% of any class of voting securities of the Company;
- each of the Company's named executive officers and directors; and

all of the Company's executive officers and directors as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she, or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

The beneficial ownership of shares of the Company's common stock immediately following completion of the Business Combination is based on the following: (i) an aggregate of 44,009,874 shares of PubCo Class A Common Stock issued and outstanding immediately following the completion of the Business Combination and (ii) an aggregate of 139,106,323 shares of PubCo Class B Common Stock issued and outstanding immediately following the completion of the Business Combination; *provided*, that, the information below excludes (a) the shares of PubCo Class A Common Stock reserved for future awards under the EIP and the ESPP (each, as defined below), (b) 17,766,667 shares of PubCo Class A Common Stock subject to outstanding warrants of the Company, (c) non-voting shares of PubCo Class C Common Stock issued upon completion of the Business Combination and (d) and unvested restricted units.

Unless otherwise indicated, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of common stock of the Company beneficially owned by them. Unless otherwise noted, the business address of each of the following entities or individuals is 1144 S 500 W, Salt Lake City, UT 84101.

Name and Address of Beneficial Owners	Beneficial Ownership Table		
	PubCo Class A Common Stock	PubCo Class B Common Stock	% of Total Voting Power
Evan Hafer ⁽¹⁾	15,812,243	100,730,338	63.64%
Tom Davin ⁽²⁾	—	7,551,946	4.12%
Toby Johnson ⁽³⁾	—	92,616	0.05%
Andrew McCormick ⁽⁴⁾	—	16,724	0.01%
Katy Dickson ⁽⁵⁾	—	99,309	0.05%
George Munoz ⁽⁶⁾	—	171,039	0.09%
Roland Smith	—	—	—
Steven Taslitz ⁽⁷⁾	—	1,471,566	0.80%
Glenn Welling ⁽⁸⁾	16,025,000	—	8.75%
EKNRH Holdings LLC ⁽⁹⁾	—	30,025,040	16.40%
Mathew Best ⁽¹⁰⁾	—	25,449,303	13.90%
John Miller ⁽¹¹⁾	—	12,409,327	6.78%
Marianne Hellauer ⁽¹²⁾	—	23,217,052	12.68%
Funds and accounts managed by Engaged Capital ⁽⁸⁾	16,025,000	—	8.75%
<i>All directors and officers after the Business Combination as a group (11 persons)</i>	20,837,243	108,781,585	70.79%

(1) Reflects (i) 30,025,040 shares of PubCo Class B Common Stock held through EKNRH Holdings LLC, an entity managed by Mr. Hafer, and (ii)(a) 4,812,243 shares of PubCo Class A Common Stock held by the Sponsor, (b) 11,000,000 shares of PubCo Class A Common Stock held by the Engaged Capital Investors, (c) 25,449,303 shares of PubCo Class B Common Stock held by Mr. Best, (d) 12,409,327 shares of PubCo Class B Common Stock that may be deemed to be beneficially owned by Mr. Miller, (e) 23,217,052 shares of PubCo Class B Common Stock that may be deemed to be beneficially owned by Ms. Hellauer and (f) 9,629,616 shares of PubCo Class B Common Stock held in aggregate by certain other stockholders party to the Investor Rights Agreement, which shares listed under (ii) may be deemed to be beneficially owned by Mr. Hafer, given that, pursuant to the Investor Rights Agreement, Mr. Hafer has a proxy to vote such shares with respect to director elections. Mr. Hafer disclaims any beneficial ownership of the reported shares other than with respect to shares held by EKNRH Holdings LLC and other than to the extent of any pecuniary interest Mr. Hafer may have therein, directly or indirectly.

(2) Reflects (i) 6,408,947 shares of PubCo Class B Common Stock directly held by Mr. Davin and (ii) 1,142,999 shares of PubCo Class B Common Stock that Mr. Davin may be deemed to beneficially own through his control, together with a partner, of the entity owning such shares. Mr. Davin disclaims any beneficial ownership of the reported shares held by such entity other than to the extent of any pecuniary interest Mr. Davin may have therein, directly or indirectly. Does not reflect up to 1,110,126 shares of PubCo Class B Common Stock that Mr. Davin may be deemed to beneficially own in the event of the occurrence of a Vesting Event (as defined in the A&R LLCA) with respect to the 1,110,126 Restricted Common Units that may be deemed to be beneficially owned by Mr. Davin at Closing.

(3) Does not reflect (i) up to 41,500 shares of PubCo Class B Common Stock issuable to Ms. Johnson in the event of the occurrence of a Vesting Event with respect to the 41,500 Restricted Common Units held by Ms. Johnson at Closing and (ii) unvested restricted units.

(4) Does not reflect (i) up to 8,000 shares of PubCo Class B Common Stock issuable to Mr. McCormick in the event of the occurrence of a Vesting Event with respect to the 8,000 Restricted Common Units held by Mr. McCormick at Closing and (ii) unvested restricted units.

(5) Does not reflect (i) up to 17,340 shares of PubCo Class B Common Stock issuable to Ms. Dickson in the event of the occurrence of a Vesting Event with respect to the 17,340 Restricted Common Units held by Ms. Dickson at Closing and (ii) unvested restricted units.

(6) Does not reflect (i) up to 29,300 shares of PubCo Class B Common Stock issuable to Mr. Muñoz in the event of the occurrence of a Vesting Event with respect to the 29,300 Restricted Common Units held by Mr. Muñoz at Closing and (ii) unvested restricted units.

(7) Reflects (i) 2,509 shares of PubCo Class B Common Stock directly held by Mr. Taslitz and (ii) 1,469,057 shares of PubCo Class B Common Stock held by a trust for which Mr. Taslitz is acting as a trustee and which shares may therefore be deemed to be beneficially owned by Mr. Taslitz. Mr. Taslitz disclaims any beneficial ownership of the reported shares held by such trust other than to the extent of any pecuniary interest Mr. Taslitz may have therein, directly or indirectly. Does not reflect (i) up to 209,560 shares of PubCo Class B Common Stock that Mr. Taslitz may be deemed to beneficially own in the event of the occurrence of a Vesting Event with respect to the 209,560 Restricted Common Units that may be deemed to be beneficially owned by Mr. Taslitz at Closing and (ii) unvested restricted units.

(8) Engaged Capital, as the general partner and investment adviser of the investment funds and accounts purchasing the Forward Purchase Shares (as defined below) pursuant to the Forward Purchase Investment (as defined below) and the PIPE Shares (as defined below) pursuant to the PIPE Investment (as defined below), may be deemed to

beneficially own the 16,025,000 shares owned in the aggregate by the Forward Purchase Investors (as defined below) and such PIPE Investors (as defined below) following the Business Combination. Engaged Capital Holdings, LLC, as the managing member of Engaged Capital, may be deemed to beneficially own the 16,025,000 shares owned in the aggregate by the Forward Purchase Investors and such PIPE Investors following the Business Combination. Glenn Welling, as the Founder and Chief Investment Officer of Engaged Capital and the sole member of Engaged Capital Holdings, LLC, may be deemed to beneficially own the 16,025,000 shares owned in the aggregate by the Forward Purchase Investors and such PIPE Investors following the Business Combination. Mr. Welling disclaims any beneficial ownership of the reported shares other than to the extent of any pecuniary interest Mr. Welling may have therein, directly or indirectly. The principal business address of Glenn Welling is c/o Engaged Capital, LLC, 610 Newport Center Drive, Suite 250, Newport Beach, CA 92660.

(9) Does not reflect up to 4,213,257 shares of PubCo Class B Common Stock issuable to EKNRH Holdings LLC in the event of the occurrence of a Vesting Event with respect to the 4,213,257 Restricted Common Units held by EKNRH Holdings LLC at Closing. EKNRH Holdings LLC is an entity managed by Evan Hafer and, as such, Evan Hafer is the beneficial owner of the shares held by EKNRH Holdings LLC.

(10) Does not reflect up to 3,575,586 shares of PubCo Class B Common Stock issuable to Mr. Best in the event of the occurrence of a Vesting Event with respect to the 3,575,586 Restricted Common Units held by Mr. Best at Closing.

(11) Represents shares of PubCo Class B Common Stock held by entities managed by Mr. Miller and by a trust for which Mr. Miller is serving as a trustee, which shares may in each case be deemed to be beneficially owned by Mr. Miller. Does not reflect up to 1,760,047 shares of PubCo Class B Common Stock that Mr. Miller may be deemed to beneficially own in the event of the occurrence of a Vesting Event with respect to the 1,760,047 Restricted Common Units that may be deemed to be beneficially owned by Mr. Miller at Closing. Mr. Miller disclaims any beneficial ownership of the reported shares other than to the extent of any pecuniary interest Mr. Miller may have therein, directly or indirectly.

(12) Represents 1,646,468 shares of PubCo Class B Common Stock held by trusts and 1,646,469 shares of PubCo Class B Common Stock held by GI Decaf Trust UAD 2/3/2016, in each case for which Ms. Hellauer is serving as a trustee, and which shares may be deemed to be beneficially owned by Ms. Hellauer. Does not reflect up to 3,292,937 shares of PubCo Class B Common Stock that Ms. Hellauer may be deemed to beneficially own in the event of the occurrence of a Vesting Event with respect to the 3,292,937 Restricted Common Units that may be deemed to be beneficially owned by Ms. Hellauer at Closing. Ms. Hellauer disclaims any beneficial ownership of the reported shares other than to the extent of any pecuniary interest Ms. Hellauer may have therein, directly or indirectly.

Directors and Executive Officers

The Company's directors and executive officers after the Closing are described in the Proxy Statement/Prospectus in the section titled *"Management After the Business Combination"* beginning on page 246 thereof, which is incorporated herein by reference.

Director and Executive Compensation

The compensation of the named executive officers of Authentic Brands before the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled *"BRCC's Executive Compensation"* beginning on page 214 thereof, which is incorporated herein by reference. The compensation of the directors of Authentic Brands before the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled *"BRCC's Executive Compensation—Director Compensation"* on page 218 thereof, which is incorporated herein by reference.

At the Special Meeting, the SilverBox's stockholders approved the 2022 Omnibus Incentive Plan (the *"EIP"*) and the 2022 Employee Stock Purchase Plan (the *"ESPP"*), which were approved by the board of directors of the Company on February 9, 2022. A description of the material terms of the EIP and the ESPP is set forth in the sections of the Proxy Statement/Prospectus titled *"Proposal No. 4—The Omnibus Incentive Plan Proposal"* beginning on page 179 thereof and *"Proposal No. 5—The Employee Stock Purchase Plan Proposal"* beginning on page 185 thereof, respectively, which are incorporated herein by reference. This summary is qualified in its entirety by reference to the complete text of the EIP and the ESPP, a copy of which is attached as Exhibit 10.8 and Exhibit 10.9, respectively, to this Current Report.

The information set forth in this Current Report under Item 5.02 is incorporated in this Item 2.01 by reference.

The Board of Directors will determine the annual compensation to be paid to the members of the board of directors of the Company.

Certain Relationships and Related Transactions and Director Independence

Certain relationships and related person transactions of Authentic Brands are described in the Proxy Statement/Prospectus in the section titled *"Certain Relationships and Related Person Transactions—BRCC"* beginning on page 244 thereof, which is incorporated herein by reference.

Reference is made to the disclosure regarding director independence in the section of the Proxy Statement/Prospectus titled *"Management After the Business Combination—Director Independence"* on page 250 thereof, which is incorporated herein by reference.

The information set forth under Item 1.01 of this Current Report under the sections titled *"Third Amended and Restated Limited Liability Company Agreement," "Tax Receivable Agreement," "Investor Rights Agreement"* and *"Director and Executive Compensation"* is incorporated into this Item 2.01 by reference.

The Company adopted a formal written policy effective upon the Business Combination providing that persons meeting the definition of "Related Person" under Item 404(a) of Regulation S-K such as the Company's executive officers, directors, nominees for election as directors, beneficial owners of more than 5% of any class of the Company's capital stock and any member of the immediate family of any of the foregoing persons are not permitted to enter into a related party transaction with the Company without the approval of the Company's audit committee, subject to the exceptions described below.

A related party transaction is a transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which the Company was or is to be a participant in which the amount involves exceeds \$120,000 in the aggregate, and in which a related party had or will have a direct or indirect material interest. Transactions involving compensation for services provided to the Company as an employee or director and certain other transactions are not covered by this policy.

Under the policy, the audit committee will review information that it deems reasonably necessary to enable the Company to identify any existing or potential related person transactions and to effectuate the terms of the policy. In addition, under the Code of Conduct, employees and directors have an affirmative responsibility to disclose any transaction or relationship that reasonably could be expected to give rise to a conflict of interest.

Legal Proceedings

Reference is made to the disclosure regarding legal proceedings in the section of the Proxy Statement/Prospectus titled “*Information About BRCC—Legal Proceedings*” on page 213 thereof, which is incorporated herein by reference.

Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters

Following the Closing of the Business Combination, the PubCo Class A Common Stock began trading on the NYSE under the symbol “BRCC” and the Company’s warrants began trading on the NYSE under the symbol “BRCC WS” on February 10, 2022, in lieu of the shares, warrants and units of SilverBox. The Company has not paid any cash dividends on its shares of common stock to date.

It is the present intention of the Company’s board of directors to retain all earnings, if any, for use in the Company’s business operations and, accordingly, the Company’s board does not anticipate declaring any dividends in the foreseeable future. The payment of cash dividends in the future will be dependent upon the Company’s revenues and earnings, if any, capital requirements and general financial condition. The payment of any cash dividends is within the discretion of the Company’s board of directors. Further, the ability of PubCo to declare dividends may be limited by the terms of financing or other agreements entered into by it or its subsidiaries from time to time.

Information regarding the SilverBox Class A Common Stock, the SilverBox Class B Common Stock, SilverBox’s warrants and SilverBox’s units and related stockholder matters are described in the Proxy Statement/Prospectus in the section titled “*Market Price and Dividend Information*” on page 120 thereof, which is incorporated herein by reference.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth under Item 3.02 of this Current Report, which is incorporated herein by reference.

Description of Registrant’s Securities

The description of the Company’s securities is contained in the Proxy Statement/Prospectus in the section titled “*Description of PubCo Securities*” beginning on page 260 thereof, which is incorporated herein by reference.

Indemnification of Directors and Officers

Information about indemnification of the Company’s directors and officers is set forth in the Proxy Statement in the section titled “*Certain Relationships and Related Party Transactions—Indemnification of Directors and Officers*” beginning on page 244 thereof, which is incorporated herein by reference. The disclosure set forth in Item 1.01 of this Current Report under the section titled “*Indemnification Agreements*” is incorporated by reference into this Item 2.01.

Financial Statements and Supplementary Data

Reference is made to the disclosure set forth under Item 9.01 of this Current Report concerning the Company’s consolidated financial statements and supplementary data.

Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Reference is made to the disclosure set forth under Item 4.01 of this Current Report relating to the changes in certifying accountant.

Financial Statements and Exhibits

Reference is made to the disclosure set forth under Item 9.01 of this Current Report concerning the financial information of the Company.

Item 3.02. Unregistered Securities

Forward Purchases

In connection with the Closing of the Business Combination, on February 9, 2022, the Company issued 10,000,000 shares of PubCo Class A Common Stock (the “Forward Purchase Shares”) to funds and accounts managed by Engaged Capital (collectively, the “Forward Purchase Investors”), at \$10.00 per Forward Purchase Share, in exchange for 10,000,000 shares of SilverBox Class C Common Stock issued to the Forward Purchase Investors pursuant to the amended and restated forward purchase agreement (the “Forward Purchase Agreement”) for aggregate proceeds of \$100,000,000 (the “Forward Purchase Investment”).

The Forward Purchase Shares issued to the Forward Purchase Investors have not been registered under the Securities Act and have been issued in reliance upon the exemption provided in Section 4(a)(2) of the Securities Act.

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*Certain Agreements Related to the Business Combination—Amended and Restated Forward Purchase Agreement*” on page 164 thereof, which is incorporated herein by reference.

This summary is qualified in its entirety by reference to the text of the Amended and Restated Forward Purchase Agreement, which is included as Exhibit 10.6 to this Current Report and is incorporated herein by reference.

PIPE Investment and Backstop Investment

In connection with the Closing of the Business Combination, on February 9, 2022, the Company issued (i) 10,000,000 shares of PubCo Class A Common Stock (the “PIPE Shares”) to certain accredited investors (collectively, the “PIPE Investors”), at \$10.00 per PIPE Share, in exchange for 10,000,000 shares of SilverBox Class C Common Stock issued to the PIPE Investors pursuant to the subscription and backstop agreements (collectively, the “Subscription Agreements”) for aggregate proceeds of \$100,000,000 (the “PIPE Investment”) and (ii) 10,000,000 shares of PubCo Class A Common Stock (the “Backstop Shares”) to certain accredited investors (collectively, the “Backstop Investors”), at \$10.00 per Backstop Share, in exchange for 10,000,000 shares of SilverBox Class C Common Stock issued to the Backstop Investors pursuant to the Subscription Agreements for aggregate proceeds of \$100,000,000 (the “Backstop Investment”).

The PIPE Shares issued to the PIPE Investors and the Backstop Shares issued to the Backstop Investors have not been registered under the Securities Act and have been issued in reliance upon the exemption provided in Section 4(a)(2) of the Securities Act.

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*Certain Agreements Related to the Business Combination—PIPE Subscription Agreements*” beginning on page 164 thereof, which is incorporated herein by reference.

This summary is qualified in its entirety by reference to the text of the form of the Subscription Agreement, which is included as Exhibit 10.7 to this Current Report and is incorporated herein by reference.

Business Combination Consideration

Reference is made to the disclosure set forth under Item 2.01 of this Current Report, which is incorporated herein by reference.

In connection with the Closing of the Business Combination, on February 9, 2022, the Company issued 139,106,323 shares of PubCo Class B Common Stock and 1,388,125 shares of PubCo Class C Common Stock, representing 694,066 shares of Series C-1 Common Stock and 694,059 shares of Series C-2 Common Stock. The issuances were made to the applicable holders, each of whom is an accredited investor, in reliance on Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D under the Securities Act.

Item 3.03. Material Modification to Rights of Security Holders

The disclosure set forth under Item 5.03 of this Current Report is incorporated herein by reference.

Item 4.01. Changes in Registrant’s Certifying Accountants.

On February 9, 2022, the audit committee of the board of directors of the Company approved the appointment of Ernst & Young LLP (“EY”) as the Company’s independent registered public accounting firm to audit the Company’s consolidated financial statements for the year ended December 31, 2021. EY served as the independent registered public accounting firm of Authentic Brands prior to the Business Combination.

Item 5.01. Changes in Control of Registrant.

The disclosure set forth under the Introductory Note and in the section titled “*Security Ownership of Certain Beneficial Owners and Management*” in Item 2.01 of this Current Report is incorporated herein by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Executive Officers and Directors

The disclosure set forth in the sections titled “*Directors and Executive Officers*” and “*Certain Relationships and Related Transactions*” in Item 2.01 of this Current Report is incorporated herein by reference.

2022 Omnibus Equity Incentive Plan and 2022 Employee Stock Purchase Plan

The disclosure set forth in the section titled “*Directors and Executive Officers*” in Item 2.01 of this Current Report is incorporated herein by reference.

The disclosure set forth in the section titled “*Directors and Executive Officers*” in Item 2.01 of this Current Report is incorporated herein by reference.

Stock Option Awards

On February 9, 2022, in connection with the Closing of the Business Combination, the Company made the following awards of stockoptions under the EIP (the “Option Awards”):

Name	Number of Options
Tom Davin	132,353
Greg Iverson	123,529

Each Option Award has an exercise price of \$10.00 per Class A share and term of seven years. The Option Awards vest in equal annual installments over the first three anniversaries of grant.

In the event that the optionholder’s employment terminates due to death or “disability,” he or she will be entitled to receive additional vesting of the number of options that would vest on the next annual vesting date. In the event that the optionholder’s employment terminates without “cause” (as defined in the EIP) or the optionholder resigns for “good reason” (as defined in the award agreement) during the three months prior to, or twelve months following, a change in control, the Option Award will vest in full.

The description above regarding the Option Awards is qualified in its entirety by reference to the form of Option Award Agreement, which is included as Exhibit 10.10 and incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On February 9, 2022, in connection with the Closing of the Business Combination, the Company amended and restated its certificate of incorporation (as amended and restated, the “A&R Charter”) and its bylaws (as amended, the “A&R Bylaws”), each effective as of the Closing. Upon the filing of the A&R Charter, the Company converted from a Delaware corporation into a Delaware public benefit corporation.

The material terms of each of the A&R Charter and the A&R Bylaws and the general effect upon the rights of holders of the Company’s capital stock are discussed in the Proxy Statement/Prospectus in the sections titled “*Proposal No. 2—The Organizational Document Proposals*” and “*Description of PubCo Securities*” beginning on pages 173 and 260 thereof, respectively, which are incorporated herein by reference.

Copies of the A&R Charter and the A&R Bylaws are included as Exhibit 3.1 and Exhibit 3.2 to this Current Report, respectively, and are incorporated herein by reference.

Item 5.05. Amendment to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.

In connection with the Closing of the Business Combination, on February 9, 2022 and effective as of such date, the board of directors of the Company adopted a code of ethics and business conduct (the “Code”) applicable to the Company’s associates, officers and directors. The Code clarifies (i) the types of permitted conduct thereunder, including business activities and opportunities, and (ii) procedures for the reporting, oversight and investigation of alleged violations of the Code. The Company intends to post any amendments to or any waivers from a provision of the Code on our website.

The foregoing description of the Code does not purport to be complete and is qualified in its entirety by reference to the full text of the Code, which is included as Exhibit 14.1 to this Current Report and incorporated herein by reference.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, the Company ceased being a shell company. Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “Proposal No. 1—The Business Combination Proposal” beginning on page 128 thereof, which is incorporated herein by reference. Further, the information set forth in the Introductory Note and under Item 2.01 of this Current Report is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure

On February 9, 2022, the Company issued a press release announcing the completion of the Business Combination, a copy of which is attached hereto as Exhibit 99.2 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired

The financial statements of Authentic Brands as of September 30, 2021 and for the nine months ended September 30, 2021 and 2020 and as of December 31, 2020 and 2019 and for the years ended December 31, 2020 and 2019 are set forth in the Proxy Statement/Prospectus beginning on page F-38 thereof and are incorporated herein by reference.

(b) Pro Forma Financial Information

The unaudited pro forma condensed combined financial information of the Company as of and for the nine months ended September 30, 2021 and the year ended December 31, 2020 is set forth in Exhibit 99.1 hereto and is incorporated herein by reference.

(d) Exhibits

Exhibit Description

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|-------------------------------|--|
| <u>2.1 †</u> | <u>Business Combination Agreement, dated as of November 2, 2021, by and among SilverBox, the Company, Merger Sub 1, Merger Sub 2, Authentic Brands and Blocker (incorporated by reference to Exhibit 2.1 to the Company’s Registration Statement on Form S-4 (File No. 333-260942) filed on November 10, 2021 with the SEC).</u> |
| <u>2.2</u> | <u>First Amendment to Business Combination Agreement, dated as of January 4, 2022, by and among SilverBox, the Company, Merger Sub 1, Merger Sub 2, Authentic Brands and Blocker (incorporated by reference to Exhibit 2.1 to the Company’s Registration Statement on Form S-4/A (File No. 333-260942) filed on January 4, 2022 with the SEC).</u> |
| <u>3.1*</u> | <u>Amended and Restated Certificate of Incorporation of the Company.</u> |
| <u>3.2*</u> | <u>Amended and Restated By-Laws of the Company.</u> |
| <u>4.1*</u> | <u>Specimen Common Stock Certificate.</u> |
| <u>4.2*</u> | <u>Specimen Warrant Certificate.</u> |
| <u>4.3</u> | <u>Warrant Agreement, dated as of February 25, 2021, between Continental Stock Transfer & Trust Company and SilverBox (incorporated by reference to Exhibit 4.1 to SilverBox’s Current Report on Form 8-K filed with the SEC on March 3, 2021).</u> |
| <u>4.4*</u> | <u>Warrant Assumption Agreement, dated as of February 9, 2022, by and among SilverBox, the Company and Continental Stock Transfer & Trust Company.</u> |
| <u>10.1*†</u> | <u>Third Amended and Restated Limited Liability Company Agreement of Authentic Brands, dated as of February 9, 2022, by and among Authentic Brands and each other person who is or at any time becomes a member of Authentic Brands.</u> |
| <u>10.2*</u> | <u>Tax Receivable Agreement, dated as of February 9, 2022, by and among the Company, Authentic Brands and Sterling New Investment Holdings LLC, as agent.</u> |
| <u>10.3*†</u> | <u>Investor Rights Agreement, dated as of February 9, 2022, by and among the Company and the stockholders party thereto.</u> |
| <u>10.4*</u> | <u>Form of Indemnification Agreement.</u> |
| <u>10.5*</u> | <u>Waiver under the Business Combination Agreement, dated as of February 9, 2022, by and among Authentic Brands and SilverBox.</u> |
| <u>10.6</u> | <u>Amended and Restated Forward Purchase Agreement, dated as of November 2, 2021, by and among SilverBox, Engaged Capital and Authentic Brands (incorporated by reference to Exhibit 10.3 to the Company’s Registration Statement on Form S-4 (File No. 333-260942) filed on November 10, 2021 with the SEC).</u> |

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|-----------------------------|---|
| <u>10.7</u> | <u>Form of PIPE Subscription Agreement (incorporated by reference to Exhibit 10.2 to the Company’s Registration Statement on Form S-4 (File No. 333-260942) filed on November 10, 2021 with the SEC).</u> |
|-----------------------------|---|

[10.8*# The Company's 2022 Omnibus Incentive Plan.](#)

[10.9*# The Company's 2022 Employee Stock Purchase Plan.](#)

[10.10*# Form of Stock Option Award Agreement under the Company's 2022 Omnibus Incentive Plan.](#)

[14.1* The Company's Code of Business Conduct and Ethics.](#)

[21.1* List of Subsidiaries of the Company.](#)

[99.1* Unaudited pro forma condensed combined financial information of the Company.](#)

[99.2* Press Release, dated February 9, 2022.](#)

104 Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

* Filed herewith

Indicates a management contract or compensatory plan, contract or arrangement.

† Schedules and similar attachments to this Exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of such omitted materials to the SEC upon request.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 10, 2022

BRC INC.

By: /s/ Gregory Iverson

Name: Gregory Iverson

Title: Chief Financial Officer

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BRC INC.**

BRC Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation was filed with the Office of the Secretary of State of the State of Delaware on October 26, 2021 (the “Original Certificate”).
2. The Corporation is filing this Amended and Restated Certificate of Incorporation of the Corporation (this “Certificate of Incorporation”), which restates, integrates and further amends the Original Certificate, as heretofore amended and which was duly adopted by all necessary action of the board of directors of the Corporation and the stockholders of the Corporation in accordance with the provisions of Sections 242, 245 and 228 of the General Corporation Law of the State of Delaware.
3. The text of the Original Certificate is hereby amended and restated in its entirety hereby to read in full as follows:

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BRC INC.
A DELAWARE PUBLIC BENEFIT CORPORATION**

Article I

Section 1.1. Name. The name of the Corporation is BRC Inc. (the “Corporation”).

Article II

Section 2.1. Address. The registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801; and the name of the Corporation’s registered agent at such address is The Corporation Trust Company.

Article III

Section 3.1. Public Benefit Corporation. The Corporation is a public benefit corporation under Subchapter XV of the General Corporation Law of the State of Delaware (the “DGCL”), or any successor provisions.

Section 3.2. Purposes. The nature of the business of the corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows:

(A) To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law; and

(B) To promote the following specific public benefits: support the underserved active military, veteran and first-responder communities by, among others: (i) hiring and creating meaningful post-military career opportunities for veterans, including by highlighting for other businesses the benefits of hiring veterans, (ii) inspiring veterans to become entrepreneurs through educational programs and donations to relevant charities, (iii) donating cash and in-kind resources to charities that support the unique needs of active military, veterans and first responders, (iv) providing quality products and media relating to these communities and (v) forging an enduring, profitable business.

If the DGCL is amended to alter or further define the management and operation of public benefit corporations, then the Company shall be managed and operated in accordance with the DGCL, as so amended.

Article IV

Section 4.1. Capitalization. The total number of shares of all classes of stock that the Corporation is authorized to issue is 2,802,500,000 shares, consisting of four classes of stock as follows: (i) 1,000,000 shares of Preferred Stock, par value \$0.0001 per share (“Preferred Stock”), (ii) 2,500,000,000 shares of Class A Common Stock, par value \$0.0001 per share (“Class A Common Stock”), (iii) 300,000,000 shares of Class B Common Stock, par value \$0.0001 per share (“Class B Common Stock”) and (iv) 1,500,000 shares of Class C Non-Voting Common Stock, par value \$0.0001 per share (“Class C Common Stock” and, together with the Class A Common Stock and the Class B Common Stock, the “Common Stock”), which Class C Common Stock shall be divided into two series as follows: 750,000 shares of Series C-1 Common Stock, par value \$0.0001 per share (“Series C-1 Common Stock”) and 750,000 shares of Series C-2 Common Stock, par value \$0.0001 per share (“Series C-2 Common Stock”). The number of authorized shares of any of the Class A Common Stock, the Class B Common Stock, the Class C Common Stock, or the Preferred Stock may be increased or decreased (but not below the number of shares of such class then outstanding or, in the case of Class A Common Stock, necessary for issuance (x) upon conversion of outstanding shares of Class C Common Stock or (y) upon exchange of Common Units (as defined in the Second Amended and Restated Limited Liability Company Agreement of Authentic Brands LLC (as amended or otherwise modified from time to time, the “LLC Agreement”)) and corresponding shares of Class B Common Stock) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Class A Common Stock, the Class B Common Stock, the Class C Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock.

Section 4.2. Preferred Stock.

(A) The Board of Directors of the Corporation (the “Board”) is hereby expressly authorized, subject to any limitations prescribed by the DGCL, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designations with respect thereto. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(B) Except as otherwise required by applicable law, holders of a series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designations relating to such series).

Section 4.3. Common Stock.

(A) Voting Rights.

(1) Except as otherwise provided in this Certificate of Incorporation or as required by applicable law, each holder of Class A Common Stock, as such, shall be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that to the fullest extent permitted by applicable law, holders of Class A Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding class or series of Common Stock or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such class or series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(2) Except as required by applicable law, no holder of Class C Common Stock, as such, shall be entitled to any voting rights with respect to Class C Common Stock.

(3) Except as otherwise provided in this Certificate of Incorporation or as required by applicable law, each holder of record of Class B Common Stock, as such, shall be entitled to one vote for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally or holders of Class B Common Stock as a separate class are entitled to vote (whether voting separately as a class or together with one or more classes of the Corporation's capital stock); provided, however, to the fullest extent permitted by applicable law, holders of Class B Common Stock, as such, shall have no voting power pursuant to this Certificate of Incorporation with respect to, and shall not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding class or series of Common Stock or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such class or series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

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(4) Except as otherwise provided in this Certificate of Incorporation or required by applicable law, at any annual or special meeting of the stockholders of the Corporation, holders of the Class A Common Stock and holders of the Class B Common Stock shall vote together as a single class (or, if the holders of one or more series of Preferred Stock are entitled to vote together with holders of the Class A Common Stock and holders of the Class B Common Stock, as a single class with the holders of such other series of Preferred Stock) on all matters submitted to a vote of the stockholders having voting rights generally, and shall have the exclusive right to vote for the election of directors and all other matters properly submitted to a vote of the stockholders.

(B) Dividends and Distributions.

(1) *Class A Common Stock.* Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends and other distributions in cash, stock of any corporation or property of the Corporation, the holders of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares held by each such stockholder such dividends and other distributions as may from time to time be declared by the Board in its discretion out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(2) *Class B Common Stock and Class C Common Stock.* Dividends and other distributions shall not be declared or paid on the Class B Common Stock or the Class C Common Stock.

(C) Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock having a preference over the Class A Common Stock as to distributions upon dissolution or liquidation or winding up shall be entitled, the holders of all outstanding shares of Class A Common Stock (including Class A Common Stock which converted to Class A Common Stock from Class C Common Stock in accordance with Section 4.3(E) below on or prior to the date of such liquidation, dissolution or winding up (including if a Conversion Event occurred as a result of such liquidation, dissolution or winding up)) shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of (i) Class C Common Stock (other than to the extent such liquidation, dissolution or winding up constitutes a Conversion Event, in which case such Class C Common Stock shall automatically convert to Class A Common Stock in accordance with Section 4.3(E) below and the holders of such resulting Class A Common Stock shall be treated as a holder of Class A Common Stock in accordance with this Section 4.3(C)) and (ii) Class B Common Stock, in the case of clauses (i) and (ii) as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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(D) Cancellation of Class B Common Stock; Cancellation of Class C Common Stock

(1) In the event that any outstanding share of Class B Common Stock shall cease to be held directly or indirectly by a holder of a Common Unit (as defined in the LLC Agreement), as set forth in the books and records of the Operating Company (including pursuant to an Exchange (as defined in the LLC Agreement)), such share shall automatically and without further action on the part of the Corporation or any holder of Class B Common Stock be transferred to the Corporation and cancelled for no consideration. The Corporation shall not issue additional shares of Class B Common Stock after the Closing Date (as defined in the LLC Agreement) other than in connection with the valid issuance of Common Units in accordance with the LLC Agreement or the conversion of any Restricted Units (as defined in the LLC Agreement) into Common Units upon the occurrence of an applicable Vesting Event (as defined in the LLC Agreement).

(2) To the extent that, on or before the fifth (5th) anniversary of the Closing Date, the First Tier Vesting Event (as defined in that certain sponsor letter agreement, dated as of November 2, 2021, by and among Engaged Capital, LLC, the Corporation and the Company (as amended or otherwise modified from time to time, the "Sponsor Letter Agreement")) has not occurred with respect to any Restricted Unit (as defined in the Sponsor Letter Agreement), then immediately and without any further action by the Corporation or the holder thereof, on the date that is the fifth (5th) anniversary of the Closing Date, all of the Series C-1 Common Stock outstanding shall automatically be forfeited and transferred to the Corporation and canceled for no consideration therefor and shall cease to be outstanding. To the extent that, on or before the seventh (7th) anniversary of the Closing Date, the Second Tier Vesting Event (as defined in the Sponsor Letter Agreement) has not occurred with respect to any Restricted Unit (as defined in the Sponsor Letter Agreement), then immediately and without any further action by the Corporation or the holder thereof, on the date that is the seventh (7th)

anniversary of the Closing Date, all of the Series C-2 Common Stock outstanding shall automatically be forfeited and transferred to the Corporation and canceled for no consideration therefor and shall cease to be outstanding.

(E) Conversion of Class C Common Stock. Immediately upon any Conversion Event applicable to any shares of Class C Common Stock, such shares of Class C Common Stock shall automatically, without any further action on the part of the record holder thereof or any other person, convert into and become an equal number of shares of Class A Common Stock, which conversion shall be effective on the Conversion Date with respect to such shares of Class C Common Stock, and the holder of such share of Class C Common Stock shall become a record holder of Class A Common Stock as of such Conversion Date. Each outstanding stock certificate or book-entry credit, as applicable, that, immediately prior to such Conversion Event, represented one or more shares of Class C Common Stock shall, upon such Conversion Event, represent as of the Conversion Date the number of shares of Class A Common Stock into which the Class C Common Stock converted, without the need for any surrender, exchange or registration thereof or any consent or notification, and on or promptly after the Conversion Date, if such shares are uncertificated, the Corporation or the transfer agent of the Corporation shall register such shares in book-entry form, reflecting that such holder is a record holder of Class A Common Stock as of the Conversion Date in respect of the relevant shares of Class C Common Stock, without the need for any surrender, exchange or registration thereof or any consent or notification. The Corporation, or any transfer agent of the Corporation, shall, upon the request on or after the Conversion Date of any holder whose shares of Class C Common Stock have been converted into shares of Class A Common Stock as a result of a Conversion Event and upon surrender by such holder to the Corporation of the outstanding certificate(s) formerly representing such holder's shares of Class C Common Stock (if any), issue and deliver to such holder certificate(s) representing the shares of Class A Common Stock into which such holder's shares of Class C Common Stock were converted as a result of such Conversion Event (if such shares are certificated) or, if such shares are uncertificated, register such shares in book-entry form, reflecting that such holder is a record holder of Class A Common Stock as of the Conversion Date in respect of the relevant shares of Class C Common Stock. If a dividend is declared by the Corporation on a Conversion Date, such dividend shall be paid to the holder of each share of Class C Common Stock converting on such Conversion Date as a holder of Class A Common Stock and the Corporation shall ensure that the holder of the applicable shares of Class C Common Stock on such Conversion Date shall be treated as a record holder of Class A Common Stock (in respect of each share of Class C Common Stock which converted into a share of Class A Common Stock in accordance with this Section 4.3(E) on such Conversion Date) for purposes of such dividend.

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(F) Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock an amount equal to the number of then-outstanding Common Units subject to Exchange (as defined in the LLC Agreement) and then-outstanding Restricted Units plus the number of then-outstanding shares of Class C Common Stock, in each case, from time to time. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class B Common Stock an amount equal to the number of then-outstanding Restricted Units, from time to time.

(G) Splits. If the Corporation at any time combines or subdivides (by any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Certificate of Incorporation, scheme, arrangement or otherwise (each, a "Split")) the number of shares of Class A Common Stock into a greater or lesser number of shares, the shares of Class B Common Stock and Class C Common Stock outstanding immediately prior to such subdivision shall be proportionately similarly combined or subdivided such that the ratio of shares of outstanding Class B Common Stock and Class C Common Stock, respectively, to shares of outstanding Class A Common Stock immediately prior to such subdivision shall be maintained immediately after such combination or subdivision; provided, that such actions shall be subject to Sections 3.04 and 3.05 of the LLC Agreement. Any actions from the Corporation described in this Section 4.3(G) shall become effective at the close of business on the date the combination or subdivision becomes effective.

(H) Transfers of Class B Common Stock and Class C Common Stock

(1) A holder of Class B Common Stock may surrender shares of Class B Common Stock to the Corporation for cancellation for no consideration at any time. Following the surrender, or other acquisition, of any shares of Class B Common Stock to or by the Corporation, the Corporation will take all actions necessary to cancel and retire such shares and such shares shall not be re-issued by the Corporation.

(2) Except as set forth in Section 4.3(H)(1), a holder of Class B Common Stock may transfer or assign shares of Class B Common Stock (or any legal or beneficial interest in such shares) (directly or indirectly, including by operation of law) only if such holder also simultaneously transfers an equal number of such holder's Common Units in compliance with and as permitted by the LLC Agreement.

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(3) No share of Class C Common Stock may be Transferred (as such term is defined in the LLC Agreement), other than to the holder of such share of Class C Common Stock's Permitted Transferees (as such term is defined in the LLC Agreement), prior to the Conversion Date of such shares of Class C Common Stock, at which time the shares of Class A Common Stock into which such shares of Class C Common Stock convert in accordance with the provisions of this Certificate of Incorporation may be Transferred, subject to any restrictions on transfer applicable to the holder of such Class A Common Stock and applicable law. The transfer restrictions described in Sections 4.3(H)(2) and 4.3(H)(3) are referred to as the "Restrictions."

(4) Any purported transfer of shares of Class B Common Stock and Class C Common Stock in violation of the Restrictions shall be null and void. If, notwithstanding the Restrictions, a person shall, voluntarily or involuntarily, purportedly become or attempt to become, the purported owner ("Purported Owner") of shares of Class B Common Stock or Class C Common Stock, as applicable, in violation of the Restrictions, then the Purported Owner shall not obtain any rights in, to or with respect to such shares of Class B Common Stock or Class C Common Stock, as applicable (the "Restricted Shares"), and the purported transfer of the Restricted Shares to the Purported Owner shall not be recognized by the Corporation, the Corporation's transfer agent (the "Transfer Agent") or the Secretary of the Company and each Restricted Share shall, to the fullest extent permitted by law, automatically, without any further action on the part of the Corporation, the holder thereof, the Purported Owner or any other party, lose all voting rights as set forth herein and become a non-voting share.

(5) Upon a determination by the Board that a person has attempted or may attempt to transfer or to acquire Restricted Shares in violation of the Restrictions, the Corporation may take such action as it deems advisable to refuse to give effect to such transfer or acquisition on the books and records of the Corporation, including without limitation to cause the Transfer Agent or the Secretary of the Corporation, as applicable, to not record the Purported Owner as the record owner of the Restricted Shares, and to institute proceedings to enjoin or rescind any such transfer or acquisition.

(6) The Board may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by bylaw or otherwise, regulations and procedures not inconsistent with the provisions of this Section 4.3(H) for determining whether any transfer or acquisition of shares of Class B Common Stock or Class C Common Stock would violate the Restrictions and for the orderly application, administration and implementation of the provisions of this Section 4.3(H). Any such procedures and regulations shall be kept on file with the Secretary of the Company and with the Transfer Agent and shall be made available for inspection by and, upon written request shall be mailed to, holders of shares of Class B Common Stock and Class C Common Stock.

(7) All certificates or book entries representing shares of Class B Common Stock and C Common Stock shall bear a legend substantially in the following form (or in such other form as the Board may determine): THESE SECURITIES REPRESENTED BY THIS [CERTIFICATE][BOOK ENTRY] ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE

Article V

Section 5.1. By-Laws. In furtherance and not in limitation of the powers conferred by the DGCL, and subject to the provisions hereof, the Board is expressly authorized to make, amend, alter, change, add to or repeal the by-laws of the Corporation (as the same may be amended from time to time, the "By-Laws") without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation. In addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designations relating to any series of Preferred Stock), by the By-Laws or pursuant to applicable law, the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of Article I, Article II or Article IV of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith and, with respect to any other provision of the By-Laws of the Corporation, the affirmative vote of the holders of at least a majority of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any such provision of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith.

Article VI

Section 6.1. Board of Directors.

(A) Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board shall manage or direct the business and affairs of the Corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the Corporation's conduct, and the specific public benefit or public benefits identified in this Certificate of Incorporation. Subject to the investor rights agreement (the "Investor Rights Agreement") dated on or about the date hereof, by and among (i) the Corporation; (ii) the Sponsor (as defined therein), (iii) Engaged (as defined therein), (iv) the Founder (as defined therein), (v) the Sterling Equityholder (as defined therein) and (vi) the other parties thereto, the total number of directors constituting the whole Board shall be determined from time to time by resolution adopted by the Board. Subject to the Investor Rights Agreement, the directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. Class I directors shall initially serve for a term expiring at the first annual meeting of stockholders following the Closing Date, Class II directors shall initially serve for a term expiring at the second annual meeting of stockholders following the Closing Date and Class III directors shall initially serve for a term expiring at the third annual meeting of stockholders following the Closing Date. At each annual meeting following the Closing Date, successors to the class of directors whose term expires at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove, or shorten the term of, any incumbent director. Subject to the Investor Rights Agreement, any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her earlier death, resignation, retirement, disqualification or removal from office. The Board is authorized to assign members of the Board already in office to their respective class in accordance with the Investor Rights Agreement. Notwithstanding the foregoing and subject to the Investor Rights Agreement, the term of all Class I directors shall automatically become one year commencing on the seventh annual meeting of stockholders, the term of all Class II directors shall automatically become one year commencing on the eighth annual meeting of stockholders, the term of all Class III directors shall automatically become one year commencing on the ninth annual meeting of stockholders, with all directors having a term of one year from and after such ninth annual meeting of stockholders.

(B) Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding and the rights granted pursuant to the Investor Rights Agreement, any newly-created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders). Subject to the Investor Rights Agreement, any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

(C) Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission permitted by the By-Laws. Subject to the terms of the Investor Rights Agreement, any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed only for cause and only upon the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Subject to the terms and conditions of the Investor Rights Agreement, in case the Board or any one or more directors should be so removed, new directors may be elected pursuant to Section 6.1(B).

(D) Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto. Notwithstanding Section 6.1(A), the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.1(A) hereof, and the total number of directors constituting the whole Board shall be automatically adjusted accordingly.

(E) Subject to the Investor Rights Agreement, directors of the Corporation shall be elected by a majority of the votes cast at an annual meeting of stockholders by holders of the Class A Common and Class B Common Stock, voting as a single class.

(F) Directors of the Corporation need not be elected by written ballot unless the By-Laws shall so provide.

Article VII

Section 7.1. Meetings of Stockholders. Any action required or permitted to be taken by the holders of stock of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders unless such action is recommended or approved by all directors of the Corporation then in office; provided, however, that any action required or permitted to be taken by the holders of Class B Common Stock, voting separately as a class, the Class C Common Stock, voting separately as a class, or, to the extent expressly permitted by the certificate of designations relating to one or more series of Preferred Stock, by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with applicable law. Subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation or as otherwise provided in the By-Laws.

Section 7.2. Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the By-Laws.

Article VIII

Section 8.1. Limited Liability of Directors. To the fullest extent permitted by applicable law, no director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this Article VIII shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing prior to such amendment or repeal. In the absence of a conflict of interest, any failure to satisfy Section 365 of the DGCL shall not, for the purposes of Sections 102(b)(7) or 145 of the DGCL, or for purposes of any use of the term "good faith" in this Certificate of Incorporation or the By-Laws in regard to the indemnification or advancement of expenses of officers, directors, employees or agents, constitute an act or omission not in good faith, or a breach of the duty of loyalty.

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Section 8.2. Director and Officer Indemnification and Advancement of Expenses

(A) The Corporation, to the fullest extent permitted by law, shall indemnify and advance expenses to any Person made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation or any predecessor of the Corporation, or, while serving as a director or officer of the Corporation, serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(B) The rights to indemnification and advancement of expenses conferred on any Person by this Section 8.2 shall not be exclusive of any other rights that such Person may have or hereafter acquire under law, this Certificate of Incorporation, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(C) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(D) To the extent a Person has rights to indemnification, advancement of expenses and/or insurance provided by a third party, (1) the Corporation shall be the indemnitor of first resort (i.e., that its obligations to such Person are primary and any obligation of such third party to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Person are secondary), (2) the Corporation shall be required to advance the full amount of expenses incurred by such Person and shall be liable for the full amount of all claims, liabilities, damages, losses, costs and expenses (including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim) to the extent legally permitted and as required by the terms of this Certificate of Incorporation, the By-Laws and the agreements to which the Corporation is a party, without regard to any rights such Person may have against such third party and (3) the Corporation irrevocably waives, relinquishes and releases such third party from any and all claims against them for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by such third party on behalf of a Person with respect to any claim for which such Person has sought indemnification from the Corporation shall affect the foregoing, and such third party shall have a right of contribution and be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Person against the Corporation.

Section 8.3. Employee and Agent Indemnification and Advancement of Expenses. The Corporation, to the fullest extent permitted by law, may indemnify and advance expenses to any Person made or threatened to be made a party to an action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she is or was an employee or agent of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as an employee or agent at the request of the Corporation or any predecessor to the Corporation.

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Article IX

Section 9.1. DGCL Section 203 and Business Combinations

(A) The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(B) Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(1) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(2) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least

85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers of the Corporation and (ii) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(3) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(C) The restrictions contained in this Article IX shall not apply if:

(1) a stockholder becomes an interested stockholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (ii) would not, at any time within the three-year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

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(2) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Section 9.1(C)(2); (ii) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board; and (iii) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 9.1(C)(2).

(D) For purposes of this Article IX, references to:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) "business combination," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

a. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section 9.1(B) of this Article IX is not applicable to the surviving entity;

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

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c. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (iii) through (v) of this subsection (c) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

d. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

e. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (a) through (d) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(4) "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing Section 9.1(B) of Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group (as such term is used in Rule 13d-5 under the Securities Exchange Act of 1934, as such Rule is in effect as of the date of this

(5) “interested stockholder” means any person (other than the Corporation or any direct and indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an Affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the Affiliates and associates of such person; but “interested stockholder” shall not include (x) the Founder or any of its Affiliates or any “group,” or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, provided that a majority of the aggregate shares of voting stock of the Corporation owned by such group immediately prior to the business combination or the transaction which resulted in the stockholder becoming an interested stockholder were owned (without giving effect to beneficial ownership attributed to such person pursuant to Section 13(d)(3) of the Exchange Act or Rule 13d-5 of the Exchange Act) by the Founder or one or more of its Affiliates, or (y) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided, further, that in the case of clause (y) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(6) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a person that individually or with or through any of its Affiliates or associates:

- a. beneficially owns such stock, directly or indirectly; or
- b. has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s Affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or
- c. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subsection (b) above), or disposing of such stock with any other person that beneficially owns, or whose Affiliates or associates beneficially own, directly or indirectly, such stock.

(7) “person” means any individual, corporation, partnership, unincorporated association or other entity.

(8) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(9) “voting stock” means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

Article X

Section 10.1. Competition and Corporate Opportunities.

(A) In recognition and anticipation that members of the Board who are not employees of the Corporation (“Non-Employee Directors”) and their respective Affiliates and Affiliated Entities (each, as defined below) may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

(B) No Non-Employee Director or his or her Affiliates or Affiliated Entities (the Persons (as defined below) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by applicable law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates, has historically engaged, now engages or proposes to engage at any time or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by applicable law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by applicable law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 10.1(C) of this Article X. Subject to Section 10.1(C) of this Article X, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by applicable law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

(C) Subject to Section 10.1(D), the Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered or presented to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 10.1(B) of this Article X shall not apply to any such corporate opportunity.

(D) In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation, (iii) is one in which the Corporation has no interest or reasonable expectancy, or (iv) is one presented to any Person for the benefit of a member of the Board or such member's Affiliate over which such member of the Board has no direct or indirect influence or control, including, but not limited to, a blind trust.

(E) For purposes of this Article X, (i) "Affiliate" shall mean (a) in respect of a member of the Board, any Person that, directly or indirectly, is controlled by such member of the Board (other than the Corporation and any entity that is controlled by the Corporation) and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "Affiliated Entity" shall mean (x) any Person of which a Non-Employee Director serves as an officer, director, employee, agent or other representative (other than the Corporation and any entity that is controlled by the Corporation), (y) any direct or indirect partner, stockholder, member, manager or other representative of such Person or (z) any person controlling, controlled by or under common control with any of the foregoing, including any investment fund or vehicle under common management; and (iii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(F) To the fullest extent permitted by applicable law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

(G) Any alteration, amendment, addition to or repeal of this Article X shall require the affirmative vote of at least 80% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Neither the alteration, amendment, addition to or repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article X, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the By-Laws, the Investor Rights Agreement, any indemnification agreement between such Person and the Corporation or any of its subsidiaries, or applicable law.

Article XI

Section 11.1. Severability. If any provision of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

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Article XII

Section 12.1. Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, or any claim for aiding and abetting such alleged breach, (iii) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation (a) arising pursuant to any provision of the DGCL, this Certificate of Incorporation (as it may be amended or restated) or the By-Laws or (b) as to which the DGCL confers jurisdiction on the Delaware Court of Chancery or (iv) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation governed by the internal affairs doctrine of the law of the State of Delaware shall, as to any action in the foregoing clauses (i) through (iv), to the fullest extent permitted by applicable law, be solely and exclusively brought in the Delaware Court of Chancery; provided, however, that the foregoing shall not apply to any claim (a) as to which the Delaware Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Delaware Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (b) which is vested in the exclusive jurisdiction of a court or forum other than the Delaware Court of Chancery, or (c) arising under federal securities laws, including the Securities Act of 1933, as amended, as to which the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum. Notwithstanding the foregoing, the provisions of this Article XII will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or any other claim for which the federal district courts of the United States of America shall be the sole and exclusive forum. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

Article XIII

Section 13.1. Amendments. In addition to any vote required by applicable law or this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock), the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class: Article V, Article VI, Article VII, Article VIII, Article IX, Article XII and this Article XIII. Except as expressly provided in the foregoing sentence and the remainder of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock), including Section 10.1(G), this Certificate of Incorporation may be amended by the affirmative vote of the holders of at least a majority of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed on this 9th day of February, 2022.

BRC INC.

By: /s/ Steve Kadenacy
Name: Steve Kadenacy
Title: Chief Executive Officer

**AMENDED AND RESTATED BY-LAWS
OF
BRC INC.
A DELAWARE PUBLIC BENEFIT CORPORATION**

**ARTICLE I.
STOCKHOLDERS**

Section 1. The annual meeting of the stockholders of BRC Inc. (the “Corporation”) for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications pursuant to paragraph (C)(2) of Section 12, as may be designated from time to time by the Board of Directors of the Corporation (the “Board”). The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled.

Section 2. Except as otherwise required by the General Corporation Law of the State of Delaware (the “DGCL”) or the certificate of incorporation of the Corporation (as amended and/or restated, the “Certificate of Incorporation”), and subject to the rights of the holders of any series of Preferred Stock (as defined in the Certificate of Incorporation), special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. Special meetings may be held either at a place, within or without the State of Delaware, or by means of remote communications pursuant to paragraph (C)(2) of Section 12 as the Board may determine. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled.

Section 3. Except as otherwise provided by the DGCL, the Certificate of Incorporation or these By-Laws, notice of the date, time, place (if any), the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto, to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner in accordance with Section 2(A) of Article IX.

Section 4. The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by the DGCL or by the Certificate of Incorporation or these By-Laws; but if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or, by a majority in voting power thereof, the stockholders present (either in person or by proxy) and entitled to vote thereon may, to the extent permitted by law, adjourn the meeting from time to time. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. At any adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Notice need not be given of any adjourned meeting if the time, date and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 5. The Chairman of the Board, or in the absence of the Chairman of the Board or at the Chairman of the Board’s direction, the Chief Executive Officer, or in the Chief Executive Officer’s absence or at the Chief Executive Officer’s direction, any officer of the Corporation shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer’s absence, an Assistant Secretary, shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening and (for any or no reason) to recessing and/or adjourning the meeting (whether or not a quorum is present), announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote, imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, establishing procedures for the transaction of business at the meeting (including the dismissal of business not properly presented), maintaining order at the meeting and safety of those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders. Unless and to the extent determined by the Board or the chairman over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, subject to applicable law. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the DGCL, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder may execute a writing authorizing another person or persons to act for the stockholder as proxy, and execution of the writing may be accomplished by the stockholder or the stockholder’s authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing by means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such means of electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. If it is determined that such electronic transmissions are valid, the inspector or inspectors of stockholder votes or, if there are no such inspectors, such other persons making that determination shall specify the information upon which they relied.

A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the preceding paragraphs of this Section 6 (including any electronic transmission) may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 7. When a quorum is present at any meeting, the vote of the holders of a majority of the votes cast *provided* that an abstention or broker non-vote shall not

count as a vote cast) shall decide any matter brought before such meeting, unless the matter is one upon which by express provision of the Certificate of Incorporation, these By-Laws or the DGCL a minimum or different vote is required, in which case such minimum or different vote shall be the required vote for such matter. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required and a quorum is present, the affirmative vote of a majority of the votes cast (*provided* that an abstention or broker non-vote shall not count as a vote cast) by shares of such class or series or classes or series shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws or the DGCL a minimum or different vote is required, in which case such minimum or different vote shall be the required vote for such matter.

Section 8. (A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9. At any time when action by holders of one or more classes or series of stock of the Corporation is permitted to be taken by written consent pursuant to the terms and limitations set forth in the Certificate of Incorporation, the provisions of this section shall apply. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as required by the DGCL, written consents signed by the holders of shares having not less than the minimum number of votes necessary to take such corporate action are so delivered to the Corporation in accordance with the applicable provisions of the DGCL. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in the applicable provisions of the DGCL. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the DGCL, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the DGCL, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

Section 10. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 11. The Board, in advance of all meetings of the stockholders, may (and shall if required by applicable law) appoint one or more inspectors of stockholder votes, who may be employees or agents of the Corporation or stockholders or their proxies, but who shall not be directors of the Corporation or candidates for election as directors. In the event that the Board fails to so appoint one or more inspectors of stockholder votes or, in the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law.

Section 12.

(A) Annual Meetings of Stockholders

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) as provided in the Investor Rights Agreement (as defined in the Certificate of Incorporation), (b) pursuant to the Corporation's notice

of meeting (or any supplement thereto) delivered pursuant to Article I, Section 3 of these By-Laws, (c) by or at the direction of the Board or any authorized committee thereof or (d) by any stockholder of the Corporation who is entitled to vote on such election or such other business at the meeting, who has complied with the notice procedures set forth in subparagraphs (2) and (3) of this paragraph (A) of this Section 12 and who was a stockholder of record at the time such notice was delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Article I, Section 12(A) (1)(d) of these By-laws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (even if such matter is already the subject of any notice to the stockholders or a public announcement from the Board), and, in the case of business other than nominations of persons for election to the Board, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting (which date shall, for purposes of the Corporation's first annual meeting of stockholders after the Closing Date (as defined in the Certificate of Incorporation), be deemed to have occurred on June 1 of the preceding calendar year); *provided, however*, that in the event that the date of the annual meeting is scheduled for more than thirty (30) days before, or more than seventy (70) days following, such anniversary date, or if no annual meeting was held in the preceding year (other than as provided in the last sentence of this paragraph (2)), notice by the stockholder to be timely must be so delivered not later than the tenth day following the day on which public announcement of the date of such meeting is first made. For purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision), the date for notice specified in this paragraph (A)(2) shall be the earlier of the date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4. For purposes of the first annual meeting of stockholders following the Closing Date (as defined in the Certificate of Incorporation), the date of the preceding year's annual meeting shall be deemed to be June 1 of the preceding calendar year.

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Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy statement as a nominee of the stockholder and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business or nomination, (iv) a representation whether the stockholder or the beneficial owner, if any, will be or is part of a group which will (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, (v) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation and (vi) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; (d) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"); and (e) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) the intent or effect of which may be (i) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (ii) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (iii) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. A stockholder providing notice of a proposed nomination for election to the Board or other business proposed to be brought before a meeting (whether given pursuant to this paragraph (A)(2) or paragraph (B) of this Section 12) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or any adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior to the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

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The foregoing notice requirements of this paragraph (A)(2) of Section 12 shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this paragraph (A)(2), Section 12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board is increased, effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 12, and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which a public announcement of such increase is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Article I, Section 3 of these By-Laws. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board or an authorized committee thereof or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who has complied with the notice procedures set forth in this Section 12 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by paragraph (A)(2) of this Section 12 is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(C) General. (1) Only persons who are nominated in accordance with the procedures set forth in this Section 12 shall be eligible to be elected to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 12. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 12 and, if any proposed nomination or business is not in compliance with this Section 12, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

Notwithstanding the foregoing provisions of this Section 12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may, by means of remote communication participate in a meeting of stockholders of the Corporation and be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; *provided, however*, that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(3) For purposes of this Section 12, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or otherwise disseminated in a manner constituting "public disclosure" under Regulation FD promulgated by the Securities and Exchange Commission.

(4) No adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice (or extend any notice time period) of such meeting for purposes of this Section 12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 12 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(5) Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 12; *provided, however*, that, to the fullest extent permitted by law, any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 12 (including paragraphs (A)(1)(d) and (B) hereof), and compliance with paragraphs (A)(1)(d) and (B) of this Section 12 shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in this Section 12 shall apply to the right, if any, of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Notwithstanding anything to the contrary contained herein, for as long as the Investor Rights Agreement remains in effect with respect to the Stockholder Parties (as defined in the Certificate of Incorporation), the Stockholder Parties (to the extent then subject to the Investor Rights Agreement) shall not be subject to the notice procedures set forth in paragraphs (A)(2), (A)(3) or (B) of this Section 12 with respect to any annual or special meeting of stockholders to the extent necessary to effect the transactions and rights set forth in the Investor Rights Agreement.

ARTICLE II. BOARD OF DIRECTORS

Section 1. The Board shall consist, subject to the Certificate of Incorporation and the Investor Rights Agreement, of such number of directors as shall from time to time be fixed exclusively by resolution adopted by the Board. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships and except as otherwise expressly provided in the Certificate of Incorporation) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors in accordance with the terms of the Certificate of Incorporation and the Investor Rights Agreement, as applicable. Except as otherwise provided herein, a majority of the total number of directors then in office shall constitute a quorum for the transaction of business. Except as otherwise provided by law, these By-Laws or the Certificate of Incorporation, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 2. Subject to the Certificate of Incorporation and the Investor Rights Agreement, unless otherwise required by the DGCL or Article II, Section 4 of these By-Laws, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death,

resignation, removal, retirement, disqualification or otherwise) shall be filled only by a majority of the directors then in office, although less than a quorum, by any authorized committee of the Board or by a sole remaining director.

Section 3. Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board, the Chief Executive Officer, or by a majority of the total number of directors then in office, by written notice, including facsimile, e-mail or other means of electronic transmission, duly served on or sent and delivered to each director in accordance with Article X, Section 2. Notice of each special meeting of the Board shall be given, as provided in Article X, Section 2, to each director (i) at least twenty-four (24) hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two (2) days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five (5) days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 4. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, and other features of such directorships shall be governed by the terms of the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the total number of directors fixed by the Board pursuant to the Certificate of Incorporation and these By-Laws. Except as otherwise expressly provided in the terms of such series, the number of directors that may be so elected by the holders of any such series of stock shall be elected for terms expiring at the next annual meeting of stockholders, and vacancies among directors so elected by the separate vote of the holders of any such series of Preferred Stock shall be filled by the affirmative vote of a majority of the remaining directors elected by such series, or, if there are no such remaining directors, by the holders of such series in the same manner in which such series initially elected a director.

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Section 5. The Board may from time to time establish one or more committees of the Board to serve at the pleasure of the Board, which shall be comprised of such members of the Board, subject to the Investor Rights Agreement, and have such duties as the Board shall from time to time determine. Any director may belong to any number of committees of the Board. Subject to the Certificate of Incorporation and the Investor Rights Agreement, the Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member, subject to the Investor Rights Agreement. Unless otherwise provided in the Certificate of Incorporation, these By-Laws or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to a subcommittee any or all of the powers and authority of the committee.

Section 6. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (including by electronic transmission). After the action is taken, the writing or writings (including any electronic transmission or transmissions) shall be filed with the minutes of proceedings of the Board.

Section 7. The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such a meeting.

Section 8. The Board may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation.

ARTICLE III. OFFICERS

Section 1. Subject to Section 6.1(F) of the Certificate of Incorporation, the Board shall elect officers of the Corporation, including a Chief Executive Officer, a President and a Secretary. The Board may also from time to time elect such other officers as it may deem proper or may delegate to any elected officer of the Corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior or Corporate, or may be given such other designation or combination of designations as the Board or the Chief Executive Officer may determine. Any two or more offices may be held by the same person. The Board may also elect or appoint a Chairman of the Board, who may or may not also be an officer of the Corporation. The Board may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these By-Laws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 2. All officers of the Corporation elected by the Board shall hold office for such terms as may be determined by the Board or, except with respect to his or her own office, the Chief Executive Officer, or until their respective successors are chosen and qualified or until his or her earlier resignation or removal. Subject to Section 6.1(F) of the Certificate of Incorporation, any officer may be removed from office at any time either with or without cause by the Board, or, in the case of appointed officers, by any elected officer upon whom such power of removal shall have been conferred by the Board.

Section 3. Each of the officers of the Corporation elected by the Board or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

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Section 4. Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

ARTICLE IV. INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 1. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative or any other type whatsoever (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnatee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnatee in connection therewith; notwithstanding the foregoing, except as provided in Section 3 of this Article IV with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnatee, the Corporation shall indemnify any such indemnatee in connection with a proceeding (or part thereof) initiated by such indemnatee only if such proceeding (or part thereof) was authorized by the Board.

Section 2. In addition to the right to indemnification conferred in Section 1 of this Article IV, an indemnatee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article IV (which shall be governed by Section 3 of this Article IV) (hereinafter an “advancement of expenses”); *provided, however*, that, if (x) the DGCL requires or (y) in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnatee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnatee, including, without limitation, service to an employee benefit plan) shall be made solely upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnatee, to repay all amounts so advanced if it shall ultimately be determined after final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnatee is not entitled to indemnification under this Article IV or otherwise.

Section 3. If a claim under Section 1 or 2 of this Article IV is not paid in full by the Corporation within (i) sixty (60) days after a written claim for indemnification has been received by the Corporation or (ii) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnatee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if the indemnatee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnatee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnatee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnatee to enforce a right to an advancement of expenses) it shall be a defense of the Corporation that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnatee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnatee is proper in the circumstances because the indemnatee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnatee has not met such applicable standard of conduct, shall create a presumption that the indemnatee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnatee, be a defense to such suit. In any suit brought by the indemnatee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnatee is not entitled to be indemnified, or to such advancement of expenses, under this Article IV or otherwise shall be on the Corporation.

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Section 4.

(A) The provision of indemnification to or the advancement of expenses and costs to any indemnatee under this Article IV, or the entitlement of any indemnatee to indemnification or advancement of expenses and costs under this Article IV, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnatee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnatee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnatee’s capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(B) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnatee as a director and/or officer of the Corporation or as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise at the request of the indemnatee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnatee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article IV, irrespective of any right of recovery the indemnatee may have from the indemnatee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by the indemnatee-related entities and no right of advancement, indemnification or recovery the indemnatee may have from the indemnatee-related entities shall reduce or otherwise alter the rights of the indemnatee or the obligations of the Corporation under this Article IV. In the event that any of the indemnatee-related entities shall make any payment to the indemnatee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnatee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnatee against the Corporation, and the indemnatee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnatee-related entities effectively to bring suit to enforce such rights. Each of the indemnatee-related entities shall be third-party beneficiaries with respect to this Section 4(B) of Article IV, entitled to enforce this Section 4(B) of Article IV.

For purposes of this Section 4(B) of Article IV, the following terms shall have the following meanings:

(1) The term “indemnatee-related entities” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnatee has agreed, on behalf of the Corporation or at the Corporation’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnatee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(2) The term “jointly indemnifiable claims” shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnatee shall be entitled to indemnification or advancement of expenses from both the indemnatee-related entities and the Corporation pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnatee-related entities, as applicable.

Section 5. The rights conferred upon indemnitees in this Article IV shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article IV that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 6. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 7. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IV with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE V. CORPORATE BOOKS

The books of the Corporation may be kept inside or outside of the State of Delaware at such place or places as the Board may from time to time determine.

ARTICLE VI. CHECKS, NOTES, PROXIES, ETC.

All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board or such officer or officers who may be delegated such authority. Proxies to vote and consents with respect to securities of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or by such officers as the Chairman of the Board, Chief Executive Officer or the Board may from time to time determine.

ARTICLE VII. SHARES AND OTHER SECURITIES OF THE CORPORATION

Section 1. Certificated and Uncertificated Shares. The shares of capital stock the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 2. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two authorized officers of the Corporation, which shall include, without limitation, the Chief Executive Officer, the General Counsel and the Secretary. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue. Each certificate representing capital stock issued by the Corporation shall note conspicuously that the Corporation is a public benefit corporation, as required by the DGCL.

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Section 3. Lost, Destroyed or Wrongfully Taken Certificates

(A) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation may issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(B) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 4. Transfer of Stock

(A) Transfers of record of shares of stock of the Corporation shall be made only upon the books administered by or on behalf of the Corporation and only upon proper transfer instructions, including by Electronic Transmission, pursuant to the direction of the registered holder thereof, such person's attorney lawfully constituted in writing, or from an individual presenting proper evidence of succession, assignment or authority to transfer the shares of stock; or, in the case of stock represented by certificate(s) upon delivery of a properly endorsed certificate(s) for a like number of shares or accompanied by a duly executed stock transfer power.

(B) The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 5. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 6. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. PUBLIC BENEFIT CORPORATION

Section 1. Required Statement in Stockholder Meeting Notice. The Corporation shall include in every notice of a meeting of stockholders a statement to the effect

that it is a public benefit corporation under Subchapter XV of the DGCL.

Section 2. Periodic Statements. The Corporation shall no less than biennially provide the stockholders with a statement as to the Corporation's promotion of the public benefit or public benefits identified in the Certificate of Incorporation and of the best interests of those materially affected by the Corporation's conduct. The statement shall include: (i) the objectives the Board has established to promote such public benefit or public benefits and interests; (ii) the standards the Board has adopted to measure the Corporation's progress in promoting such public benefit or public benefits and interests; (iii) objective factual information based on those standards regarding the Corporation's success in meeting the objectives for promoting such public benefit or public benefits and interests; and (iv) an assessment of the Corporation's success in meeting the objectives and promoting such public benefit or public benefits and interests.

ARTICLE IX. FISCAL YEAR

The fiscal year of the Corporation shall end on December 31 of each calendar year, unless otherwise determined by resolution of the Board.

ARTICLE X. CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Corporation. In lieu of the corporate seal, when so authorized by the Board or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

ARTICLE XI. GENERAL PROVISIONS

Section 1. Notice. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting need not be given to any person who shall attend such meeting (except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 2. Means of Giving Notice. Except as otherwise set forth in any applicable law or any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting shall be given by the following means:

(A) Notice by Electronic Transmission.

(1) Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these By-Laws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a form of electronic transmission to the extent permitted by law.

(2) Any notice given pursuant to the preceding paragraph shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

(B) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director; (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when the notice is received or left at such person's address, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(C) Electronic Transmission. "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or database (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(D) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(E) Exceptions to Notice Requirements.

(1) Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(2) Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (x) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (y) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (x) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 3. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 4. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation or the DGCL, the provision of these By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE XII. AMENDMENTS

These By-Laws may be made, amended, altered, changed, added to or repealed as set forth in the Certificate of Incorporation.

SPECIMEN [CLASS A][CLASS B][CLASS C] COMMON STOCK CERTIFICATE

NUMBER

SHARES

BRC INC.
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
[CLASS A][CLASS B][CLASS C] COMMON STOCK

**SEE REVERSE FOR
CERTAIN DEFINITIONS
CUSIP [●]**

This Certifies that *is the owner of*

**FULLY PAID AND NON-ASSESSABLE SHARES OF [CLASS A][CLASS B][CLASS C] COMMON
STOCK PAR VALUE OF
US\$0.0001 EACH OF BRC INC. (THE “CORPORATION”)**

*subject to the Corporation’s amended and restated certificate of incorporation, as the same may be amended from
time to time, and transferable on the books of the Corporation in person or by a duly authorized attorney upon
surrender of this certificate properly endorsed.*

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the facsimile signatures of its duly authorized officers.

Dated: _____

Chief Executive Officer

General Counsel and Corporate Secretary

BRC INC.

The Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Corporation and the qualifications, limitations, or restrictions of such preferences and/or rights. This certificate and the shares represented thereby are issued and shall be held subject to all the provisions of the Corporation’s amended and restated certificate of incorporation, as the same may be amended from time to time, and resolutions of the Board of Directors providing for the issue of securities (copies of which may be obtained from the secretary of the Corporation), to all of which the holder of this certificate by acceptance hereof assents.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT	— Custodian
			(Cust) (Minor)
			under Uniform Gifts to Minors Act (State)
TEN ENT	— as tenants by the entireties		
JT TEN	— as joint tenants with right of survivorship and not as tenants in common		

Additional abbreviations may also be used though not in the above list.

For value received, hereby sells, assigns and transfers unto

(PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER(S) OF ASSIGNEE(S))
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)
Shares of common stock represented by the within Certificate, and does hereby irrevocably constitute and appoint
Attorney to transfer the said shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

Stockholder

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed:

By: _____

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C.

[FACE]

Number

Warrants

THIS WARRANT SHALL BE NULL AND VOID IF NOT EXERCISED PRIOR TO THE EXPIRATION OF THE EXERCISE PERIOD PROVIDED FOR IN THE WARRANT AGREEMENT DESCRIBED BELOW

BRC Inc.
Incorporated Under the Laws of the State of Delaware

CUSIP 05601U 113**Warrant Certificate**

This Warrant Certificate certifies that, or registered assigns, is the registered holder of warrant(s) evidenced hereby (the **“Warrants”** and each, a **“Warrant”**) to purchase shares of Class A common stock, \$0.0001 par value per share (**“Common Stock”**), of BRC Inc., a Delaware public benefit corporation (the **“Company”**). Each whole Warrant entitles the holder, upon exercise during the period set forth in the Warrant Agreement referred to below, to receive from the Company that number of fully paid and non-assessable shares of Common Stock as set forth below, at the exercise price (the **“Warrant Price”**) as determined pursuant to the Warrant Agreement, payable in lawful money (or through “cashless exercise” as provided for in the Warrant Agreement) of the United States of America upon surrender of this Warrant Certificate and payment of the Warrant Price at the office or agency of the Warrant Agent referred to below, subject to the conditions set forth herein and in the Warrant Agreement. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Each whole Warrant is initially exercisable for one fully paid and non-assessable share of Common Stock. No fractional shares will be issued upon exercise of any Warrant. If, upon the exercise of Warrants, a holder would be entitled to receive a fractional interest in a share of Common Stock, the Company will, upon exercise, round down to the nearest whole number of the number of shares of Common Stock to be issued to the holder. The number of shares of Common Stock issuable upon exercise of the Warrants is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

The initial Warrant Price per share of Common Stock for any Warrant is equal to \$11.50 per share. The Warrant Price is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

Subject to the conditions set forth in the Warrant Agreement, the Warrants may be exercised only during the Exercise Period and to the extent not exercised by the end of such Exercise Period, such Warrants shall become null and void. The Warrants may be redeemed, subject to certain conditions, as set forth in the Warrant Agreement.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, as such term is used in the Warrant Agreement.

This Warrant Certificate shall be governed by and construed in accordance with the internal laws of the State of New York.

BRC INC.

By: _____
Name:
Title:

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By: _____
Name:
Title:

[Form of Warrant Certificate]

[Reverse]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants entitling the holder on exercise to receive shares of Common Stock and are issued or to be issued pursuant to a Warrant Agreement, dated as of February 25, 2021, as amended by the Warrant Assumption Agreement, dated as of February 9, 2022 (as so amended, the **“Warrant Agreement”**), duly executed and delivered by the Company to Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (or successor warrant agent) (collectively, the **“Warrant Agent”**), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words **“holders”** or **“holder”** meaning the Registered Holders or Registered Holder, respectively) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Warrants may be exercised at any time during the Exercise Period set forth in the Warrant Agreement. The holder of Warrants evidenced by this Warrant Certificate may exercise them by surrendering this Warrant Certificate, with the form of election to purchase set forth hereon properly completed and executed, together with payment of the Warrant Price as specified in the Warrant Agreement (or through “cashless exercise” as provided for in the Warrant Agreement) at the designated office of the Warrant Agent. In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there

shall be issued to the holder hereof or his, her or its assignee, a new Warrant Certificate evidencing the number of Warrants not exercised.

Notwithstanding anything else in this Warrant Certificate or the Warrant Agreement, no Warrant may be exercised unless at the time of exercise (i) a registration statement covering the shares of Common Stock to be issued upon exercise is effective under the Securities Act and (ii) a prospectus thereunder relating to the shares of Common Stock is current, except through "cashless exercise" as provided for in the Warrant Agreement.

The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock issuable upon exercise of the Warrants set forth on the face hereof may, subject to certain conditions, be adjusted. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a fractional interest in a share of Common Stock, the Company shall, upon exercise, round down to the nearest whole number of shares of Common Stock to be issued to the holder of the Warrant.

Warrant Certificates, when surrendered at the designated office of the Warrant Agent by the Registered Holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other third-party charges imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the Registered Holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a stockholder of the Company.

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Election to Purchase

(To Be Executed Upon Exercise of Warrant)

The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, to receive shares of Common Stock and herewith tenders payment for such shares of Common Stock to the order of BRC Inc. (the "**Company**") in the amount of \$ _____ in accordance with the terms hereof. The undersigned requests that a certificate for such shares of Common Stock be registered in the name of _____, whose address is _____ and that such shares of Common Stock be delivered to _____ whose address is _____. If said number of shares of Common Stock is less than all of the shares of Common Stock purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares of Common Stock be registered in the name of _____, whose address is _____, and that such Warrant Certificate be delivered to _____, whose address is _____.

In the event that the Warrant has been called for redemption by the Company pursuant to Section 6.2 of the Warrant Agreement and a holder thereof elects to exercise its Warrant pursuant to a Make-Whole Exercise, the number of shares of Common Stock that this Warrant is exercisable for shall be determined in accordance subsection 3.3.1(c) or Section 6.2 of the Warrant Agreement, as applicable.

In the event that the Warrant is a Private Placement Warrant or a Working Capital Warrant that is to be exercised on a "cashless" basis pursuant to subsection 3.3.1(c) of the Warrant Agreement, the number of shares of Common Stock that this Warrant is exercisable for shall be determined in accordance with subsection 3.3.1(c) of the Warrant Agreement.

In the event that the Warrant is to be exercised on a "cashless" basis pursuant to Section 7.4 of the Warrant Agreement, the number of shares of Common Stock that this Warrant is exercisable for shall be determined in accordance with Section 7.4 of the Warrant Agreement.

In the event that the Warrant may be exercised, to the extent allowed by the Warrant Agreement, through cashless exercise (i) the number of shares of Common Stock that this Warrant is exercisable for would be determined in accordance with the relevant section of the Warrant Agreement which allows for such cashless exercise and (ii) the holder hereof shall complete the following: The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, through the cashless exercise provisions of the Warrant Agreement, to receive shares of Common Stock. If said number of shares of Common Stock is less than all of the shares of Common Stock purchasable hereunder (after giving effect to the cashless exercise), the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares of Common Stock be registered in the name of _____, whose address is _____, and that such Warrant Certificate be delivered to _____, whose address is _____.

Date: _____

(Signature) _____

(Address) _____

(Tax Identification Number) _____

Signature Guaranteed: _____

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO SEC RULE 17Ad-15 (OR ANY SUCCESSOR RULE) UNDER THE SECURITIES EXCHANGE ACT, OF 1934, AS AMENDED).

WARRANT ASSUMPTION AGREEMENT

This Warrant Assumption Agreement (this “Warrant Assumption Agreement”) is entered into as of February 9, 2022, by and among SilverBox Engaged Merger Corp I, a Delaware corporation (“SilverBox”), BRC Inc., a Delaware corporation and wholly owned subsidiary of SilverBox (“PubCo”), and Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (the “Warrant Agent”). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Business Combination Agreement (as defined below).

WHEREAS, SilverBox and the Warrant Agent are parties to that certain Warrant Agreement, dated as of February 25, 2021 (the “Warrant Agreement”);

WHEREAS, SilverBox, PubCo, Authentic Brands LLC, a Delaware limited liability company (the “Company”), SBEA Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of PubCo (“Merger Sub 1”), BRCC Blocker Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of SilverBox (“Merger Sub 2”), and Grand Opal Investment Holdings, Inc., a Delaware corporation (“Blocker Corp”) are parties to that certain Business Combination Agreement, dated as of November 2, 2021 (as it may be amended, supplemented or otherwise modified from time to time, the “Business Combination Agreement”), pursuant to which, on the terms and subject to the conditions set forth therein, among other things: (i) SilverBox will merge with and into Merger Sub 1 (the “PubCo Merger”), with Merger Sub 1 being the surviving entity of the PubCo Merger, as a result of which, among other things, (a) each SilverBox Class A Share outstanding immediately prior to the PubCo Merger will no longer be outstanding and will automatically be converted into the right of the holder thereof to receive a PubCo Class A Share on a one-for-one basis, (b) each SilverBox Class B Share outstanding immediately prior to the PubCo Merger will no longer be outstanding and will automatically be converted into the right of the holder thereof to receive a combination of PubCo Class A Shares and PubCo Class C Shares, and (c) each outstanding warrant (each, a “SilverBox Warrant”) to purchase SilverBox Class A Shares outstanding immediately prior to the PubCo Merger will become a warrant of PubCo (each, a “PubCo Warrant”) exercisable for PubCo Class A Shares on a one-for-one basis; (ii) Merger Sub 2 will merge with and into Blocker Corp (the “Blocker Merger”), with Blocker Corp being the surviving entity of the Blocker Merger, as a result of which, among other things, the Blocker Corp Shareholders will receive, on a pro rata basis in exchange for the Blocker Corp Shares, a combination of PubCo Class A Shares, PubCo Class C Shares and cash; and (iii) (a) the Company will issue Company Common Units to PubCo in exchange for a combination of PubCo Class B Shares and cash, and (b) PubCo will be admitted as the managing member of the Company;

WHEREAS, pursuant to the terms and conditions of each of the Warrant Agreement and the Business Combination Agreement, upon the PubCo Merger Effective Time, each SilverBox Warrant issued and outstanding immediately prior to the PubCo Merger Effective Time will automatically become a PubCo Warrant at the same exercise price per share and on the same terms in effect immediately prior to the PubCo Merger Effective Time, and the rights and obligations of SilverBox under the Warrant Agreement will be irrevocably assigned and assumed by PubCo; and

WHEREAS, as a result of this Warrant Assumption Agreement, at the PubCo Merger Effective Time, PubCo will assume all of the obligations of SilverBox with respect to each SilverBox Warrant, each of which will, at the PubCo Merger Effective Time, become a warrant to purchase PubCo Class A Shares pursuant to the terms and conditions of the Warrant Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SilverBox, PubCo and the Warrant Agent hereby agree as follows:

1. Assignment and Assumption.

(a) Upon and subject to the occurrence of the PubCo Merger Effective Time, SilverBox hereby assigns, and PubCo hereby assumes, the rights and obligations of SilverBox under the Warrant Agreement and the SilverBox Warrants (which shall be converted into PubCo Warrants), including the obligation to issue PubCo Class A Shares upon the exercise of the PubCo Warrants, and PubCo hereby agrees to faithfully perform, satisfy and discharge when due, the liabilities and obligations of SilverBox under the Warrant Agreement and the SilverBox Warrants (which shall be converted into PubCo Warrants). As a result of the PubCo Merger, upon and subject to the occurrence of the PubCo Merger Effective Time, each SilverBox Warrant will be automatically and irrevocably modified, pursuant to and in accordance with Section 4.4 of the Warrant Agreement, with the effect that, at the PubCo Merger Effective Time, each SilverBox Warrant will be exchanged for a warrant to purchase shares of PubCo Class A Shares pursuant to the terms and conditions of the Warrant Agreement.

(b) PubCo acknowledges and agrees that, subject to the terms of the Warrant Agreement, the SilverBox Warrants and this Warrant Assumption Agreement, the Warrant Agreement and the SilverBox Warrants (which shall be converted into PubCo Warrants) shall continue in full force and effect following the PubCo Merger Effective Time and that, from and after the PubCo Merger Effective Time, all of SilverBox’s obligations thereunder shall be valid and enforceable as against PubCo and shall not be impaired or limited by the execution or effectiveness of this Warrant Assumption Agreement.

(c) This Warrant Assumption Agreement is being executed and delivered pursuant and subject to the Warrant Agreement. Nothing in this Warrant Assumption Agreement shall, or shall be deemed to, defeat, limit, alter, impair, enhance or enlarge any right, obligation, claim or remedy created by the Warrant Agreement or any other document or instrument delivered pursuant to or in connection with it.

(d) The choice of law and jurisdiction provisions set forth in the Warrant Agreement and this Warrant Assumption Agreement shall continue to govern the rights and obligations of the parties to the Warrant Agreement and this Warrant Assumption Agreement in all respects. The Company hereby waives any objection to the jurisdiction provision governing the terms of the Warrant Agreement and this Warrant Assumption Agreement.

2. Miscellaneous.

(a) Governing Law and Jurisdiction. The validity, interpretation, and performance of this Warrant Assumption Agreement shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Warrant Assumption Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction. The Company hereby waives any objection to such jurisdiction and that such courts represent an inconvenient forum. Any such process or summons to be served upon PubCo may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to PubCo at the address set forth below:

BRC Inc.
1144 S 500 W
Salt Lake City, UT 84101

Attention: Tom Davin, Co-CEO
Andrew McCormick, General Counsel

Email: tom.davin@blackriflecoffee.com
andrew.mccormick@blackriflecoffee.com

with a copy to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654

Attention: Steven V. Napolitano, P.C.
John A. Kaercher, P.C.
Joshua N. Korff, P.C.
Peter S. Seligson

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E-mail: stephen.napolitano@kirkland.com
john.kaercher@kirkland.com
jkorff@kirkland.com
peter.seligson@kirkland.com

or to such other address or addresses as the parties may from time to time designate in writing.

(b) Binding Effect. This Warrant Assumption Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.

(c) Entire Agreement. This Warrant Assumption Agreement sets forth the entire agreement and understanding between the parties as to the subject matter thereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature among them. Except as expressly set forth in this Warrant Assumption Agreement, provisions of the Warrant Agreement which are not inconsistent with this Warrant Assumption Agreement shall remain in full force and effect. This Warrant Assumption Agreement may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

(d) Severability. This Warrant Assumption Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Warrant Assumption Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Warrant Assumption Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

(e) Amendment. This Warrant Assumption Agreement may not be amended, except by an instrument in writing signed by each party hereto.

(f) Termination. If the Business Combination Agreement is terminated in accordance with its terms before the PubCo Merger Effective Time, this Warrant Assumption Agreement shall immediately terminate and cease to have any force or effect, without any liability on the part of any party hereto, as if this Warrant Assumption Agreement had not been executed and delivered.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have executed this Warrant Assumption Agreement as of the date first written above.

SILVERBOX ENGAGED MERGER CORP I

By: /s/ Steve Kadenacy
Name: Steve Kadenacy
Title: Chief Executive Officer

BRC INC.

By: /s/ Tom Davin
Name: Steve Kadenacy
Title: Chief Executive Officer

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By: /s/ Erika Young
Name: Erika Young
Title: Vice President

AUTHENTIC BRANDS LLC
THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

Dated as of February 9, 2022

THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH LIMITED LIABILITY COMPANY INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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AUTHENTIC BRANDS LLC**THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

This THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”) of Authentic Brands LLC, a Delaware limited liability company (the “**Company**”), dated as of February 9, 2022 (the “**Effective Date**”), is entered into by and among the Company, BRC Inc., a Delaware public benefit corporation (the “**Corporation**”), as the managing member of the Company, and each of the other Members (as defined herein).

RECITALS

WHEREAS, unless the context otherwise requires, capitalized terms used herein have the respective meaning ascribed to them in Article I;

WHEREAS, the Company was formed as a limited liability company with the name “Authentic Brands LLC”, pursuant to and in accordance with the Delaware Act by the filing of the Certificate with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Delaware Act on June 5, 2018;

WHEREAS, prior to the Business Combination, the Company was governed by that certain Second Amended and Restated Limited Liability Company Agreement of the Company, effective as of May 7, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, together with all schedules, exhibits and annexes thereto, the “**Initial LLC Agreement**”), which the parties listed on Schedule 1 hereto executed in their capacity as members (including pursuant to consents and joinders thereto) (collectively, the “**Pre-Business Combination Members**”);

WHEREAS, in connection with the Business Combination, (a) the Company and the Pre-Business Combination Members shall convert all of the Original Units into Common Units, Incentive Units and Restricted Units (the “**Recapitalization**”) as provided herein; *provided that*, the Company may (at its option), in conjunction with the establishment of the Corporate Equity Incentive Plans, convert the unvested Incentive Units of the Company into stock options or restricted stock of the Corporation (having the same vesting terms and in-the-money economics) in lieu of converting such unvested Original Incentive Units of the Company into unvested Incentive Units, (b) the Company shall be a party to a series of reorganization transactions with the Corporation and various other parties pursuant to which, among other matters, the Corporation shall be issued Common Units and Restricted Units (which, in the case of the Restricted Units, are solely issued in respect of the Corporation's issuance of restricted shares of Series C-1 Common Stock and Series C-2 Common Stock of the Corporation pursuant to the Sponsor Letter Agreement and the Transaction Support Agreements entered into by the Blocker Corp Shareholders) and admitted as a Member in exchange for the direct or indirect contribution of the Aggregate Closing PIPE Proceeds and the aggregate cash proceeds available for release from the Trust Account (after giving effect to all of the SilverBox Shareholder Redemptions) and (c) the Company shall redeem all of the issued and outstanding Series A Preferred Units (other than those held by Grand Opal Investment Holdings, Inc., which shall be converted into Common Units pursuant to the Recapitalization) and deliver to the holders thereof an aggregate amount in cash equal to the Preferred Unit Redemption Amount in exchange therefor (the “**Preferred Redemption**”); and

WHEREAS, in connection with the foregoing matters, the Company and the Members desire to continue the Company without dissolution and amend and restate the Initial LLC Agreement in its entirety as of the Effective Date to reflect, among other things, (a) the Recapitalization, (b) the addition of the Corporation as a Member and its designation as sole Manager of the Company, (c) the Preferred Redemption and (d) the other rights and obligations of the Members, the Company, the Manager and the Corporation, in each case, as provided and agreed upon in the terms of this Agreement as of the Effective Date, at which time the Initial LLC Agreement shall be superseded entirely by this Agreement and shall be of no further force or effect.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Initial LLC Agreement is hereby amended and restated in its entirety and the Company, the Corporation and the other Members, each intending to be legally bound, each hereby agrees as follows:

**ARTICLE I
DEFINITIONS**

The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

“**Additional Member**” has the meaning set forth in Section 12.02.

“**Adjusted Capital Account Deficit**” means, with respect to the Capital Account of any Member as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Member's Capital Account balance shall be:

(a) reduced for any items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6); and

(b) increased for any amount such Member is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(l) and 1.704-2(i) (relating to minimum gain).

“**Admission Date**” has the meaning set forth in Section 10.06.

“**Affiliate**” (and, with a correlative meaning, “**Affiliated**”) means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition, “control” (including with correlative meanings,

“controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement).

“**Aggregate Closing PIPE Proceeds**” has the meaning set forth in the Business Combination Agreement.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Assignee**” means a Person to whom a Unit has been transferred but who has not become a Member pursuant to Article XII.

“**Assumed Tax Liability**” means, with respect to any Member, an amount equal to the excess of (a) the product of (i) the Distribution Tax Rate multiplied by (ii) the estimated or actual cumulative taxable income or gain of the Company, as determined for federal income tax purposes, allocated to such Member for full or partial Fiscal Years commencing on or after January 1, 2022, less prior losses of the Company allocated to such Member for full or partial Fiscal Years commencing on or after January 1, 2022, in each case, as determined by the Manager and to the extent such prior losses are available to reduce such income over (b) the cumulative Tax Distributions made to such Member after the closing date of the Business Combination pursuant to Sections 4.01(b)(i), 4.01(b)(ii) and 4.01(b)(iii); provided that, in the case of the Corporation, such Assumed Tax Liability (x) shall be computed without regard to any increases to the tax basis of the Company’s property pursuant to Sections 734(b) or 743(b) of the Code and (y) to the extent permitted under the Credit Agreements, shall in no event be less than an amount that will enable the Corporation to meet both its tax obligations and its obligations pursuant to the Tax Receivable Agreement for the relevant Taxable Year; provided further that, in the case of each Member, and for the avoidance of doubt, such Assumed Tax Liability shall take into account any Code Section 704(c) allocations (including “reverse” 704(c) allocations) to the Member and any deduction under Code Section 199A.

“**Base Rate**” means, on any date, a variable rate per annum equal to the rate of interest most recently published by *The Wall Street Journal* as the “prime rate” at large U.S. money center banks.

“**Beneficial Owner**” means, with respect to a security, a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares:

- (a) voting power, which includes the power to vote, or to direct the voting of, such security; or
- (b) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

The terms “**Beneficially Own**” and “**Beneficial Ownership**” shall have correlative meanings.

“**Black-Out Period**” means any “black-out” or similar period under the Corporation’s policies covering trading in the Corporation’s securities to which the applicable Redeeming Member is subject (or will be subject at such time as it owns Class A Common Stock), which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement.

“**Blocker Corp Shareholders**” has the meaning set forth in the Business Combination Agreement.

“**Book Value**” means, with respect to any property of the Company, the Company’s adjusted basis for U.S. federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted (as determined by the Manager) by Treasury Regulation Section 1.704-1(b)(2)(iv), except that, in the case of any property contributed to the Company, the Book Value of such property shall initially equal the Fair Market Value of such property at the time of such contribution.

“**Business Combination**” has the meaning set forth in the Business Combination Agreement.

“**Business Combination Agreement**” means that certain Business Combination Agreement dated as of November 2, 2021, by and among SilverBox Engaged Merger Corp I, the Corporation, SBEA Merger Sub LLC, BRCC Blocker Merger Sub LLC, Grand Opal Investment Holdings, Inc., and the Company.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banks located in New York City, New York or Salt Lake City, Utah are authorized or required by Law to close.

“**Capital Account**” means the capital account maintained for a Member in accordance with Section 5.01.

“**Capital Contribution**” means, with respect to any Member, the amount of any cash, cash equivalents, promissory obligations or the Fair Market Value of other property that such Member (or such Member’s predecessor) contributes (or is deemed to contribute) to the Company pursuant to Article III hereof, net of any liabilities assumed by the Company from such Member in connection with such contribution or to which the contributed property is subject.

“**Cash Settlement**” means immediately available funds in U.S. dollars in an amount equal to the Redeemed Units Equivalent.

“**Certificate**” means the Company’s Certificate of Formation as filed with the Secretary of State of the State of Delaware, as amended or amended and restated from time to time.

“**Change of Control**” means the occurrence of any of the following events:

(a) any “person” or “group” (within the meaning of Sections 13(d) of the Exchange Act (excluding any “person” or “group” who, on the Closing Date, is the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities)) becomes the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities;

- (b) (i) the shareholders of the Corporation approve a plan of complete liquidation or dissolution of Corporation or (ii) there is consummated an agreement or series

of related agreements for the sale or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation's assets, other than such sale or other disposition by the Corporation of all or substantially all of the Corporation's assets to an entity at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporation in substantially the same proportions as their ownership of the Corporation immediately prior to such sale or other disposition; or

(c) there is consummated a merger or consolidation of the Corporation with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (i) the Corporate Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (ii) all of the Persons who were the respective Beneficial Owners of the voting securities of the Corporation immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation; or

(d) the following individuals cease for any reason to constitute a majority of the number of directors of the Corporation then serving: individuals who were directors of the Corporation on the Closing Date or any new director whose appointment or election to the Corporate Board or nomination for election by the Corporation's shareholders was approved or recommended by a vote of at least two-thirds of the directors then still in office who either were directors of the Corporation on the Closing Date or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (d).

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and Class B Common Stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions.

"Change of Control Date" has the meaning set forth in Section 10.09(a).

"Change of Control Transaction" means any Change of Control that is approved by the Corporate Board prior to such Change of Control.

"Class A Common Stock" means, as applicable, (a) the shares of Class A common stock, par value \$0.0001 per share, of the Corporation or (b) following any consolidation, merger, reclassification or other similar event involving the Corporation, any shares or other securities of the Corporation or any other Person or cash or other property that become payable in consideration for the Class A common stock, \$0.0001 par value per share, of the Corporation or into which the Class A common stock, \$0.0001 par value per share, of the Corporation is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

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"Class B Common Stock" means, as applicable, (a) the shares of Class B Common Stock, par value \$0.0001 per share, of the Corporation or (b) following any consolidation, merger, reclassification or other similar event involving the Corporation, any shares or other securities of the Corporation or any other Person or cash or other property that become payable in consideration for the Class B common stock, \$0.0001 par value per share, of the Corporation or into which the Class B common stock, \$0.0001 par value per share, of the Corporation is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

"Class C Common Stock" means, as applicable, (a) the shares of Class C common stock, par value \$0.0001 per share, of the Corporation or (b) following any consolidation, merger, reclassification or other similar event involving the Corporation, any shares or other securities of the Corporation or any other Person or cash or other property that become payable in consideration for the Class C common stock, \$0.0001 par value per share, of the Corporation or into which the Class C common stock, \$0.0001 par value per share, of the Corporation is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

"Closing Date" means the date on which the Business Combination is consummated.

"Code" means the United States Internal Revenue Code of 1986, as amended. Unless the context requires otherwise, any reference herein to a specific section of the Code shall be deemed to include any corresponding provisions of future Law as in effect for the relevant taxable period.

"Common Unit" means a Unit designated as a "Common Unit" and having the rights and obligations specified with respect to the Common Units in this Agreement; *provided that*, the Common Units shall exclude any Restricted Units prior to their conversion into Common Units upon the occurrence of an applicable Vesting Event.

"Common Unit Redemption Price" means, with respect to any Redemption, the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the Stock Exchange, or any other exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by Bloomberg, L.P., or its successor, for each of the 20 consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the applicable Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on the Stock Exchange or any other securities exchange or automated or electronic quotation system as of any particular Redemption Date, then the Manager (through a majority of its directors who are disinterested) shall determine the Common Unit Redemption Price in good faith.

"Company" has the meaning set forth in the preamble to this Agreement.

"Company Equity Incentive Plan" means the Authentic Brands LLC 2018 Equity Incentive Plan.

"Confidential Information" has the meaning set forth in Section 15.02(a).

"Conversion Date" means, with respect to any Restricted Unit, the date on which a Vesting Event occurs for such Restricted Unit or such later date as determined pursuant to Section 3.05(a).

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"Corporate Board" means the board of directors of the Corporation.

"Corporate Equity Incentive Plans" means, collectively, (a) the BRC, Inc. 2022 Omnibus Incentive Plan and (b) the BRC, Inc. 2022 Employee Stock Purchase Plan, in each case, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Corporation" has the meaning set forth in the recitals to this Agreement, together with its successors and assigns.

"Corresponding Rights" means any rights issued with respect to a share of Class A Common Stock or Class B Common Stock pursuant to a "poison pill" or similar stockholder rights plan approved by the Corporate Board.

“**Credit Agreements**” means any promissory note, mortgage, loan agreement, indenture or similar instrument or agreement to which the Company or any of its Subsidiaries is or becomes a borrower, as such instruments or agreements may be amended, restated, supplemented or otherwise modified from time to time and including any one or more refinancing or replacements thereof, in whole or in part, with any other debt facility or debt obligation, for as long as the payee or creditor to whom the Company or any of its Subsidiaries owes such obligation is not an Affiliate of the Company.

“**Delaware Act**” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et seq.*, as it may be amended from time to time, and any successor thereto.

“**Direct Exchange**” has the meaning set forth in Section 11.03(a).

“**Discount**” has the meaning set forth in Section 6.06.

“**Distributable Cash**” means, as of any relevant date on which a determination is being made by the Manager regarding a potential distribution pursuant to Section 4.01(a), the amount of cash that could be distributed by the Company for such purposes in accordance with the Credit Agreements (and without otherwise violating any applicable provisions of any of the Credit Agreements).

“**Distribution**” (and, with a correlative meaning, “**Distribute**”) means each distribution made by the Company to a Member with respect to such Member’s Units, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; *provided however* that, none of the following shall be a Distribution: (a) any recapitalization that does not result in the distribution of cash or property to Members or any exchange of securities of the Company, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units or (b) any other payment made by the Company to a Member that is not properly treated as a “distribution” for purposes of Sections 731, 732, or 733 or other applicable provisions of the Code.

“**Distribution Tax Rate**” means, with respect to a Fiscal Year or portion thereof, the higher of the then applicable (a) sum of the highest marginal effective U.S. federal individual income tax rate and highest combined marginal effective U.S. state and local individual income tax rate for an individual residing in Salt Lake City, Utah and (b) sum of the highest marginal effective U.S. federal corporate income tax rate and the highest combined marginal effective U.S. state and local corporate income tax of any state in which the Company does business, in each case, taking into account the character of the relevant tax items (*e.g.*, ordinary or capital) and the deductibility of state and local income taxes for federal income tax purposes (but only to the extent such taxes are deductible under the Code), as reasonably determined by the Manager.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

“**Election Notice**” has the meaning set forth in Section 11.01(b).

“**Equity Plan**” means any stock or equity purchase plan, restricted stock or equity plan or other similar equity compensation plan now or hereafter adopted by the Company or the Corporation, including the Corporate Equity Incentive Plans but excluding the Company Equity Incentive Plan.

“**Equity Securities**” means (a) Units or other equity interests in the Company or any Subsidiary of the Company (including other classes or groups thereof having such relative rights, powers and duties as may from time to time be established by the Manager pursuant to the provisions of this Agreement, including rights, powers or duties senior to existing classes and groups of Units and other equity interests in the Company or any Subsidiary of the Company), (b) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other equity interests in the Company or any Subsidiary of the Company, and (c) warrants, options or other rights to purchase or otherwise acquire Units or other equity interests in the Company or any Subsidiary of the Company.

“**Event of Withdrawal**” means the bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company. “Event of Withdrawal” shall not include an event that (a) terminates the existence of a Member for income tax purposes (including (i) a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, (ii) a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or (iii) merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member) but that (b) does not terminate the existence of such Member under applicable state law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Units of such trust that is a Member).

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and any applicable rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

“**Exchange Election Notice**” has the meaning set forth in Section 11.03(b).

“**Fair Market Value**” of a specific asset of the Company will mean the amount which the Company would receive in an all-cash sale of such asset in an arms-length transaction with a willing unaffiliated third party, with neither party having any compulsion to buy or sell, consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), as such amount is determined by the Manager (or, if pursuant to Section 14.02, the Liquidators) in its good faith judgment using all factors, information and data it deems to be pertinent.

“**Family Group**” means (a) in the case of a Member or LLC Employee who is an individual, such individual’s spouse, parents and descendants (whether natural or adopted) and any trust or estate planning vehicle or entity solely for the benefit of such individual or the individual’s spouse, parents, descendants or other relatives, and (b) in the case of a Member or LLC Employee that is a trust, the beneficiary of such trust.

“**First Tier Vesting Event**” means the first day on which the VWAP of the Class A Common Stock is greater than or equal to \$15.00 over any 20 trading days within any 30 trading day period commencing at any time on or after the Closing Date; *provided* that, the reference to \$15.00 shall be decreased by the aggregate per share amount of dividends actually paid in respect of a share of Class A Common Stock following the Effective Date.

“**Fiscal Period**” means any interim accounting period within a Taxable Year established by the Manager and which is permitted or required by Section 706 of the Code.

“**Fiscal Year**” means the Company’s annual accounting period established pursuant to Section 8.02.

“**Full Vesting Event**” means, with respect to the Restricted Units, a Change of Control Transaction or liquidation of the Company.

“**Governmental Entity**” means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision

of clause (a) or (b) of this definition, including, but not limited to, any county, municipal or other local subdivision of the foregoing, or (d) any agency, arbitrator or arbitral body, authority, board, body, bureau, commission, court, department, entity, instrumentality, organization or tribunal exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of clauses (a), (b) or (c) of this definition.

“*HSR Act*” has the meaning set forth in Section 3.05(c).

“*Imputed Underpayment Amount*” means (a) any “imputed underpayment” within the meaning of Section 6225 of the Code (or any corresponding or similar provision of state, local or foreign tax law) paid (or payable) by the Company as a result of any adjustment by the IRS with respect to any Company item of income, gain, loss, deduction, or credit of the Company (including, without limitation, any “partnership-related item” within the meaning of Section 6241(2) of the Code (or any corresponding or similar provision of state, local or foreign tax law)), including any interest, penalties or additions to tax with respect to any such adjustment, (b) any amount not described in clause (a) (including any interest, penalties or additions to tax with respect to such amounts) paid (or payable) by the Company as a result of the application of Sections 6221-6241 of the Code (or any corresponding or similar provision of state, local or foreign tax law), and/or (c) any amount paid (or payable) by any entity treated as a partnership for U.S. federal income tax purposes in which the Company holds (or has held) a direct or indirect interest other than through entities treated as corporations for U.S. federal income tax purposes if the Company bears the economic burden of such amounts, whether by law or agreement, as a result of the application of Sections 6221-6241 of the Code (including for the avoidance of doubt Section 6226(b) of the Code or any corresponding or similar provision of state, local or foreign tax law), including any interest, penalties or additions to tax with respect to such amounts.

“*Incentive Unit Exchange*” has the meaning set forth in Section 10.11.

“*Incentive Unit Exchange Rate*” means, at any time, the quotient of (a) the excess of (x) the Per Common Unit Equity Value on the date of the Incentive Unit Exchange over (y) the sum of the portion of the Participation Threshold to the extent it (or a portion of it) remains unmet (as reasonably determined by the Manager) applicable to such Incentive Unit and allocable to a Common Unit (as reasonably determined by the Manager) and the amount of any Tax Distributions made in respect of the applicable Incentive Unit prior to it becoming a Participating Incentive Unit, divided by (b) the Per Common Unit Equity Value on the date of the Incentive Unit Exchange; *provided* that if the number determined by the foregoing calculation is a negative number, the Incentive Unit Exchange Rate shall be deemed to be zero and the Incentive Unit Exchange Rate shall be subject to adjustment, as reasonably determined by the Manager, to the extent necessary so that the Incentive Units may be treated as “profits interests” under applicable tax law and taking into account any Incentive Unit Exchange.

“*Incentive Units*” means a Unit designated as an “Incentive Unit” and having the rights and obligations specified with respect to the Incentive Units in this Agreement, which shall include the Incentive Units into which Original Incentive Units are converted pursuant to the Recapitalization.

“*Indemnified Person*” has the meaning set forth in Section 7.04(a).

“*Initial LLC Agreement*” has the meaning set forth in the recitals to this Agreement.

“*Investment Company Act*” means the U.S. Investment Company Act of 1940, as amended from time to time.

“*Investor Rights Agreement*” means that certain Investor Rights Agreement, dated as of the Effective Date (as may be amended from time to time in accordance with its terms), by and among the Corporation, certain of the Members as of the Effective Date and certain other Persons whose signatures are affixed thereto (together with any joinder thereto from time to time by any successor or assign to any party to such agreement).

“*IRS*” means the Internal Revenue Service.

“*Joinder*” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“*Law*” means all laws, statutes, ordinances, rules and regulations of any Governmental Entity.

“*Liquidator*” has the meaning set forth in Section 14.02.

“*Liquidity Limitations*” has the meaning set forth in Section 4.01(b)(i).

“*LLC Employee*” means an employee of, or other service provider (including any management member whether or not treated as an employee for the purposes of U.S. federal income tax) to, the Company or any of its Subsidiaries, in each case acting in such capacity.

“*Losses*” means items of loss or deduction of the Company determined according to Section 5.01(b).

“*Manager*” has the meaning set forth in Section 6.01.

“*Market Price*” means, with respect to a share of Class A Common Stock as of a specified date, the last sale price per share of Class A Common Stock, regular way, or if no such sale took place on such day, the average of the closing bid and asked prices per share of Class A Common Stock, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Stock Exchange or, if the Class A Common Stock is not listed or admitted to trading on the Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Class A Common Stock is listed or admitted to trading or, if the Class A Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if the Class A Common Stock is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in shares of Class A Common Stock selected by the Corporate Board or, in the event that no trading price is available for the shares of Class A Common Stock, the fair market value of a share of Class A Common Stock, as determined in good faith by the Corporate Board.

“*Member*” means, as of any date of determination, (a) each of the members named on the Schedule of Members and (b) any Person admitted to the Company as a Substituted Member or Additional Member in accordance with Article XII but in each case only so long as such Person is shown on the Company’s books and records as the owner of one or more Units, each in its capacity as a member of the Company.

“*Member Minimum Gain*” means minimum gain attributable to Member Nonrecourse Debt determined in accordance with Regulations Section 1.704-2(i).

“Member Nonrecourse Debt” has the meaning set forth for the term “partner nonrecourse debt” in Regulations Section 1.704-2(b)(4).

“Minimum Gain” means “partnership minimum gain” determined pursuant to Treasury Regulation Section 1.704-2(d).

“Net Loss” means, with respect to a Fiscal Year, the excess if any, of the aggregate amount of Losses for such Fiscal Year over the aggregate amount of Profits for such Fiscal Year (excluding Profits and Losses specially allocated pursuant to Section 5.03 and Section 5.04) or, to the extent required, items thereof.

“Net Profit” means, with respect to a Fiscal Year, the excess, if any, of the aggregate amount of Profits for such Fiscal Year over the aggregate amount of Losses for such Fiscal Year (excluding Profits and Losses specially allocated pursuant to Section 5.03 and Section 5.04) or, to the extent required, items thereof.

“Officer” has the meaning set forth in Section 6.01(b).

“Original Incentive Units” means Incentive Units that are Original Units.

“Original Units” means, collectively, (a) all of the issued and outstanding Class A Common Units of the Company, (b) all of the issued and outstanding Class B Common Units of the Company, (c) all of the Incentive Units of the Company and (d) the Series A Preferred Units of the Company held by Grand Opal Investment Holdings, Inc., in each case, as defined in the Initial LLC Agreement.

“Other Agreements” has the meaning set forth in Section 10.04.

“Partial Vesting Event” means (a) with respect to 50% of any Member’s Restricted Units held as of the date of a First Tier Vesting Event, the First Tier Vesting Event; *provided that*, a First Tier Vesting Event shall not occur more than once; or (b) with respect to the remaining 50% of any Member’s Restricted Units held as of the date of a First Tier Vesting Event (in each case after giving effect to any subdivision (by any equity split, equity distribution, reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise)), the Second Tier Vesting Event.

“Participating Incentive Unit” means an Incentive Unit that is vested and for which the Participation Threshold has been fully met.

“Participation Threshold” has the meaning set forth in Section 3.04(c).

“Partnership Representative” has the meaning set forth in Section 9.03.

“Per Common Unit Equity Value” means, as of any particular time, the amount to which each holder of a Common Unit would be entitled in respect of such Common Unit if the aggregate equity value of the Company as of such time (as reasonably determined by the Manager) were distributed to the Members in accordance with Section 4.01(a) (assuming for these purposes that all Incentive Units are vested).

“Percentage Interest” means, with respect to a Member at a particular time, such Member’s percentage interest in the Company determined by dividing the number of such Member’s Common Units or Participating Incentive Units, as applicable, by the total number of Common Units and Participating Incentive Units of all Members at such time. The Percentage Interest of each Member shall be calculated to the fourth decimal place.

“Permitted Transfer” has the meaning set forth in Section 10.02.

“Permitted Transferee” has the meaning set forth in Section 10.02.

“Person” means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other organization or entity, whether or not a legal entity.

“Pre-Business Combination Members” has the meaning set forth in the recitals to this Agreement.

“Preferred Redemption” has the meaning set forth in the recitals to this Agreement.

“Preferred Unit Redemption Amount” has the meaning set forth in the Business Combination Agreement.

“Pro rata”, “pro rata portion”, “according to their interests”, “ratably”, “proportionately”, “proportional”, “in proportion to”, “based on the number of Units held”, “based upon the percentage of Units held”, “based upon the number of Units outstanding” and other terms with similar meanings, when used in the context of a number of Units of the Company relative to other Units, means as amongst an individual class of Units, pro rata based upon the number of such Units within such class of Units.

“Profits” means items of income and gain of the Company determined according to Section 5.01(b).

“Pubco Offer” has the meaning set forth in Section 10.09(b).

“Quarterly Tax Distribution” has the meaning set forth in Section 4.01(b)(i).

“Recapitalization” has the meaning set forth in the recitals to this Agreement.

“Redeemed Units” has the meaning set forth in Section 11.01(a).

“Redeemed Units Equivalent” means the product of (a) the applicable number of Redeemed Units, *multiplied by* (b) the Common Unit Redemption Price.

“Redeeming Member” has the meaning set forth in Section 11.01(a).

“Redemption” has the meaning set forth in Section 11.01(a).

“Redemption Date” has the meaning set forth in Section 11.01(a).

“Redemption Notice” has the meaning set forth in Section 11.01(a).

“Redemption Right” has the meaning set forth in Section 11.01(a).

“Restricted Unit” means a Unit designated as a “Restricted Unit” which is subject to vesting, and having the rights and obligations specified with respect to the Restricted Units in this Agreement.

“Retraction Notice” has the meaning set forth in Section 11.01(c).

“Revised Partnership Audit Provisions” means Section 1101 of Title XI (Revenue Provisions Related to Tax Compliance) of the Bipartisan Budget Act of 2015, H.R. 1314, Public Law Number 114-74.

“Schedule of Members” has the meaning set forth in Section 3.01(a).

“SEC” means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

“Second Tier Vesting Event” means the first day on which the VWAP of the Class A Common Stock is greater than or equal to \$20.00 over any 20 trading days within any 30 trading day period commencing at any time on or after the Closing Date; *provided* that, the reference to \$20.00 shall be decreased by the aggregate per share amount of dividends actually paid in respect of a share of Class A Common Stock following the Effective Date.

“Securities Act” means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

“Series A Preferred Unit” means a Unit designated as a “Series A Preferred Unit” and having the rights and obligations specified with respect to the Series A Preferred Units in this Agreement.

“Share Settlement” means a number of shares of Class A Common Stock (together with any Corresponding Rights) equal to the number of Redeemed Units.

“SilverBox Shareholder Redemption” has the meaning set forth in the Business Combination Agreement.

“Sponsor Letter Agreement” has the meaning set forth in the Business Combination Agreement.

“Stock Exchange” means the New York Stock Exchange.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, references to a “Subsidiary” of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“Substituted Member” means a Person that is admitted as a Member to the Company pursuant to Section 12.01.

“Tax Distributions” has the meaning set forth in Section 4.01(b)(i).

“Tax Receivable Agreement” means that certain Tax Receivable Agreement, dated as the date of the Effective Date (as may be amended from time to time in accordance with its terms), by and among the Corporation, the Company and the Agent (as such term is defined in the Tax Receivable Agreement) (together with any joinder thereto from time to time by any successor or assign to any party to such agreement).

“Taxable Year” means the Company’s accounting period for U.S. federal income tax purposes determined pursuant to Section 9.02.

“Trading Day” means a day on which the Stock Exchange or such other principal United States securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“Transfer” (and, with a correlative meaning, **“Transferring”** and **“Transferred”**) means any sale, transfer, assignment, redemption, pledge, encumbrance or other disposition of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of Law) (a) any interest (legal or beneficial) in any Equity Securities or (b) any equity or other interest (legal or beneficial) in any Member if substantially all of the assets of such Member consist solely of Units.

“Treasury Regulations” means the final, temporary and (to the extent they can be relied upon) proposed regulations under the Code, as promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period. Such term shall be deemed to include any future amendments to such regulations and any corresponding provisions of succeeding regulations.

“Trust Account” has the meaning set forth in the Business Combination Agreement.

“Unit” means the fractional interest of a Member in Profits, Losses and Distributions of the Company, and otherwise having the rights and obligations specified with respect to “Units” in this Agreement; *provided however* that, (a) any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement applicable to such class or group of Units and (b) the Series A Preferred Units are intended to be issued solely for purposes of effecting the Preferred Redemption as of the Effective Date, after which time there shall be no Series A Preferred Units issued and outstanding except as otherwise provided herein.

“Unvested Corporate Shares” means shares of Class A Common Stock issuable pursuant to awards granted under the Corporate Equity Incentive Plans that are not

“**Value**” means, for any Equity Plan, the Market Price for the Trading Day immediately preceding the Vesting Date.

“**Vested Corporate Shares**” means the shares of Class A Common Stock issued pursuant to awards granted under the Corporate Equity Incentive Plans that are vested pursuant to the terms thereof or any award or similar agreement relating thereto.

“**Vesting Date**” has the meaning set forth in Section 3.12(a)(ii).

“**Vesting Event**” means a Partial Vesting Event or a Full Vesting Event.

ARTICLE II ORGANIZATIONAL MATTERS

Section 2.01 Formation of Company. The Company was formed on June 5, 2018 pursuant to the provisions of the Delaware Act. The filing of the Certificate of Formation of the Company with the Secretary of State of the State of Delaware are hereby ratified and confirmed in all respects.

Section 2.02 Third Amended and Restated Limited Liability Company Agreement. The Members hereby execute this Agreement for the purpose of amending, restating and superseding the Initial LLC Agreement in its entirety and otherwise establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Delaware Act. The Members hereby agree that, during the term of the Company set forth in Section 2.06, the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act. No provision of this Agreement shall be in violation of the Delaware Act and to the extent any provision of this Agreement is in violation of the Delaware Act, such provision shall be void and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement. Neither any Member nor the Manager nor any other Person shall have appraisal rights with respect to any Units.

Section 2.03 Name. The name of the Company is “Authentic Brands LLC”. The Manager, in its sole discretion, may change the name of the Company at any time and from time to time. Notification of any such change shall be given to all of the Members. The Company’s business may be conducted under its name or any other name or names deemed advisable by the Manager.

Section 2.04 Purpose; Powers. The primary business and purpose of the Company shall be to engage in such activities as are permitted under the Delaware Act and determined from time to time by the Manager in accordance with the terms and conditions of this Agreement. The Company shall have the power and authority to take (directly or indirectly through its Subsidiaries) any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to accomplish the foregoing purpose.

Section 2.05 Principal Office; Registered Office. The principal office of the Company shall be located at such place or places as the Manager may from time to time designate, each of which may be within or outside the State of Delaware. The Company may have such other offices as the Manager may designate from time to time. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law.

Section 2.06 Term. The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in perpetuity unless dissolved in accordance with the provisions of Article XIV.

Section 2.07 No State-Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.07, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for U.S. federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment. Notwithstanding anything to the contrary set forth in this Section 2.07, this Section 2.07 shall not prevent the Company from entering into or consummating any transaction which constitutes a Change of Control to the extent such transaction is duly authorized by the Manager in accordance with this Agreement, subject to (a) the consent rights set forth in the Investor Rights Agreement (if any, applicable to such transaction) and (b) the rights set forth in the Tax Receivable Agreement, if any, to the extent applicable to such transaction.

ARTICLE III MEMBERS; UNITS; CAPITALIZATION

Section 3.01 Members.

(a) The Company shall maintain a schedule setting forth: (i) the name and address of each Member and (ii) the aggregate number of outstanding Units and the number and class of Units held by each Member (such schedule, the “**Schedule of Members**”). The applicable Schedule of Members in effect as of the Effective Date and after giving effect to the Recapitalization is set forth as Schedule 2 to this Agreement. The Company shall also maintain a record of (1) the aggregate amount of cash Capital Contributions that has been made by the Members with respect to their Units and (2) the Fair Market Value of any property other than cash contributed by the Members with respect to their Units (including, if applicable, a description and the amount of any liability assumed by the Company or to which contributed property is subject) in its books and records. The Schedule of Members may be updated by the Manager in the Company’s books and records from time to time, and as so updated, it shall be the definitive record of ownership of each Unit of the Company and all relevant information with respect to each Member. The Company shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Units for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Units on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Act.

(b) No Member shall be required or, except as approved by the Manager pursuant to Section 6.01 and in accordance with the other provisions of this Agreement, permitted to (i) loan any money or property to the Company, (ii) borrow any money or property from the Company or (iii) make any additional Capital Contributions.

Section 3.02 Units.

(a) Interests in the Company shall be represented by Units, or such other securities of the Company, in each case as the Manager may establish in its discretion in accordance with the terms and subject to the restrictions hereof. At the Effective Date, the Units will be comprised of one class of Common Units, one class of Incentive Units, one class of Restricted Units and, solely for purposes of effecting the Preferred Redemption, one series of Preferred Units (which shall be denoted as "Series A Preferred Units").

(b) Subject to Section 3.06(a), the Manager may (i) issue additional Common Units at any time in its sole discretion and (ii) create one or more additional classes or series of Units or preferred Units solely to the extent such new class or series of Units or preferred Units are substantially economically equivalent to a class of common or other stock of the Corporation or class or series of preferred stock of the Corporation, respectively; *provided* that, as long as there are any Members (other than the Corporation and its Subsidiaries), (A) no such new class or series of Units may deprive such Members of, or dilute or reduce, the allocations and distributions they would have received, and the other rights and benefits to which they would have been entitled, in respect of their Units if such new class or series of Units had not been created and (B) no such new class or series of Units may be issued, in each case, except to the extent (and solely to the extent) the Company actually receives cash in an aggregate amount, or other property with a Fair Market Value in an aggregate amount, equal to the aggregate distributions that would be made in respect of such new class or series of Units if the Company were liquidated immediately after the issuance of such new class or series of Units, in the case of each of clauses (A) and (B), other than in connection with the creation and issuance of one or more classes or series of Units issued in accordance with the Equity Plan.

(c) Subject to Sections 15.03(b) and 15.03(c), the Manager may amend this Agreement, without the consent of any Member or any other Person, in connection with the creation and issuance of such classes or series of Units, pursuant to Sections 3.02(b), 3.04(a) or 3.10.

Section 3.03 Recapitalization; the Business Combination; the Preferred Redemption

(a) In order to effect the Recapitalization, the number of Original Units that were issued and outstanding and held by the Pre-Business Combination Members prior to the Effective Date as set forth opposite the respective Pre-Business Combination Member in Schedule 1 are hereby converted, as of the Effective Date, taking into account and adjusted for any distribution considered an advance to a Pre-Business Combination Member that remains outstanding as of the Effective Date and giving effect to such conversion and the other transactions related to the Recapitalization, into the number and class of Units set forth opposite the name of the respective Member on the Schedule of Members attached hereto as Schedule 2; *provided* that, for the avoidance of doubt, the number of Common Units, Incentive Units and Restricted Units set forth on Schedule 2 shall include the effects of the Business Combination and the other transactions contemplated by the Business Combination Agreement. Such Common Units, Incentive Units and Restricted Units set forth on Schedule 2 are hereby issued and outstanding as of the Effective Date and the holders of such Common Units, Incentive Units and Restricted Units are Members hereunder. Notwithstanding the foregoing, the Company may (at its option), in conjunction with the establishment of the Corporate Equity Incentive Plans, convert the unvested Original Incentive Units of the Company into stock options or restricted stock of the Corporation (having the same vesting terms and in-the-money economics) in lieu of converting such unvested Original Incentive Units of the Company into Incentive Units pursuant to the Recapitalization.

(b) Immediately prior to the Recapitalization, the Company shall redeem all of the issued and outstanding Series A Preferred Units (other than those held by Grand Opal Investment Holdings, Inc., which shall be converted into Common Units pursuant to the Recapitalization) and deliver to the holders thereof an aggregate amount in cash equal to the Preferred Unit Redemption Amount in exchange therefor, in each case, pursuant to and in accordance with the terms of the Business Combination Agreement. Following the Preferred Redemption and the Recapitalization as of the Effective Date, there shall be no Series A Preferred Units outstanding.

Section 3.04 Incentive Units.

(a) As of the Effective Date, the Incentive Units issued under the Company Equity Incentive Plan that remain outstanding are set forth on Schedule 2. It is each Member's intention that the Original Incentive Units issued under the Company Equity Incentive Plan and the Incentive Units shall represent interests in the profits and losses, but not the capital, of the Company.

(b) The Company and each Member agree to treat the Original Incentive Units and the Incentive Units as "profits interests" within the meaning of Rev. Proc. 93-27, 1993-2 C.B. 343 and Rev. Proc. 2001-43, 2001-2 C.B. 191 or the corresponding requirements of any subsequent guidance promulgated by the IRS or other applicable law. The Company will treat each holder of Original Incentive Units and Incentive Units as the owner of such Units, and will file its Internal Revenue Service Form 1065 and issue appropriate Schedule K-1s to such holder, allocating to each such holder its distributive share of all items of income, gain, loss, deduction and credit associated with such Units as if such Units were fully vested. Each holder of Original Incentive Units and Incentive Units agrees to take into account such distributive share in computing such holder's federal income tax liability for the entire period during which such holder owns such Units. Subject to a "determination" (as such term is defined in Section 1313(a) of the Code) to the contrary, the Company agrees not to claim a deduction (as wages, compensation or otherwise) for the fair market value of the Original Incentive Units or Incentive Units issued either at the time of grant of such Units or at the time such Units become substantially vested in accordance with their respective terms. The undertakings contained in this Section 3.04(b) will be construed in accordance with Section 4 of Rev. Proc. 2001-43, 2001-2 C.B. 191 and in the event of a change of law in respect of the tax treatment of the grants of "profits" interests, the Company and each Member shall take all actions as may reasonably be required to maintain, to the extent possible, the tax treatment of grants of "profits" interests contemplated by Revenue Procedures 93-27 and 2001-43 (for the avoidance of doubt, such actions shall include necessary or advisable amendments of this Agreement).

(c) The former board of directors of the Company has previously established a participation threshold with respect to the Incentive Units (as previously adjusted including pursuant to the Initial LLC Agreement, if at all, and as adjusted from time to time by the Manager pursuant to this Agreement, if at all the "**Participation Threshold**"). The Participation Threshold shall be subject to adjustment, as reasonably determined by the Manager, from time to time, including in respect of any changes to the capital structure, to the extent necessary so that the Incentive Units may be treated as "profits interests" under applicable tax law. In the event that, after the applicable grant date for the Original Incentive Units or Incentive Units, additional capital is contributed to the Company, their Participation Threshold shall be adjusted, as determined by the Manager in its sole discretion, to reflect the terms upon which such additional capital was raised by the Company. Notwithstanding the foregoing, the Participation Threshold of a subset of Original Incentive Units or Incentive Units shall not be less than zero. So long as the Participation Threshold has not been fully met for an Original Incentive Unit or an Incentive Unit, the Participation Threshold of such Original Incentive Unit or Incentive Unit may increase from the grant date of such Unit by an amount designated by the Manager (or a designee thereof). The Manager shall reasonably determine whether and to the extent a Participation Threshold of an Incentive Unit has been met and what portion of it remains unmet (if any), with such determination being based upon any distributions previously made or that are being made to other Units pursuant to this Agreement or that were made pursuant to the Initial LLC Agreement (or other applicable prior agreement of the Company) and in accordance with the Incentive Units being treated as "profits interests" under applicable tax law.

Section 3.05 Restricted Units.

(a) Each Restricted Unit will be held in accordance with this Agreement unless and until an applicable Vesting Event occurs with respect to such Restricted Unit. Upon the occurrence of a Vesting Event, on the Conversion Date, those Restricted Units to which such Vesting Event relates will be immediately converted into an equal number of Common Units, with all rights and privileges of a Common Unit under this Agreement from and after the Conversion Date. For the avoidance of doubt, (i) upon the occurrence of a First Tier Vesting Event, 50% of each of the Members' Restricted Units outstanding as of the date of such occurrence will vest and convert immediately into an equal number of Common Units; (ii) upon the occurrence of a Second Tier Vesting Event, the remaining Restricted Units held by each Member as of the date of such occurrence (after giving effect to any subdivision (by any equity split, equity distribution, reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise)) will vest and convert immediately into an equal number of Common Units (such that, following the occurrence of a Second Tier Vesting Event, no Restricted Units remain outstanding); and (iii) upon the occurrence of a Change of Control Transaction or liquidation of the Company, 100% of each of the Members' Restricted Units then outstanding will vest and convert immediately into an equal number of Common Units (such that following the occurrence of such Change of Control Transaction or liquidation of the Company, no Member will hold any Restricted Units).

(b) If a First Tier Vesting Event has not occurred at the time of the occurrence of a Second Tier Vesting Event *provided* that, such Second Tier Vesting Event occurs prior to or as of the fifth anniversary of the Effective Date, such First Tier Vesting Event shall also occur upon the occurrence of the Second Tier Vesting Event, such that all of the then outstanding Restricted Units shall vest in accordance with Section 3.05(a).

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(c) Notwithstanding anything to the contrary contained in this Agreement, if, upon the occurrence of a Vesting Event, a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") for the immediate conversion of any Restricted Unit into an equal number of Common Units, then the Conversion Date with respect to all Restricted Units which would convert into an equal number of Common Units resulting from such Vesting Event shall be delayed until the earlier of (i) such time as the required filing under the HSR Act has been made and the waiting period applicable to such conversion under the HSR Act shall have expired or been terminated or (ii) such filing is no longer required, at which time such conversion shall automatically occur without any further action by the holders of any such Restricted Unit. Each of the Members agree to promptly take all actions required to make such filing under the HSR Act and the filing fee for such filing shall be paid by the Company. On the Conversion Date with respect to any Restricted Unit held by a Member, the Corporation shall issue, for each Restricted Unit which has converted into a Common Unit under this Agreement, one share of Class B Common Stock to such Member.

(d) The Corporation hereby agrees to reserve for issuance at all times an adequate number of shares of Class B Common Stock to permit the issuance of all Class B Common Stock assuming all of the Members' Restricted Units vest under this Agreement.

(e) To the extent that the First Tier Vesting Event has not occurred by the fifth anniversary of the Effective Date, then immediately and without any further action under this Agreement, 50% of the Restricted Units issued and outstanding under this Agreement as of such date shall be canceled and extinguished for no consideration. To the extent that the Second Tier Vesting Event has not occurred by the seventh anniversary of the Effective Date, then immediately and without any further action under this Agreement, all remaining Restricted Units issued and outstanding under this Agreement as of such date shall be canceled and extinguished for no consideration.

Section 3.06 Authorization and Issuance of Additional Units.

(a) Except as otherwise determined by the Manager in connection with a contribution of cash or other assets by the Corporation to the Company:

(i) the Company and the Corporation shall undertake all actions, including an issuance, reclassification, distribution, division or recapitalization, with respect to the Common Units, Restricted Units, Class A Common Stock, Class B Common Stock or Class C Common Stock, as applicable, to maintain at all times (A) a one-to-one ratio between the number of Common Units owned by the Corporation, directly or indirectly, and the number of outstanding shares of Class A Common Stock, (B) a one-to-one ratio between the number of Common Units owned by Members (other than the Corporation and its Subsidiaries), directly or indirectly, and the number of outstanding shares of Class B Common Stock owned by such Members, directly or indirectly, and (C) a one-to-one ratio between the number of Restricted Units owned by the Corporation, directly or indirectly, and the number of outstanding shares of Class C Common Stock, in each case, disregarding, for purposes of maintaining the one-to-one ratio, (1) Unvested Corporate Shares, (2) treasury stock or (3) preferred stock or other debt or equity securities (including warrants, options or rights) issued by the Corporation that are convertible into or exercisable or exchangeable for Class A Common Stock or Class B Common Stock (except to the extent the net proceeds from such other securities, including any exercise or purchase price payable upon conversion, exercise or exchange thereof, has been contributed by the Corporation to the equity capital of the Company);

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(ii) in the event the Corporation issues, transfers or delivers from treasury stock or repurchases Class A Common Stock in a transaction not contemplated in this Agreement, the Manager and the Corporation shall take all actions such that, after giving effect to all such issuances, transfers, deliveries or repurchases, the number of outstanding Common Units owned, directly or indirectly, by the Corporation will equal on a one-for-one basis the number of outstanding shares of Class A Common Stock; and

(iii) in the event the Corporation issues, transfers or delivers from treasury stock or repurchases or redeems the Corporation's preferred stock in a transaction not contemplated in this Agreement, the Manager and the Corporation shall take all actions such that, after giving effect to all such issuances, transfers, deliveries, repurchases or redemptions, the Corporation, directly or indirectly, holds (in the case of any issuance, transfer or delivery) or ceases to hold (in the case of any repurchase or redemption) equity interests in the Company which (in the good faith determination by the Manager) are in the aggregate substantially economically equivalent to the outstanding preferred stock of the Corporation so issued, transferred, delivered, repurchased or redeemed.

(b) Except as otherwise determined by the Manager in its reasonable discretion, the Company and the Corporation shall not undertake any subdivision (by any Unit split, stock split, Unit distribution, stock distribution, reclassification, division, recapitalization or similar event) or combination (by reverse Unit split, reverse stock split, reclassification, division, recapitalization or similar event) of the Common Units, Restricted Units, Class A Common Stock or Class B Common Stock that is not accompanied by an identical subdivision or combination of the applicable classes of Units or stock to maintain at all times (x) a one-to-one ratio between the number of Common Units owned, directly or indirectly, by the Corporation and the number of outstanding shares of Class A Common Stock or (y) a one-to-one ratio between the number of Common Units owned by Members (other than the Corporation and its Subsidiaries) and the number of outstanding shares of Class B Common Stock, in each case, unless such action is necessary to maintain at all times a one-to-one ratio between either the number of Common Units owned, directly or indirectly, by the Corporation and the number of outstanding shares of Class A Common Stock or the number of Common Units owned by Members (other than the Corporation and its Subsidiaries) and the number of outstanding shares of Class B Common Stock as contemplated by Section 3.06(a)(i).

(c) The Company shall only be permitted to issue additional Common Units or Restricted Units, or establish other classes or series of Units or other Equity Securities in the Company to the Persons and on the terms and conditions provided for in Section 3.02, Section 3.03, Section 3.05, this Section 3.06, Section 3.12, Section 3.13 and Section 10.11. Subject to the foregoing, the Manager may cause the Company to issue additional Common Units authorized under this Agreement or establish other classes or series of Units or other Equity Securities in the Company at such times and upon such terms as the Manager shall determine and the Manager shall amend this Agreement as necessary in connection with the issuance of additional Common Units and admission of additional Members under this Section 3.06 without the requirement of

(d) Notwithstanding any other provision of this Agreement, if the Corporation or any of its Subsidiaries (other than the Company and its Subsidiaries) acquires or holds any material amount of cash in excess of any monetary obligations it reasonably anticipates, the Corporation and the Manager may, in their sole discretion, use such excess cash amount in such manner, and make such adjustments to or take such other actions with respect to the capitalization of the Corporation and the Company, as the Corporation and the Manager in good faith determine to be fair and reasonable to the shareholders of the Corporation and to the Members and to preserve the intended economic effect of this Section 3.06, Article XI and the other provisions hereof.

Section 3.07 Repurchase or Redemption of Shares of Class A Common Stock. Except as otherwise determined by the Manager in connection with the use of cash or other assets held by the Corporation, if at any time, any shares of Class A Common Stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the Corporation for cash, then the Manager shall cause the Company, immediately prior to such repurchase or redemption of Class A Common Stock, to redeem a corresponding number of Common Units held (directly or indirectly) by the Corporation, at an aggregate redemption price equal to the aggregate purchase or redemption price of the shares of Class A Common Stock being repurchased or redeemed by the Corporation (plus any expenses related thereto) and upon such other terms as are the same for the shares of Class A Common Stock being repurchased or redeemed by the Corporation. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any repurchase or redemption if such repurchase or redemption would violate any applicable Law.

Section 3.08 Certificates Representing Units: Lost, Stolen or Destroyed Certificates: Registration and Transfer of Units

(a) Units shall not be certificated unless otherwise determined by the Manager. If the Manager determines that one or more Units shall be certificated, each such certificate shall be signed by or in the name of the Company, by any two authorized officers of the Company, representing the number of Units held by such holder. Such certificate shall be in such form (and shall contain such legends) as the Manager may determine. Any or all of such signatures on any certificate representing one or more Units may be a facsimile, engraved or printed, to the extent permitted by applicable Law. No Units shall be treated as a "security" within the meaning of Article 8 of the Uniform Commercial Code unless all Units then outstanding are certificated; notwithstanding anything to the contrary herein, including Section 15.03, the Manager is authorized to amend this Agreement in order for the Company to opt-in to the provisions of Article 8 of the Uniform Commercial Code without the consent or approval of any Member of any other Person.

(b) If Units are certificated, the Manager may direct that a new certificate representing one or more Units be issued in place of any certificate theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon delivery to the Manager of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Manager may require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

(c) To the extent Units are certificated, upon surrender to the Company or the transfer agent of the Company, if any, of a certificate for one or more Units, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, in compliance with the provisions hereof, the Company shall issue a new certificate representing one or more Units to the Person entitled thereto, cancel the old certificate and record the transaction upon its books. Subject to the provisions of this Agreement, the Manager may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, Transfer and registration of Units.

Section 3.09 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

Section 3.10 No Withdrawal. No Person shall be entitled to withdraw any part of such Person's Capital Contribution or Capital Account or to receive any Distribution from the Company, except as expressly provided in this Agreement.

Section 3.11 Loans From Members. Loans by Members to the Company shall not be considered Capital Contributions. Subject to the provisions of Section 3.01(b), the amount of any such advances shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

Section 3.12 Corporate Equity Plans.

(a) Restricted Class A Common Stock Granted to LLC Employees. If at any time or from time to time, in connection with any Equity Plan, any shares of Class A Common Stock are issued to an LLC Employee (including any shares of Class A Common Stock that are subject to forfeiture in the event such LLC Employee terminates his or her employment with the Company or any Subsidiary) in consideration for services performed for the Company or any Subsidiary:

(i) The Corporation shall issue such number of shares of Class A Common Stock as are to be issued to such LLC Employee in accordance with the Equity Plan;

(ii) On the date (such date, the "Vesting Date") that the Value of such shares is includible in taxable income of such LLC Employee, the following events will be deemed to have occurred: (1) the Corporation shall be deemed to have sold such shares of Class A Common Stock to the Company (or if such LLC Employee is an employee of, or other service provider to a Subsidiary, to such Subsidiary) for a purchase price equal to the Value of such shares of Class A Common Stock, (2) the Company (or such Subsidiary) shall be deemed to have delivered such shares of Class A Common Stock to such LLC Employee, (3) the Corporation shall be deemed to have contributed the purchase price for such shares of Class A Common Stock to the Company as a Capital Contribution, and (4) in the case where such LLC Employee is an employee of a Subsidiary, the Company shall be deemed to have contributed such amount to the capital of the Subsidiary; and

(iii) The Company shall issue to the Corporation on the Vesting Date a number of Common Units equal to the number of shares of Class A Common Stock issued under Section 3.12(a)(i) in consideration for a Capital Contribution that the Corporation is deemed to make to the Company pursuant to clause (3) of Section 3.12(a)(ii) above.

(b) Future Stock Incentive Plans. Nothing in this Agreement shall be construed or applied to preclude or restrain the Corporation from adopting,

modifying or terminating stock incentive plans for the benefit of employees, directors or other business associates of the Corporation, the Company or any of their respective Affiliates. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Corporation, amendments to this Section 3.12 may become necessary or advisable and that any approval or consent to any such amendments requested by the Corporation shall be deemed granted by the Manager and the Members, as applicable, without the requirement of any further consent or acknowledgement of any other Member.

(c) *Anti-dilution Adjustments.* For all purposes of this Section 3.12, the number of shares of Class A Common Stock and the corresponding number of Common Units shall be determined after giving effect to all anti-dilution or similar adjustments that are applicable, as of the date of exercise or vesting, to the option, warrant, restricted stock or other equity interest that is being exercised or becomes vested under the applicable Equity Plan and applicable award or grant documentation.

Section 3.13 *Dividend Reinvestment Plan, Cash Option Purchase Plan, Stock Incentive Plan or Other Plan* Except as may otherwise be provided in this Article III, all amounts received or deemed received by the Corporation in respect of any dividend reinvestment plan, cash option purchase plan, stock incentive or other stock or subscription plan or agreement, either (a) shall be utilized by the Corporation to effect open market purchases of shares of Class A Common Stock, or (b) if the Corporation elects instead to issue new shares of Class A Common Stock with respect to such amounts, shall be contributed by the Corporation to the Company in exchange for additional Common Units. Upon such contribution, the Company will issue to the Corporation a number of Common Units equal to the number of new shares of Class A Common Stock so issued.

ARTICLE IV DISTRIBUTIONS

Section 4.01 *Distributions.*

(a) *Distributable Cash; Other Distributions.*

(i) To the extent permitted by applicable Law and hereunder and subject to Section 4.01(c), Distributions to Members may be declared by the Manager out of Distributable Cash or other funds or property legally available therefor in such amounts, at such time and on such terms (including the payment dates of such Distributions) as the Manager in its sole discretion shall determine using such record date as the Manager may designate. All Distributions made under this Section 4.01 shall be made to the Members as of the close of business on such record date on a *pro rata* basis in accordance with each Member's Percentage Interest (other than, for the avoidance of doubt, any distributions made pursuant to Section 4.01(b)(v)) as of the close of business on such record date; *provided however* that, the Manager shall have the obligation to make Distributions as set forth in Sections 4.01(b) and 14.02; *provided further* that, notwithstanding any other provision herein to the contrary, no Distributions shall be made to any Member to the extent such Distribution would render the Company insolvent or violate the Delaware Act; *provided further* that, notwithstanding any other provision herein to the contrary but subject to Section 4.01(b), for any Incentive Units subject to a Participation Threshold, if such Participation Threshold is not fully met, no Distribution shall be made to such Incentive Units pursuant to this Section 4.01(a) and any amounts otherwise distributable to such Incentive Units shall be made to the Common Units or other Incentive Units with a Participation Threshold that has been fully met in accordance with this Section 4.01(a). For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. In furtherance of the foregoing, it is intended that the Manager shall, to the extent permitted by applicable Law and hereunder, have the right in its sole discretion to make Distributions of Distributable Cash to the Members pursuant to this Section 4.01(a) in such amounts as shall enable the Corporation to meet its obligations, including its obligations pursuant to the Tax Receivable Agreement (to the extent such obligations are not otherwise able to be satisfied as a result of Tax Distributions required to be made pursuant to Section 4.01(b)).

(ii) No Restricted Unit shall be entitled to receive any Distribution of Distributable Cash pursuant to this Section 4.01(a).

(iii) Notwithstanding anything to the contrary in this Section 4.01(a), (A) the Company shall not make a distribution (other than Tax Distributions under Section 4.01(b)) to any Member in respect of any Common Units or Incentive Units which remain subject to vesting conditions in accordance with any applicable equity plan or individual award agreement and (B) with respect to any amounts that would otherwise have been distributed to a Member but for the preceding clause (A), such amount shall be held in trust by the Company for the benefit of such Member unless and until such time as such Common Units or Incentive Units have vested in accordance with the applicable equity plan or individual award agreement, and within five Business Days of such time, the Company shall distribute such amounts to such Member.

(b) *Tax Distributions.*

(i) With respect to each Fiscal Year, to the extent the Company has available cash for distribution by the Company under the Delaware Act and subject to any applicable agreement to which the Company or any of its Subsidiaries is a party governing the terms of third party indebtedness for borrowed money, and subject to the retention and establishment of reserves, or payment to third parties, of such funds as the Manager deems necessary or desirable in its sole discretion with respect to the reasonable needs and obligations of the Company or any of its Subsidiaries and to prevent their insolvency (such limitations, the "*Liquidity Limitations*"), the Company shall, to the extent permitted by applicable Law, make cash distributions ("*Tax Distributions*") to each Member (including, for the avoidance of doubt, any holders of Incentive Units) in accordance with, and to the extent of, such Member's Assumed Tax Liability. Tax Distributions pursuant to this Section 4.01(b)(i) shall be estimated by the Company on a quarterly basis and, to the extent feasible, shall be distributed to the Members (together with a statement showing the calculation of such Tax Distribution and an estimate of the Company's net taxable income allocable to each Member for such period) on a quarterly basis on April 15th, June 15th, September 15th and December 15th (or such other dates that allow for timely payment of quarterly estimated tax payments for U.S. federal income tax purposes by both individuals and corporations, as determined by the Manager) (each, a "*Quarterly Tax Distribution*"); *provided* that, the foregoing shall not restrict the Company from making a Tax Distribution on any other date. Quarterly Tax Distributions shall take into account the estimated taxable income or loss of the Company for the current Fiscal Year based on four equal quarterly installments, which may be adjusted for updated quarterly estimations. A final accounting for Tax Distributions shall be made for each Fiscal Year after the allocation of the Company's actual net taxable income or loss has been determined and any shortfall in the amount of Tax Distributions a Member received for such Fiscal Year based on such final accounting shall promptly be distributed to such Member (subject to the Liquidity Limitations). For the avoidance of doubt, any excess Tax Distributions a Member receives with respect to any Fiscal Year shall reduce future Tax Distributions otherwise required to be made to such Member with respect to any subsequent Fiscal Year.

(ii) To the extent a Member otherwise would be entitled to receive less than its Percentage Interest (for purposes of this Section 4.01(b)(ii) assuming all Incentive Units are Participating Incentive Units) of the aggregate Tax Distributions to be paid pursuant to this Section 4.01(b) (other than any distributions made pursuant to Section 4.01(b)(v)) on any given date, the Tax Distributions to such Member shall be increased to ensure that all Distributions made on any given date pursuant to this Section 4.01(b) are made *pro rata* in accordance with the Members' respective Percentage Interests. If, on the date of a Tax Distribution, there are insufficient funds on hand to distribute to the Members the full amount of the Tax Distributions to which such Members are otherwise entitled, Distributions pursuant to this Section 4.01(b) shall be made to the Members to the extent of available funds in accordance with their Percentage Interests and the Company shall make future Tax Distributions as soon as funds become available sufficient (subject to the Liquidity Limitations) to pay the remaining portion of the Tax Distributions to which such Members are otherwise entitled. Notwithstanding anything to the contrary contained in this Agreement, (A) the Manager shall make, in its reasonable discretion, equitable adjustments (downward (but not below zero) or upward) to the Members' Tax Distributions (but in any event *pro rata* in accordance with the Members' respective Percentage Interests) to take into account increases or

decreases in the number of Units held by each Member during the relevant period (including as a result of conversion of any Restricted Units into Common Units in connection with the occurrence of a Vesting Event) and in respect of any Incentive Units, and (B) no Tax Distributions (or downward (but not below zero) or upward adjustment to any Tax Distributions) pursuant to this Section 4.01(b) (other than, for the avoidance of doubt, any distributions made pursuant to Section 4.01(b)(v) or in respect of Incentive Units) shall be made other than *pro rata* in accordance with the Members' respective Percentage Interests.

(iii) In the event of any audit by, or similar event with, a taxing authority that affects the calculation of any Member's Assumed Tax Liability for any Taxable Year (other than an audit conducted pursuant to the Revised Partnership Audit Provisions (or any similar provision of state, local and other Law) for which no election is made pursuant to Code Section 6226 and the Treasury Regulations promulgated thereunder (or any similar provision of state, local and other Law)), or in the event the Company files an amended tax return, each Member's Assumed Tax Liability with respect to such year shall be recalculated by giving effect to such event (for the avoidance of doubt, taking into account interest or penalties). Any shortfall in the amount of Tax Distributions the Members and former Members received for the relevant Taxable Years based on such recalculated Assumed Tax Liability promptly shall be distributed to such Members and the successors of such former Members (subject to the Liquidity Limitations), except, for the avoidance of doubt, to the extent Distributions were made to such Members and former Members pursuant to Section 4.01(a) and this Section 4.01(b) in the relevant Taxable Years sufficient to cover such shortfall.

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(iv) Notwithstanding the foregoing, Tax Distributions pursuant to this Section 4.01(b) (other than, for the avoidance of doubt, any distributions made pursuant to Section 4.01(b)(v)), if any, shall be made to a Member only to the extent all previous Tax Distributions to such Member pursuant to Section 4.01(b) with respect to the Fiscal Year are less than the Tax Distributions such Member otherwise would have been entitled to receive with respect to such Fiscal Year pursuant to this Section 4.01(b).

(v) Notwithstanding the foregoing and anything to the contrary in this Agreement, following the Effective Date, no Member shall have any further right to any Tax Distributions (as defined in the Initial LLC Agreement) pursuant to Section 4.3 of the Initial LLC Agreement.

(c) *Limitations.* For purposes of determining the amount of Distributions to be made under this Section 4.01 (including Tax Distributions), each Member shall be treated as having made the Capital Contributions made by, been allocated the net taxable income or loss of the Company (in accordance with the definition of Assumed Tax Liability) allocated to, and received the Distributions made to or received by, its predecessors in respect of any of such Member's Units.

ARTICLE V CAPITAL ACCOUNTS; ALLOCATIONS; TAX MATTERS

Section 5.01 Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv) and Section 704(b) of the Code. For this purpose, the Company may (in the discretion of the Manager), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv), increase or decrease the Capital Accounts in accordance with the rules of such Treasury Regulation to reflect a revaluation of the Company's property; *provided* that, the Manager shall cause the Company to increase or decrease the Capital Accounts to reflect a revaluation of the Company's property upon the conversion of any Restricted Units into Common Units upon the occurrence of a Vesting Event in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s). If any noncompensatory options or Restricted Units are outstanding upon the occurrence of a revaluation event described in this Section 5.01(a) (other than, if applicable, the noncompensatory options being exercised or the Restricted Units being converted that give rise to the occurrence of such event), the Company shall adjust the Book Values of its properties in accordance with, or, in the case of outstanding Restricted Units, in accordance with principles similar to those set forth in, Treasury Regulations Sections 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2).

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(b) For purposes of computing the amount of any item of income, gain, loss or deduction with respect to the Company to be allocated pursuant to this Article V and to be reflected in the Capital Accounts of the Members, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); *provided however* that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(1)(B) or Code Section 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includible in gross income or are not deductible for U.S. federal income tax purposes.

(ii) If the Book Value of any property of the Company is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e), (f) or (s), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of property of the Company having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to property of the Company having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any asset of the Company pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

(c) Upon the conversion of any Restricted Units into Common Units upon a Vesting Event, the parties hereto intend that the allocations and capital maintenance rules shall be governed under Treasury Regulations Section 1.704-3 with adjustments being made in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s) and consistent with the principles of Section 704(c) of the Code and the Treasury Regulations thereunder in order to effectuate the Members' agreed upon economic sharing of items within the Company.

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Section 5.02 Allocations. Except as otherwise provided in this Agreement, and after giving effect to Sections 5.03 and 5.04, Net Profits and Net Losses for any Fiscal Year or Fiscal Period shall be allocated to the Members in such manner that the Capital Account balance of each Member shall, to the greatest extent possible immediately after making such allocations, be equal (proportionately) to (x) the amount that would be distributed to such Member (after satisfaction of any financial obligations of each Member to the Company under any provisions of this Agreement), if (a) the Company were to sell all or substantially all assets of the Company for their Book Values, (b) all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Book Values of the assets securing such liability), (c) the Company were to distribute the remaining proceeds of sale pursuant to Section 4.01(a) or of liquidation pursuant to Section 14.02 immediately after making such allocations and (d) the Company were to dissolve pursuant to Article XIV, minus (y) such Member's share of Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets; *provided* that, for these purposes, any Common Units or Incentive Units which are subject to vesting conditions in accordance with any applicable equity plan or individual award agreement are treated as fully vested (excluding, for the avoidance of doubt, any Restricted Units prior to a Vesting Event with respect thereto).

Section 5.03 Regulatory Allocations.

(a) Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulation Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4).

(b) Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated pro rata among the Members in accordance with their Percentage Interests. Except as otherwise provided in Section 5.03(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Member shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(f). This Section 5.03(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) If any Member that unexpectedly receives an adjustment, allocation or Distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) (4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Sections 5.03(a) and 5.03(b) but before the application of any other provision of this Article V, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.03(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) If the allocation of Net Losses to a Member as provided in Section 5.02 would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of Losses as will not create or increase an Adjusted Capital Account Deficit. The Net Losses that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to this Section 5.03(d).

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(e) Profits and Losses described in Section 5.01(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(f) Notwithstanding anything to the contrary contained in this Agreement, (i) no allocation (of Net Profits or Net Losses or otherwise) shall be made in respect of any Restricted Units in determining Capital Accounts unless and until such Restricted Units are converted into Common Units upon the occurrence of a Vesting Event and (ii) in the event the Book Value of any Company asset is adjusted pursuant to the proviso in Section 5.01(a), any Net Profits or Net Losses resulting from such adjustment shall, in the manner determined by the Manager, be allocated among the Members (including the Members who held the Restricted Units giving rise to such adjustment) such that the Capital Account balance relating to each Common Unit (including such Restricted Units that have been converted into Common Units) is equal in amount immediately after making such allocation in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s); *provided* that, if the foregoing allocations pursuant to clause (ii) above are insufficient to cause the Capital Account balance relating to each Common Unit to be so equal in amount, then the Manager, in its discretion, shall cause a Capital Account reallocation in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s) (3) to cause the Capital Account balance relating to each Common Unit to be so equal in amount.

(g) The allocations set forth in Sections 5.03(a) through and including Section 5.03(e) (the "**Regulatory Allocations**") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the Company or make Distributions. Accordingly, notwithstanding the other provisions of this Article V, but subject to the Regulatory Allocations, income, gain, deduction and loss with respect to the Company shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero. In addition, if in any Fiscal Year or Fiscal Period there is a decrease in partnership minimum gain, or in partner nonrecourse debt minimum gain, and application of the minimum gain chargeback requirements set forth in Section 5.03(a) or Section 5.03(b) would cause a distortion in the economic arrangement among the Members, the Members may, if they do not expect that the Company will have sufficient other income to correct such distortion, request the IRS to waive either or both of such minimum gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such minimum gain chargeback requirement. This Section 5.03(g) is intended to minimize to the extent possible and to the extent necessary any economic distortions that may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith.

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Section 5.04 Final Allocations.

(a) Notwithstanding any contrary provision in this Agreement except Section 5.03, the Manager shall make appropriate adjustments to allocations of Profits and Losses to (or, if necessary, allocate items of gross income, gain, loss or deduction of the Company among) the Members upon the liquidation of the Company (within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations), the transfer of substantially all the Units (whether by sale or exchange or merger) or sale of all or substantially all the assets of the Company, such that, to the maximum extent possible, the Capital Accounts of the Members are proportionate to their Percentage Interests. In each case, such adjustments or allocations shall occur, to the maximum extent possible, in the Fiscal Year of the event requiring such adjustments or allocations.

(b) If any holder of Common Units or Incentive Units which are subject to vesting conditions forfeits (or the Company has repurchased at less than fair market value) all or a portion of such holder's unvested Common Units, the Company shall make forfeiture allocations in respect of such unvested Common Units or Incentive Units in the manner and to the extent required by proposed Treasury Regulations Section 1.704-1(b)(4)(xii) (as such proposed Treasury Regulations may be amended or

modified, including upon the issuance of temporary or final Treasury Regulations).

Section 5.05 Tax Allocations.

(a) The income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; *provided* that, if any such allocation is not permitted by the Code or other applicable Law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of taxable income, gain, loss and deduction of the Company with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value using (i) the traditional method set forth in Treasury Regulations Section 1.704-3(b) with respect to any Person (other than the Corporation and its Subsidiaries) who is or was a Member on or prior to the Effective Date or (ii) except as provided in clause (i), any permissible method or methods selected in the discretion of the Manager.

(c) If the Book Value of any asset of the Company is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e), (f) or (s), including adjustments to the Book Value of any asset of the Company in connection with the execution of this Agreement, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value using (i) the traditional method set forth in Treasury Regulations Section 1.704-3(b) with respect to any Person (other than the Corporation and its Subsidiaries) who is or was a Member on or prior to the Effective Date or (ii) except as provided in clause (i), any permissible method or methods selected in the discretion of the Manager.

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(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members as determined by the Manager taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) For purposes of determining a Member's share of the Company's "excess nonrecourse liabilities" within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Member's interest in income and gain shall be determined pursuant to any proper method, as reasonably determined by the Manager; *provided* that, each year the Manager shall use its reasonable best efforts (using in all instances any proper method, including the "additional method" described in Treasury Regulation Section 1.752-3(a)(3)) to allocate a sufficient amount of the excess nonrecourse liabilities to those Members who would have at the end of the applicable Taxable Year, but for such allocation, taxable income due to the deemed distribution of money to such Member pursuant to Section 752(b) of the Code that is in excess of such Member's adjusted tax basis in its Units.

(f) If, pursuant to Section 5.03(f), the Manager causes a Capital Account reallocation in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s)(3), the Manager shall make corrective allocations in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(4)(x).

(g) Allocations pursuant to this Section 5.05 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other items of the Company pursuant to any provision of this Agreement.

Section 5.06 Adjustment for Non-Compensatory Options. If the Company issues Units or other securities that are treated as non-compensatory options, as defined in Treasury Regulation Section 1.721-2, the Manager shall make such adjustments to the Book Value of the Company's assets, allocation of Profits and Losses, Capital Accounts and allocations of items for income tax purposes as it may determine may be necessary to comply with the provisions of Treasury Regulations Section 1.721-2 and Treasury Regulations Section 1.704-1(b)(2)(iv)(s) or any successor provisions relating thereto and to properly reflect the economic sharing arrangement associated with the non-compensatory options.

Section 5.07 Restricted Units. The parties hereto intend that, for U.S. federal income tax purposes, (a) the Restricted Units received by the Pre-Business Combination Members in connection with the Recapitalization and by the Corporation in connection with the Business Combination not be treated as being received in connection with the performance of services and (b) no such Member be treated as having taxable income or gain as a result of such receipt of such Restricted Units or as a result of holding any such Restricted Units at the time of any Vesting Event (other than as a result of corrective allocations made pursuant to Section 5.03(g)) and the Company shall prepare and file all tax returns consistent therewith unless otherwise required by a "determination" within the meaning of Section 1313 of the Code. Notwithstanding (and without limiting) the foregoing, each of the Members holding Restricted Units shall, within 30 days of the Effective Date, file with the IRS (via certified mail, return receipt requested) on a protective basis a completed election under Section 83(b) of the Code and the Treasury Regulations thereunder with respect to such Restricted Units so received and, upon such filing, shall thereafter notify the Company that such Member has made such timely filing and provide the Company with a copy of such election and evidence of timely filing.

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Section 5.08 Compliance with Tax Laws. The allocation rules set forth in Section 5.01 through Section 5.07 are intended to comply with the Code and Treasury Regulations and to ensure that all allocations under this Article V are respected for U.S. federal income tax purposes and reflect the economic sharing arrangement among the Members. If for any reason the Manager (or its designee) determines that any provisions in Section 5.01 through Section 5.07 do not comply with the Code or Treasury Regulations or that the allocations under this Article V may not be respected for U.S. federal income tax purposes or reflect the economic sharing arrangement among the Members, the Manager may take all reasonable actions, including amending this Article V or adjusting a Member's Capital Account or how Capital Accounts are maintained, to ensure compliance with the Code and Treasury Regulations and that the allocations provided for in this Article V shall be respected for U.S. federal income tax purposes; *provided however* that, no such change shall have a material adverse effect upon the amount of cash or other property distributable to any Member.

Section 5.09 Indemnification and Reimbursement for Payments on Behalf of a Member. If the Company or any other Person in which the Company holds an interest is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity, including any amounts withheld from amounts directly or indirectly payable to the Company or to any other Person in which the Company holds an interest) that is specifically attributable to a Member or a Member's status as such (including federal income taxes, additions to tax, interest and penalties as a result of obligations of the Company pursuant to the Revised Partnership Audit Provisions (or any similar provision of state, local and other Law), federal withholding taxes, state personal property taxes and state unincorporated business taxes, but excluding payments such as payroll taxes, withholding taxes, benefits or professional association fees and the like required to be made or made voluntarily by the Company on behalf of any Member based upon such Member's status as an employee of the Company) (a "**Withholding Payment**"), then such Member shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). If the Company incurs an Imputed Underpayment Amount, the Manager shall determine in its reasonable discretion the portion of such Imputed Underpayment Amount attributable to each Member or former Member and such attributable amount shall be treated as a Withholding Payment with respect to such Member or former Member. The Manager may offset Distributions to which a Member is otherwise entitled under this Agreement against such Member's obligation to indemnify the Company under this Section 5.09. In addition, notwithstanding anything to the contrary, each Member agrees that any Cash Settlement

such Member is entitled to receive pursuant to Article XI may be offset by an amount equal to such Member's obligation to indemnify the Company under this Section 5.09 and that such Member shall be treated as receiving the full amount of such Cash Settlement and paying to the Company an amount equal to such obligation. A Member's obligation to make payments to the Company under this Section 5.09 shall survive the transfer or termination of any Member's interest in any Units of the Company, the termination of this Agreement and the dissolution, liquidation, winding up and termination of the Company. In the event that the Company has been terminated prior to the date such payment is due, such Member shall make such payment to the Manager (or its designee), which shall distribute such funds in accordance with this Agreement. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 5.09, including instituting a lawsuit to collect such contribution with interest calculated at a rate per annum equal to the sum of the Base Rate plus 300 basis points (but not in excess of the highest rate per annum permitted by Law). Each Member hereby agrees to furnish to the Company such information and forms as required or reasonably requested in order to comply with any Laws and regulations governing withholding of tax or in order to claim any reduced rate of, or exemption from, withholding to which the Member is legally entitled. The Company may withhold any amount that it determines is required to be withheld from any amount otherwise payable to any Member hereunder, and any such withheld amount shall be deemed to have been paid to such Member for purposes of this Agreement.

ARTICLE VI MANAGEMENT

Section 6.01 Authority of Manager; Officer Delegation.

(a) Except for situations in which the approval of any Member(s) is specifically required by this Agreement, (i) all management powers over the business and affairs of the Company shall be exclusively vested in the Corporation, as the sole managing member of the Company (the Corporation, in such capacity, the "**Manager**"), (ii) the Manager shall conduct, direct and exercise full control over all activities of the Company and (iii) no other Member shall have any right, authority or power to vote, consent or approve any matter, whether under the Delaware Act, this Agreement or otherwise. The Manager shall be the "manager" of the Company for the purposes of the Delaware Act. Except as otherwise expressly provided for herein and subject to the other provisions of this Agreement, the Members hereby consent to the exercise by the Manager of all such powers and rights conferred on the Members by the Delaware Act with respect to the management and control of the Company. Any vacancies in the position of Manager shall be filled in accordance with Section 6.04.

(b) Without limiting the authority of the Manager to act on behalf of the Company, the day-to-day business and operations of the Company may be overseen and implemented by officers of the Company (each, an "**Officer**" and collectively, the "**Officers**"), subject to the limitations imposed by the Manager. An Officer may, but need not, be a Member. Each Officer shall be appointed by the Manager, with the initial Officers of the Company hereby appointed in such roles as set forth on Schedule 3 attached hereto, and shall hold office until his or her successor shall be duly designated and shall qualify or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any one Person may hold more than one office. Subject to the other provisions of this Agreement (including in Section 6.07 below), the salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Manager. The authority and responsibility of the Officers shall be limited to such duties as the Manager may, from time to time, delegate to them. Unless the Manager decides otherwise, if the title is one commonly used for officers of a business corporation formed under the General Corporation Law of the State of Delaware, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. All Officers shall be, and shall be deemed to be, officers and employees of the Company. An Officer may also perform one or more roles as an officer of the Manager. Any Officer may be removed at any time, with or without cause, by the Manager.

(c) Subject to the other provisions of this Agreement, the Manager shall have the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, consolidation, conversion, division, reorganization or other combination of the Company with or into another entity, for the avoidance of doubt, without the prior consent of any Member or any other Person being required.

Section 6.02 Actions of the Manager. The Manager may act through any Officer or through any other Person or Persons to whom authority and duties have been delegated pursuant to Section 6.07.

Section 6.03 Resignation; No Removal. The Manager may resign at any time by giving written notice to the Members. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Members, and the acceptance of the resignation shall not be necessary to make it effective. For the avoidance of doubt, the Members have no right under this Agreement to remove or replace the Manager.

Section 6.04 Vacancies. Vacancies in the position of Manager occurring for any reason shall be filled by the Corporation (or, if the Corporation has ceased to exist without any successor or assign, then by the holders of a majority in interest of the voting capital stock of the Corporation immediately prior to such cessation). For the avoidance of doubt, the Members (other than the Corporation) have no right under this Agreement to fill any vacancy in the position of Manager.

Section 6.05 Transactions Between the Company and the Manager. The Manager may cause the Company to contract and deal with the Manager, or any Affiliate of the Manager; *provided* that, such contracts and dealings (other than contracts and dealings between the Company and its Subsidiaries) are on terms comparable to and competitive with those available to the Company from others dealing at arm's length or are approved by the Members and otherwise are permitted by the Credit Agreements; *provided further* that, the foregoing shall in no way limit the Manager's rights under Sections 3.02, 3.04, 3.05 or 3.10. The Members hereby approve each of the contracts or agreements between or among the Manager, the Company and their respective Affiliates entered into on or prior to the date of this Agreement in accordance with the Initial LLC Agreement or that the board of managers of the Company or the Corporate Board has approved in connection with the Recapitalization, the Preferred Redemption or the Business Combination as of the date of this Agreement.

Section 6.06 Reimbursement for Expenses. The Manager shall not be compensated for its services as Manager of the Company except as expressly provided in this Agreement. The Members acknowledge and agree that, upon consummation of the Business Combination, the Manager's Class A Common Stock will be publicly traded and, therefore, the Manager will have access to the public capital markets and that such status and the services performed by the Manager will inure to the benefit of the Company and all Members; therefore, the Manager shall be reimbursed by the Company for any reasonable out-of-pocket expenses incurred on behalf of the Company, including all fees, expenses and costs associated with the Business Combination and all fees, expenses and costs of being a public company (including public reporting obligations, proxy statements, stockholder meetings, Stock Exchange fees, transfer agent fees, legal fees, SEC and FINRA filing fees and offering expenses) and maintaining its corporate existence. In the event that shares of Class A Common Stock are sold to underwriters in the Business Combination (or in any subsequent public offering) at a price per

share that is lower than the price per share for which such shares of Class A Common Stock are sold to the public in the Business Combination (or in such subsequent public offering, as applicable) after taking into account underwriters' discounts or commissions and brokers' fees or commissions (such difference, the "**Discount**"), (a) the Manager shall be deemed to have contributed to the Company in exchange for newly issued Common Units the full amount for which such shares of Class A Common Stock were sold to the public and (b) the Company shall be deemed to have paid the Discount as an expense. To the extent practicable, expenses incurred by the Manager on behalf of or for the benefit of the Company shall be billed directly to and paid by the Company and, if and to the extent any reimbursements to the Manager or any of its Affiliates by the Company pursuant to this Section 6.06 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts. Notwithstanding the foregoing, the Company shall not bear any income tax obligations of the Manager or any payments made pursuant to the Tax Receivable Agreement.

Section 6.07 Delegation of Authority. The Manager (a) may, from time to time, delegate to one or more Persons such authority and duties as the Manager may deem advisable, and (b) may assign titles (including chief executive officer, president, chief financial officer, chief operating officer, general counsel, senior vice president, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such Persons which may be amended, restated or otherwise modified from time to time. Any number of titles may be held by the same individual. The salaries or other compensation, if any, of such agents of the Company shall be fixed from time to time by the Manager, subject to the other provisions in this Agreement.

Section 6.08 Limitation of Liability of Manager.

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, neither the Manager nor any of the Manager's Affiliates or Manager's officers, employees or other agents shall be liable to the Company, to any Member that is not the Manager or to any other Person bound by this Agreement for any act or omission performed or omitted by the Manager in its capacity as the sole managing member of the Company pursuant to authority granted to the Manager by this Agreement; *provided however* that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to the Manager's willful misconduct or knowing violation of Law or for any present or future material breaches of any representations, warranties or covenants by the Manager or its Affiliates contained herein or in the Other Agreements with the Company. The Manager may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and shall not be responsible for any misconduct or negligence on the part of any such agent (so long as such agent was selected in good faith and with reasonable care). The Manager shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Manager in good faith reliance on such advice shall in no event subject the Manager to liability to the Company or any Member that is not the Manager.

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(b) To the fullest extent permitted by applicable Law, whenever this Agreement or any other agreement contemplated herein provides that the Manager shall act in a manner which is, or provide terms which are, "fair and reasonable" to the Company or any Member that is not the Manager, the Manager shall determine such appropriate action or provide such terms considering, in each case, the relative interests of each party to such agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable United States generally accepted accounting practices or principles, notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise.

(c) To the fullest extent permitted by applicable Law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise, whenever in this Agreement or any other agreement contemplated herein, the Manager is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, the Manager shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company, other Members or any other Person.

(d) To the fullest extent permitted by applicable Law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement the Manager is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, the Manager shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, notwithstanding any provision of this Agreement or duty otherwise, existing at Law or in equity, and, notwithstanding anything contained herein to the contrary, so long as the Manager acts in good faith or in accordance with such other express standard, the resolution, action or terms so made, taken or provided by the Manager shall not constitute a breach of this Agreement or impose liability upon the Manager or any of the Manager's Affiliates and shall be deemed approved by all Members.

Section 6.09 Investment Company Act. The Manager shall use its best efforts to ensure that the Company shall not be subject to registration as an investment company pursuant to the Investment Company Act.

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ARTICLE VII
RIGHTS AND OBLIGATIONS OF MEMBERS AND MANAGER

Section 7.01 Limitation of Liability and Duties of Members.

(a) Except as provided in this Agreement or in the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member or Manager shall be obligated personally for any such debts, obligations, contracts or liabilities of the Company solely by reason of being a Member or the Manager (except to the extent and under the circumstances set forth in any non-waivable provision of the Delaware Act). Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable Law, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

(b) In accordance with the Delaware Act and the laws of the State of Delaware, a Member may, under certain circumstances, be required to return amounts previously distributed to such Member. It is the intent of the Members that no Distribution to any Member pursuant to Articles IV or XIV shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or Distribution of any such property to a Member shall be deemed to be a compromise within the meaning of Section 18-502(b) of the Delaware Act, and, to the fullest extent permitted by Law, any Member receiving any such money or property shall not be required to return any such money or property to the Company or any other Person, unless such distribution was made by the Company to its Members in clerical error. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member.

(c) To the fullest extent permitted by applicable Law, including Section 18-1101(c) of the Delaware Act, and notwithstanding any other provision of

this Agreement (but subject, and without limitation, to Section 6.08 with respect to the Manager) or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise, the parties hereto hereby agree that to the extent that any Member (other than the Manager in its capacity as such) (or any Member's Affiliate or any manager, managing member, general partner, director, officer, employee, agent, fiduciary or trustee of any Member or of any Affiliate of a Member) has duties (including fiduciary duties) to the Company, to the Manager, to another Member, to any Person who acquires an interest in a Unit or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties or standards expressly set forth herein, if any; provided, however, that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. The elimination of duties (including fiduciary duties) to the Company, the Manager, each of the Members, each other Person who acquires an interest in a Unit and each other Person bound by this Agreement and replacement thereof with the duties or standards expressly set forth herein, if any, are approved by the Company, the Manager, each of the Members, each other Person who acquires an interest in a Unit and each other Person bound by this Agreement.

Section 7.02 Lack of Authority. No Member, other than the Manager or a duly appointed Officer, in each case in its capacity as such, has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditure on behalf of the Company. The Members hereby consent to the exercise by the Manager of the powers conferred on them by Law and this Agreement.

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Section 7.03 No Right of Partition. No Member, other than the Manager, shall have the right to seek or obtain partition by court decree or operation of Law of any property of the Company, or the right to own or use particular or individual assets of the Company.

Section 7.04 Indemnification.

(a) Subject to Section 5.09, the Company hereby agrees to indemnify and hold harmless any Person (each an "**Indemnified Person**") to the fullest extent permitted under applicable Law, as the same now exists or may hereafter be amended, substituted or replaced (but, to the fullest extent permitted by Law, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person's Affiliates) by reason of the fact that such Person is or was a Member or an Affiliate thereof (other than as a result of an ownership interest in the Corporation) or is or was serving as the Manager or a director, officer, employee or other agent of the Manager, or a director, manager, Officer, employee, Partnership Representative or other agent of the Company or is or was serving at the request of the Company as a manager, officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; *provided however* that, no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's or its Affiliates' willful misconduct or knowing violation of Law or for any present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in Other Agreements with the Company. Reasonable expenses, including out-of-pocket attorneys' fees, incurred by any such Indemnified Person in defending a proceeding shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) The right to indemnification and the advancement of expenses conferred in this Section 7.04 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, bylaw, action by the Manager or otherwise.

(c) The Company shall maintain directors' and officers' liability insurance, or substantially equivalent insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in Section 7.04(a) whether or not the Company would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 7.04. The Company shall use its commercially reasonable efforts to purchase and maintain property, casualty and liability insurance in types and at levels customary for companies of similar size engaged in similar lines of business, as determined in good faith by the Manager, and the Company shall use its commercially reasonable efforts to purchase directors' and officers' liability insurance (including employment practices coverage) with a carrier and in an amount determined necessary or desirable as determined in good faith by the Manager.

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(d) The indemnification and advancement of expenses provided for in this Section 7.04 shall be provided out of and to the extent of Company assets only. No Member (unless such Member otherwise agrees in writing or is found in a non-appealable decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company. The Company (i) shall be the primary indemnitor of first resort for such Indemnified Person pursuant to this Section 7.04 and (ii) shall be fully responsible for the advancement of all expenses and the payment of all damages or liabilities with respect to such Indemnified Person which are addressed by this Section 7.04.

(e) If this Section 7.04 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 7.04 to the fullest extent permitted by any applicable portion of this Section 7.04 that shall not have been invalidated and to the fullest extent permitted by applicable Law.

Section 7.05 Inspection Rights. The Company shall permit each Member and each of its designated representatives at such Member's sole cost and expense to examine the books and records of the Company or any of its Subsidiaries at the principal office of the Company or such other location as the Manager shall reasonably approve during normal business hours and upon reasonable notice for any purpose reasonably related to such Member's Units.

ARTICLE VIII BOOKS, RECORDS, ACCOUNTING AND REPORTS, AFFIRMATIVE COVENANTS

Section 8.01 Records and Accounting. The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required pursuant to applicable Laws. All matters concerning (a) the determination of the relative amount of allocations and Distributions among the Members pursuant to Articles IV and V and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager, whose determination shall be final and conclusive as to all of the Members absent manifest clerical error.

Section 8.02 Fiscal Year. The Fiscal Year of the Company shall end on December 31 of each year or such other date as may be required or established by the Manager.

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ARTICLE IX
TAX MATTERS

Section 9.01 Preparation of Tax Returns. The Manager shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company. The Manager shall use reasonable efforts to furnish, within 180 days of the close of each Taxable Year, to each Member a completed IRS Schedule K-1 (and any comparable state or local income tax form) and such other information as is reasonably requested by such Member relating to the Company that is necessary for such Member to comply with its tax reporting obligations. Subject to the terms and conditions of this Agreement and except as otherwise provided in this Agreement, in its capacity as Partnership Representative, the Corporation shall have the authority to prepare the tax returns of the Company using such permissible methods and elections as it determines in its reasonable discretion, including the use of any permissible method under Section 706 of the Code for purposes of determining the varying Units of its Members. Each Member shall furnish to the Company all pertinent information in its possession that is reasonably requested by the Company and is necessary to enable the Company's tax returns to be timely prepared and filed. Each Member further agrees that such Member shall not treat any Company item inconsistently on such Member's tax return with the treatment of the item on the Company's tax return or other information furnished to such Member relating to the Company for such Member to comply with its tax reporting obligations.

Section 9.02 Tax Elections. The Taxable Year shall be the Fiscal Year set forth in Section 8.02, unless otherwise required by Section 706 of the Code. The Manager shall cause the Company and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes to have in effect an election pursuant to Section 754 of the Code (or any similar provisions of applicable state, local or foreign tax Law) for each Taxable Year. The Manager shall take commercially reasonable efforts to cause each Person in which the Company owns a direct or indirect equity interest (other than a Subsidiary) that is so treated as a partnership to have in effect any such election for each Taxable Year. Each Member will upon request supply any information reasonably necessary to give proper effect to any such elections.

Section 9.03 Tax Controversies. The Manager shall cause the Company to take all necessary actions required by Law to designate the Corporation (or any other Person selected by the Manager) as the "tax matters partner" of the Company within the meaning of Section 6231 of the Code (as in effect prior to repeal of such section pursuant to the Revised Partnership Audit Provisions) with respect to any Taxable Year beginning on or before December 31, 2017 (and to the extent applicable for state and local tax purposes). The Manager shall further cause the Company to take all necessary actions required by Law to designate the Corporation (or any other Person selected by the Manager) as the "partnership representative" of the Company as provided in Section 6223(a) of the Code (and similar provisions of state, local and other Law) with respect to any Taxable Year of the Company beginning after December 31, 2017, and if the "partnership representative" is an entity, the Manager is hereby authorized to designate an individual to be the sole individual through which such entity "partnership representative" will act (in such capacities, collectively, the "**Partnership Representative**"). The Company and the Members shall cooperate fully with each other and shall use reasonable best efforts to cause the Corporation (or such other Person selected by the Manager, or its designated individual, as applicable) to become the Partnership Representative with respect to any taxable period of the Company with respect to which the statute of limitations has not yet expired (and causing any tax matters partner, partnership representative or designated individual designated prior to the Effective Date to resign, be revoked or replaced, as applicable), including (as applicable) by filing certifications pursuant to Treasury Regulations Section 301.6231(a)(7)-1(d) and completing IRS Form 8970 or any other form or certificate required pursuant to Treasury Regulation Section 301.6223-1(e)(1). The Partnership Representative shall have the right and obligation to take all actions authorized and required by the Code and other applicable tax Law for the Partnership Representative and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including any resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Company or the Partnership Representative with respect to the conduct of such proceedings. Without limiting the generality of the foregoing, with respect to any audit or other proceeding, the Partnership Representative shall be entitled to cause the Company (and any of its Subsidiaries) to make any available elections pursuant to Section 6226 of the Code (and similar provisions of state, local and other Law), and the Members shall cooperate to the extent reasonably requested by the Company in connection therewith. Each Member acknowledges that any action taken by the Partnership Representative in its capacity as such shall be binding upon such Member and that such Member shall not independently act with respect to any administrative or judicial proceeding affecting the Company. The Company shall reimburse the Partnership Representative for all reasonable out-of-pocket expenses incurred by the Partnership Representative, including reasonable fees of any professional attorneys, in carrying out its duties as the Partnership Representative. The provisions of this Article IX shall survive the transfer or termination of any Member's interest in any Units of the Company, the termination of this Agreement and the dissolution, liquidation, winding up and termination of the Company, and shall remain binding on each Member for the period of time necessary to resolve all tax matters relating to the Company, and shall be subject to the provisions of the Tax Receivable Agreement, as applicable. With respect to any tax audit or other proceeding for any taxable year of the Company that ends prior to or includes the Effective Date, the Company shall make (and the Partnership Representative shall cause the Company to make) a "push out" election under Section 6226 of the Code (or any comparable provision of state, local, or non-U.S. law) to the extent available under applicable law.

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ARTICLE X
RESTRICTIONS ON TRANSFER OF UNITS; CERTAIN TRANSACTIONS

Section 10.01 Transfers by Members. No holder of Units shall Transfer any interest in any Units, except Transfers (a) pursuant to and in accordance with Sections 10.02 and 10.09 or (b) approved in advance and in writing by the Manager (through a majority of its directors who are disinterested), in the case of Transfers by any Member other than the Manager, or (c) in the case of Transfers by the Manager, to any Person who succeeds to the Manager in accordance with Section 6.04. Notwithstanding the foregoing, "**Transfer**" shall not include (i) an event that terminates the existence of a Member for income tax purposes (including a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member), but that does not terminate the existence of such Member under applicable state Law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Units of such trust that is a Member) or (ii) any indirect Transfer of Units held by the Manager by virtue of any Transfer of Equity Securities in the Corporation.

Section 10.02 Permitted Transfers. The restrictions contained in Section 10.01 shall not apply to any of the following Transfers (each, a "**Permitted Transfer**" and each transferee, a "**Permitted Transferee**"): (a)(i) a Transfer pursuant to a Redemption or Direct Exchange in accordance with Article XI hereof or (ii) a Transfer by a Member to the Corporation or any of its Subsidiaries, or (b) a Transfer to an Affiliate of such Member or pursuant to applicable laws of descent and distribution or among such Member's Family Group; *provided that*, (x) Units may not be Transferred to a Member's spouse in connection with a divorce proceeding and (y) such Member retains exclusive voting control of the Units Transferred; *provided however that*, (1) the restrictions contained in this Agreement will continue to apply to Units after any Permitted Transfer of such Units, and (2) in the case of the foregoing clause (b), the Permitted Transferees of the Units so Transferred shall agree in writing to be bound by the provisions of this Agreement, and prior to such Transfer the transferor will deliver a written notice to the Company and the Members, which notice will disclose in reasonable detail the identity of the proposed Permitted Transferee. In the case of a Permitted Transfer of any Common Units by any Member that is authorized to hold Class B Common Stock in accordance with the Corporation's certificate of incorporation to a Permitted Transferee in accordance with this Section 10.02, such Member (or any subsequent Permitted Transferee of such Member) shall also transfer a number of shares of Class B Common Stock equal to the number of Common Units that were transferred by such Member (or subsequent Permitted Transferee) in the transaction to such Permitted Transferee. All Permitted Transfers are subject to the additional limitations set forth in Section 10.07(b).

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Section 10.03 Legend. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this

Agreement, cannot be sold unless subsequently registered under the Securities Act or if an exemption from such registration is then available with respect to such sale. To the extent such Units have been certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED ON [●], AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “*ACT*”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF AUTHENTIC BRANDS LLC, AS IT MAY BE AMENDED, RESTATED, AMENDED AND RESTATED, OR OTHERWISE MODIFIED FROM TIME TO TIME, AND AUTHENTIC BRANDS LLC RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH CONDITIONS SHALL BE FURNISHED BY AUTHENTIC BRANDS LLC TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.”

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any Units which cease to be Units in accordance with the definition thereof.

Section 10.04 Transfer. Prior to Transferring any Units, the Transferring holder of Units shall cause the prospective Permitted Transferee to be bound by this Agreement and any other agreements executed by the holders of Units and relating to such Units in the aggregate to which the transferor was a party (collectively, the “*Other Agreements*”) by executing and delivering to the Company counterparts of this Agreement and any applicable Other Agreements.

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Section 10.05 Assignee’s Rights.

(a) The Transfer of a Unit in accordance with this Agreement shall be effective as of the date of such Transfer (assuming compliance with all of the conditions to such Transfer set forth herein), and such Transfer shall be shown on the books and records of the Company. Profits, Losses and other items of the Company shall be allocated between the transferor and the transferee according to Code Section 706, using any permissible method as determined in the reasonable discretion of the Manager. Distributions made before the effective date of such Transfer shall be paid to the transferor, and Distributions made on or after such date shall be paid to the Assignee.

(b) Unless and until an Assignee becomes a Member pursuant to Article XII, the Assignee shall not be entitled to any of the rights granted to a Member hereunder or under applicable Law, other than the rights granted specifically to Assignees pursuant to this Agreement; *provided however* that, without relieving the Transferring Member from any such limitations or obligations as more fully described in Section 10.06, such Assignee shall be bound by any limitations and obligations of a Member contained herein by which a Member would be bound on account of the Assignee’s Units (including the obligation to make Capital Contributions on account of such Units).

Section 10.06 Assignor’s Rights and Obligations. Any Member who shall Transfer any Unit in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units and shall no longer have any rights or privileges, or, except as set forth in this Section 10.06, duties, liabilities or obligations, of a Member with respect to such Units or other interest (it being understood, however, that the applicable provisions of Sections 6.08 and 7.04 shall continue to inure to such Person’s benefit), except that unless and until the Assignee (if not already a Member) is admitted as a Substituted Member in accordance with the provisions of Article XII (the “*Admission Date*”), (a) such Transferring Member shall retain all of the duties, liabilities and obligations of a Member with respect to such Units, and (b) the Manager may, in its sole discretion, reinstate all or any portion of the rights and privileges of such Member with respect to such Units for any period of time prior to the Admission Date. Nothing contained herein shall relieve any Member who Transfers any Units in the Company from any liability of such Member to the Company with respect to such Units that may exist as of the Admission Date or that is otherwise specified in the Delaware Act or for any liability to the Company or any other Person for any materially false statement made by such Member (in its capacity as such) or for any present or future breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the Other Agreements with the Company.

Section 10.07 Overriding Provisions.

(a) Any Transfer or attempted Transfer of any Units in violation of this Agreement (including any prohibited indirect Transfers) shall be, to the fullest extent permitted by applicable law, null and void *ab initio*, and the provisions of Sections 10.05 and 10.06 shall not apply to any such Transfers. For the avoidance of doubt, any Person to whom a Transfer is made or attempted in violation of this Agreement shall not become a Member and shall not have any other rights in or with respect to any rights of a Member of the Company with respect to the applicable Units. The approval of any Transfer in any one or more instances shall not limit or waive the requirement for such approval in any other or future instance. The Manager shall promptly amend the Schedule of Members to reflect any Permitted Transfer pursuant to this Article X.

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(b) Notwithstanding anything contained herein to the contrary (including, for the avoidance of doubt, the provisions of Section 10.01 and Article XI and Article XII, but excluding Section 10.11), in no event shall any Member Transfer any Units to the extent such Transfer would:

(i) result in the violation of the Securities Act, or any other applicable federal, state or foreign Laws;

(ii) cause an assignment under the Investment Company Act;

(iii) in the reasonable determination of the Manager, be a violation of or a default (or an event that, with notice or the lapse of time or both, would constitute a default) under, or result in an acceleration of any obligation under any Credit Agreement to which the Company or the Manager is a party; *provided* that, the payee or creditor to whom the Company or the Manager owes such obligation is not an Affiliate of the Company or the Manager;

(iv) be a Transfer to a Person who is not legally competent or who has not achieved his or her majority of age under applicable Law (excluding trusts for the benefit of minors);

(v) cause the Company to be treated as a “publicly traded partnership” or to be taxed as a corporation pursuant to Section 7704 of the Code or any successor provision thereto under the Code; or

(vi) result in the Company having more than 100 partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3)).

(c) Notwithstanding anything contained herein to the contrary, in no event shall any Member that is not a “United States person” within the meaning

of Section 7701(a)(30) of the Code Transfer any Units, unless such Member and the transferee have delivered to the Company, in respect of the relevant Transfer, written evidence that all required withholding under Section 1446(f) of the Code will have been done and duly remitted to the applicable taxing authority or duly executed certifications (prepared in accordance with the applicable Treasury Regulations or other authorities) of an exemption from such withholding.

Section 10.08 Spousal Consent. In connection with the execution and delivery of this Agreement, any Member who is a natural person will deliver to the Company an executed consent from such Member's spouse (if any) in the form of Exhibit B-1 attached hereto or a Member's spouse confirmation of separate property in the form of Exhibit B-2 attached hereto. If, at any time subsequent to the date of this Agreement such Member becomes legally married (whether in the first instance or to a different spouse), such Member shall cause his or her spouse to execute and deliver to the Company a consent in the form of Exhibit B-1 or Exhibit B-2 attached hereto. Such Member's non-delivery to the Company of an executed consent in the form of Exhibit B-1 or Exhibit B-2 at any time shall constitute such Member's continuing representation and warranty that such Member is not legally married as of such date.

Section 10.09 Certain Transactions with respect to the Corporation

(a) In connection with a Change of Control Transaction, the Manager shall have the right, in its sole discretion, to require each Member to effect a Redemption of all or a portion of such Member's Units together with an equal number of shares of Class B Common Stock, pursuant to which such Units and such shares of Class B Common Stock will be exchanged for shares of Class A Common Stock (or economically equivalent cash or securities of a successor entity), *mutatis mutandis*, in accordance with the Redemption provisions of Article XI (applied for this purpose as if the Corporation had delivered an Election Notice that specified a Share Settlement with respect to such Redemption) and otherwise in accordance with this Section 10.09(a) (it being understood that the Corporation may elect a Direct Exchange in connection with the foregoing, and the remaining provisions of this Section 10.09(a) shall apply, *mutatis mutandis*, with respect to such Direct Exchange). Any such Redemption pursuant to this Section 10.09(a) shall be effective immediately prior to the consummation of such Change of Control Transaction (and, for the avoidance of doubt, shall be contingent upon the consummation of such Change of Control Transaction and shall not be effective if such Change of Control Transaction is not consummated) (the date of such Redemption pursuant to this Section 10.09(a), the "**Change of Control Date**"). From and after the Change of Control Date, (i) the Units and any shares of Class B Common Stock subject to such Redemption shall be deemed to be transferred to the Corporation on the Change of Control Date and (ii) each such Member shall cease to have any rights with respect to the Units and any shares of Class B Common Stock subject to such Redemption (other than the right to receive shares of Class A Common Stock (or economically equivalent cash or equity securities in a successor entity) pursuant to such Redemption). In the event the Manager desires to initiate the provisions of this Section 10.09, the Manager shall provide written notice of an expected Change of Control Transaction to all Members within the earlier of (x) five Business Days following the execution of an agreement with respect to such Change of Control Transaction and (y) ten Business Days before the proposed date upon which the contemplated Change of Control Transaction is to be effected, including in such notice such information as may reasonably describe the Change of Control Transaction, subject to Law, including the date of execution of such agreement or such proposed effective date, as applicable, the amount and types of consideration to be paid for shares of Class A Common Stock in the Change of Control Transaction and any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with a Change of Control Transaction (which election shall be available to each Member on the same terms as holders of shares of Class A Common Stock). Following delivery of such notice and on or prior to the Change of Control Date, the Members shall take all actions reasonably requested by the Corporation to effect such Redemption in accordance with the terms of Article XI, including taking any action and delivering any document required pursuant to this Section 10.09(a) to effect such Redemption. Notwithstanding the foregoing, in the event the Manager requires the Members to exchange less than all of their outstanding Units (and to surrender a corresponding number of shares of Class B Common Stock for cancellation), each Member's participation in the Change of Control Transaction shall be reduced *pro rata*.

(b) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization, or similar transaction with respect to Class A Common Stock (a "**Pubco Offer**") is proposed by the Corporation or is proposed to the Corporation or its stockholders and approved by the Corporate Board or is otherwise effected or to be effected with the consent or approval of the Corporate Board, the Manager shall provide written notice of the Pubco Offer to all Members within the earlier of (i) five Business Days following the execution of an agreement (if applicable) with respect to, or the commencement of (if applicable), such Pubco Offer and (ii) ten Business Days before the proposed date upon which the Pubco Offer is to be effected, including in such notice such information as may reasonably describe the Pubco Offer, subject to Law, including the date of execution of such agreement (if applicable) or of such commencement (if applicable), the material terms of such Pubco Offer, including the amount and types of consideration to be received by holders of shares of Class A Common Stock in the Pubco Offer, any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with such Pubco Offer, and the number of Units (and the corresponding shares of Class B Common Stock) held by such Member that is applicable to such Pubco Offer. The Members (other than the Manager) shall be permitted to participate in such Pubco Offer by delivering a written notice of participation that is effective immediately prior to the consummation of such Pubco Offer (and that is contingent upon consummation of such offer), and shall include such information necessary for consummation of such offer as requested by the Corporation. In the case of any Pubco Offer that was initially proposed by the Corporation, (x) the Corporation shall use reasonable best efforts to enable and permit the Members (other than the Manager) to participate in such transaction to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock, and to enable such Members to participate in such transaction without being required to exchange Units or shares of Class B Common Stock prior to the consummation of such transaction and (y) to the extent that the Members (other than the Manager) choose to participate in such transaction, then such Members shall take all actions reasonably necessary to effectuate their participation in such transaction, including, without limitation, exercising their respective Redemption Rights. For the avoidance of doubt, in no event shall Members be entitled to receive in such Pubco Offer aggregate consideration for each Common Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer (it being understood that payments under or in respect of the Tax Receivable Agreement shall not be considered part of any such consideration).

(c) In the event that a transaction or proposed transaction constitutes both a Change of Control Transaction and a Pubco Offer, the provisions of Section 10.09(a) shall take precedence over the provisions of Section 10.09(b) with respect to such transaction, and the provisions of Section 10.09(b) shall be subordinate to provisions of Section 10.09(a), and may only be triggered if the Manager elects to waive the provisions of Section 10.09(a).

Section 10.10 Unvested Common Units. With respect to any shares of Class B Common Stock corresponding to Common Units which remain subject to vesting conditions in accordance with any applicable Equity Plan or Individual Award Agreement, the Member holding such shares of Class B Common Stock shall abstain from voting any such shares of Class B Common Stock with respect to any matter to be voted on or considered by the stockholders of the Corporation at any annual or special meeting of the stockholders of the Corporation or action by written consent of the stockholders of the Corporation unless and until such time as such Common Units have vested in accordance with the applicable Equity Plan or Individual Award Agreement.

Section 10.11 Incentive Unit Exchange

(a) Notwithstanding anything contained in this Article X to the contrary, each holder of Incentive Units shall be entitled during the five-day period immediately following the end of any fiscal quarter from and after the Effective Date, upon the terms and subject to the conditions hereof, to surrender vested Incentive Units to the Company in exchange for the delivery to such holder a number of Common Units that is equal to the product of (x) the number of vested Incentive Units surrendered and (y) the Incentive Unit Exchange Rate (such exchange, an ***“Incentive Unit Exchange”***), which newly issued Common Units may be exchanged in a Redemption or Direct Exchange pursuant to and in accordance with Article XI. Any such Incentive Unit Exchange shall be effected in compliance with reasonable policies that the Manager may adopt or promulgate from time to time in its sole discretion. In addition, notwithstanding anything contained herein to the contrary, upon a Change of Control Transaction, all outstanding Incentive Units shall automatically be exchanged for a number of Common Units that is equal to the product of (x) the number of vested Incentive Units surrendered and (y) the Incentive Unit Exchange Rate, which newly issued Common Units may be exchanged in a Redemption or Direct Exchange pursuant to and in accordance with Article XI.

(b) In connection with any Incentive Unit Exchange (including an exchange upon a Change of Control Transaction), the Corporation shall issue to each Member surrendering its Incentive Units a number of shares of Class B Common Stock equal to the number of Common Units issued to such Member pursuant to such Incentive Unit Exchange in order to maintain at all times a one-to-one ratio between the number of Common Units owned by such Member and the number of shares of Class B Common Stock owned by such Member in accordance with Section 3.06(a)(i).

ARTICLE XI REDEMPTION AND DIRECT EXCHANGE RIGHTS

Section 11.01 Redemption Right of a Member

(a) Each Member (other than the Corporation and its Subsidiaries) shall be entitled to cause the Company to redeem (a ***“Redemption”***) all or any portion of its Common Units (excluding, for the avoidance of doubt, any Common Units that are subject to vesting conditions or the Transfer of which is prohibited pursuant to Sections 10.07(b) or 10.07(c) of this Agreement) in whole or in part (the ***“Redemption Right”***) at any time and from time to time following the waiver or expiration of any contractual lock-up period relating to the shares of the Corporation that may be applicable to such Member. A Member desiring to exercise its Redemption Right (each, a ***“Redeeming Member”***) shall exercise such right by giving written notice (the ***“Redemption Notice”***) to the Company with a copy to the Corporation. The Redemption Notice shall specify the number of Common Units (the ***“Redeemed Units”***) that the Redeeming Member intends to have the Company redeem and a date, not less than three Business Days nor more than ten Business Days after delivery of such Redemption Notice (unless and to the extent that the Manager in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the ***“Redemption Date”***); *provided* that, the Company, the Corporation and the Redeeming Member may change the number of Redeemed Units or the Redemption Date specified in such Redemption Notice to another number or date by mutual agreement signed in writing by each of them; *provided further* that, in the event the Corporation elects a Share Settlement, the Redemption may be conditioned (including as to timing) by the Redeeming Member on the closing of an underwritten distribution of the shares of Class A Common Stock that may be issued in connection with such proposed Redemption. Subject to Section 11.03 and unless the Redeeming Member timely has delivered a Retraction Notice as provided in Section 11.01(c) or has revoked or delayed a Redemption as provided in Section 11.01(d), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date):

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(i) the Redeeming Member shall Transfer and surrender, free and clear of all liens and encumbrances (x) the Redeemed Units to the Company (including any certificates representing the Redeemed Units if they are certificated), and (y) a number of shares of Class B Common Stock (together with any Corresponding Rights) equal to the number of Redeemed Units to the Corporation, to the extent applicable;

(ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 11.01(b), and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 11.01(a) and the Redeemed Units; and

(iii) the Corporation shall cancel and retire for no consideration the shares of Class B Common Stock (together with any Corresponding Rights) that were Transferred to the Corporation pursuant to Section 11.01(a)(i)(y) above.

(b) The Corporation shall have the option (as determined solely by the Corporate Board), as provided in Section 11.02, to elect to have the Redeemed Units be redeemed in consideration for either a Share Settlement or a Cash Settlement; *provided* that, for the avoidance of doubt, the Corporation may elect to have the Redeemed Units be redeemed in consideration for a Cash Settlement solely in connection with the Corporation’s completion of a substantially concurrent public offering or private sale of shares of Class A Common Stock within ten (10) Business Days of the delivery of a Redemption Notice. For the avoidance of doubt, the Company shall have no obligation to effect a Cash Settlement that exceeds the cash raised by the Corporation from the Corporation’s offering or sale of shares of Class A Common Stock referenced in this Section 11.01(b). The Corporation shall give written notice (the ***“Election Notice”***) to the Company (with a copy to the applicable Redeeming Member) of such election within two Business Days of receiving the Redemption Notice; *provided* that, if the Corporation does not timely deliver an Election Notice, the Corporation shall be deemed to have elected the Share Settlement method. If the Corporation elects a Share Settlement (including in connection with a Direct Exchange pursuant to Section 11.03), the Corporation shall deliver or cause to be delivered the number of shares of Class A Common Stock deliverable upon such Share Settlement as promptly as practicable (but not later than three Business Days) after the Redemption Date, at the offices of the then-acting registrar and transfer agent of the shares of Class A Common Stock (or, if there is no then-acting registrar and transfer agent of Class A Common Stock, at the principal executive offices of the Corporation), registered in the name of the relevant Redeeming Member (or in such other name as is requested in writing by the Redeeming Member), in certificated or uncertificated form, as determined by the Corporation; *provided* that, to the extent the shares of Class A Common Stock are settled through the facilities of The Depository Trust Company, upon the written instruction of the Redeeming Member set forth in the Redemption Notice, the Corporation shall use its commercially reasonable efforts to deliver the shares of Class A Common Stock deliverable to such Redeeming Member through the facilities of The Depository Trust Company, to the account of the participant of The Depository Trust Company designated by such Redeeming Member by no later than the close of business on the Business Day immediately following the Redemption Date.

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(c) In the event the Corporation elects the Cash Settlement in connection with a Redemption, the Redeeming Member may retract its Redemption Notice by giving written notice (the ***“Retraction Notice”***) to the Company (with a copy to the Corporation) within three Business Days of delivery of the Election Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member’s, the Company’s and the Corporation’s rights and obligations under this Section 11.01 arising from the Redemption Notice.

(d) In the event the Corporation elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists:

(i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration

statement has yet become effective;

- (ii) the Corporation shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption;
- (iii) the Corporation shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption;
- (iv) the Redeeming Member is in possession of any material non-public information concerning the Corporation, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and the Corporation does not permit disclosure of such information);
- (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC;

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- (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded;
- (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Redemption;
- (viii) the Corporation shall have failed to comply in all material respects with its obligations under the Investor Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such Redemption pursuant to an effective registration statement; or
- (ix) the Redemption Date would occur three Business Days or less prior to, or during, a Black-Out Period.

If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 11.01(d), the Redemption Date shall occur on the fifth Business Day following the date on which the condition(s) giving rise to such delay cease to exist (or such earlier day as the Corporation, the Company and such Redeeming Member may agree in writing).

(e) The number of shares of Class A Common Stock (or Redeemed Units Equivalent, if applicable) (together with any Corresponding Rights) applicable to any Share Settlement or Cash Settlement shall not be adjusted on account of any Distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; *provided however* that, if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any Distribution with respect to the Redeemed Units but prior to payment of such Distribution, the Redeeming Member shall be entitled to receive such Distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member Transferred and surrendered the Redeemed Units to the Company prior to such date; *provided further* that, a Redeeming Member shall be entitled to receive any and all Tax Distributions that such Redeeming Member otherwise would have received in respect of income allocated to such Member for the portion of any Fiscal Year irrespective of whether such Tax Distribution(s) are declared or made after the Redemption Date.

(f) In the case of a Share Settlement, in the event a reclassification or other similar transaction occurs following delivery of a Redemption Notice, but prior to the Redemption Date, as a result of which shares of Class A Common Stock are converted into another security, then a Redeeming Member shall be entitled to receive the amount of such other security (and, if applicable, any Corresponding Rights) that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

(g) Restricted Units are not permitted to be treated as Redeemed Units under this Agreement, and in no event shall the Company or the Corporation effect a Redemption or Direct Exchange, respectively, of a Restricted Unit unless and until a Vesting Event and Conversion Date has occurred with respect to such Restricted Unit and it has been converted to a Common Unit in accordance with the terms hereof.

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(h) Notwithstanding anything to the contrary contained herein, neither the Company nor the Corporation shall be obligated to effectuate a Redemption if such Redemption could (as determined in the sole discretion of the Manager) cause the Company to be treated as a “publicly traded partnership” or to be taxed as a corporation pursuant to Section 7704 of the Code or successor provisions of the Code.

Section 11.02 Election and Contribution of the Corporation. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 11.01(c), or has revoked or delayed a Redemption as provided in Section 11.01(d), subject to Section 11.03 on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date), (a) the Corporation shall make a Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement, as determined by the Corporation in accordance with Section 11.01(b)) and (b) the Company shall issue to the Corporation a number of Common Units equal to the number of Redeemed Units surrendered by the Redeeming Member. Notwithstanding any other provisions of this Agreement to the contrary, but subject to Section 11.03, in the event that the Corporation elects a Cash Settlement, the Corporation shall only be obligated to contribute to the Company an amount in respect of such Cash Settlement equal to the Redeemed Units Equivalent with respect to such Cash Settlement, which in no event shall exceed the amount actually paid by the Company to the Redeeming Member as the Cash Settlement. The timely delivery of a Retraction Notice shall terminate all of the Company’s and the Corporation’s rights and obligations under this Section 11.02 arising from the Redemption Notice.

Section 11.03 Direct Exchange Right of the Corporation.

(a) Notwithstanding anything to the contrary in this Article XI (save for the limitations set forth in Section 11.01(b) regarding the Corporation’s option to select the Share Settlement or the Cash Settlement, and without limitation to the rights of the Members under Section 11.01, including the right to revoke a Redemption Notice), the Corporation may, in its sole and absolute discretion (as determined solely by a majority of its directors who are disinterested) (subject to the timing limitations set forth on such discretion in Section 11.01(b)), elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement or the Cash Settlement, as the case may be, through a direct exchange of such Redeemed Units and the Share Settlement or the Cash Settlement, as applicable, between the Redeeming Member and the Corporation (a “**Direct Exchange**”) (rather than contributing the Share Settlement or the Cash Settlement, as the case may be, to the Company in accordance with Section 11.02 for purposes of the Company redeeming the Redeemed Units from the Redeeming Member in consideration of the Share Settlement or the Cash Settlement, as applicable). Upon such Direct Exchange pursuant to this Section 11.03, the Corporation shall acquire the Redeemed Units and shall be treated for all purposes of this

(b) The Corporation may, at any time prior to a Redemption Date (including after delivery of an Election Notice pursuant to Section 11.01(b)), deliver written notice (an “Exchange Election Notice”) to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; *provided* that, such election is subject to the limitations set forth in Section 11.01(b) and does not unreasonably prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by the Corporation at any time; *provided* that, any such revocation does not unreasonably prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all of the Redeemed Units that would have otherwise been subject to a Redemption.

(c) Except as otherwise provided by this Section 11.03, a Direct Exchange shall be consummated pursuant to the same timeframe as the relevant Redemption would have been consummated if the Corporation had not delivered an Exchange Election Notice and as follows:

(i) the Redeeming Member shall transfer and surrender, free and clear of all liens and encumbrances (x) the Redeemed Units and (y) a number of shares of Class B Common Stock (together with any Corresponding Rights) equal to the number of Redeemed Units, to the extent applicable, in each case, to the Corporation;

(ii) the Corporation shall (x) issue or pay to the Redeeming Member the Share Settlement or the Cash Settlement, as applicable, and (y) cancel and retire for no consideration the shares of Class B Common Stock (together with any Corresponding Rights) that were Transferred to the Corporation pursuant to Section 11.03(c)(i)(y) above; and

(iii) the Company shall (x) register the Corporation as the owner of the Redeemed Units and (y) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to Section 11.03(c)(i)(x) and the Redeemed Units, and issue to the Corporation a certificate for the number of Redeemed Units.

Section 11.04 Reservation of shares of Class A Common Stock; Listing; Certificate of the Corporation

(a) At all times the Corporation shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Share Settlement in connection with a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Share Settlement pursuant to a Redemption or Direct Exchange; *provided* that, nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such Share Settlement pursuant to a Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of the Corporation) or by way of Cash Settlement. The Corporation shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Share Settlement pursuant to a Redemption or Direct Exchange to the extent a registration statement is effective and available with respect to such shares; *provided* that, all such unregistered shares of Class A Common Stock (if any) shall be entitled to the registration rights set forth in the Investor Rights Agreement if the holders thereof are party to the Investor Rights Agreement and have such rights thereunder. The Corporation shall use its commercially reasonable efforts to list the Class A Common Stock required to be delivered upon any such Share Settlement pursuant to a Redemption or Direct Exchange prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock are listed at the time of such Share Settlement pursuant to a Redemption or Direct Exchange (it being understood that any such shares may be subject to transfer restrictions under applicable securities Laws). The Corporation covenants that all shares of Class A Common Stock issued in connection with a Share Settlement pursuant to a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article XI shall be interpreted and applied in a manner consistent with any corresponding provisions of the Corporation’s certificate of incorporation (if any).

(b) Prior to any Redemption or Direct Exchange effected pursuant to this Agreement, the Corporation shall take all such steps as may be required to cause to qualify for exemption under Rule 16b-3(d) or (e), as applicable, under the Exchange Act, and to be exempt for purposes of Section 16(b) under the Exchange Act, any acquisitions from, or dispositions to, the Corporation of equity securities of the Corporation (including derivative securities with respect thereto) and any securities that may be deemed to be equity securities or derivative securities of the Corporation for such purposes that result from the transactions contemplated by this Agreement, by each officer or director of the Corporation, including any director by deputation. The authorizing resolutions shall be approved by either the Corporate Board or a committee thereof composed solely of two or more Non-Employee Directors (as defined in Rule 16b-3) of the Corporation with the authorizing resolutions specifying the name of each such director whose acquisition or disposition of securities is to be exempted and the number of securities that may be acquired and disposed of by each such Person pursuant to this Agreement.

Section 11.05 Effect of Exercise of Redemption or Direct Exchange. This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange by a Member and all rights set forth herein shall continue in effect with respect to the remaining Members and, to the extent the Redeeming Member has a remaining Unit following such Redemption or Direct Exchange, the Redeeming Member. No Redemption or Direct Exchange shall relieve a Redeeming Member, the Company or the Corporation of any prior breach of this Agreement by such Redeeming Member, the Company or the Corporation.

Section 11.06 Tax Treatment. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree that a Redemption or a Direct Exchange, as the case may be, shall be treated as a direct exchange between the Corporation and the Redeeming Member for U.S. federal and applicable state and local income tax purposes. The Redeeming Member shall reasonably cooperate with the Company and the Corporation in connection with any Redemption or Direct Exchange to ensure that the requirements of Sections 1445 and 1446(f) of the Code or successor provisions of the Code are satisfied (as determined by the Manager) prior to the Redemption Date.

ARTICLE XII
ADMISSION OF MEMBERS

Section 12.01 Substituted Members. Subject to the provisions of Article X hereof, in connection with the Permitted Transfer of a Unit hereunder, the Permitted Transferee shall become a Substituted Member on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such admission shall be shown on the books and records of the Company, including the Schedule of Members.

Section 12.02 Additional Members. Subject to the provisions of Article X hereof, any Person that is not a Member as of the Effective Date may be admitted to the

Company as an additional Member (any such Person, an “**Additional Member**”) only upon furnishing to the Manager (a) duly executed Joinder and counterparts to any applicable Other Agreements and (b) such other documents or instruments as may be reasonably necessary or appropriate to effect such Person’s admission as a Member (including entering into such documents as may reasonably be requested by the Manager). Such admission shall become effective on the date on which the Manager determines in its sole discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Company, including the Schedule of Members.

ARTICLE XIII WITHDRAWAL AND RESIGNATION; TERMINATION OF RIGHTS

Section 13.01 Withdrawal and Resignation of Members. Except in the event of Transfers pursuant to Section 10.06 and the Manager’s right to resign pursuant to Section 6.03, no Member shall have the power or right to withdraw or otherwise resign as a Member from the Company prior to the dissolution and winding up of the Company pursuant to Article XIV. Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Company without the prior written consent of the Manager upon or following the dissolution and winding up of the Company pursuant to Article XIV, but prior to such Member receiving the full amount of Distributions from the Company to which such Member is entitled pursuant to Article XIV, shall be liable to the Company for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member. Upon a Transfer of all of a Member’s Units in a Transfer permitted by this Agreement, subject to the provisions of Section 10.06, such Member shall cease to be a Member.

ARTICLE XIV DISSOLUTION AND LIQUIDATION

Section 14.01 Dissolution. The Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal, removal, dissolution, bankruptcy or resignation of a Member. The Company shall dissolve, and its affairs shall be wound up, upon:

- (a) the decision of the Manager together with the written approval of the Members holding a majority of the Common Units to dissolve the Company (excluding for purposes of such calculation the Corporation and all Common Units held directly or indirectly by it);
- (b) a dissolution of the Company under Section 18-801(4) of the Delaware Act, unless the Company is continued without dissolution pursuant thereto;
- (c) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act; or
- (d) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act.

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Except as otherwise set forth in this Article XIV, the Company is intended to have perpetual existence. An Event of Withdrawal shall not in and of itself cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement.

Section 14.02 Winding up. Subject to Section 14.05, on dissolution of the Company, the Manager shall act as liquidating trustee or may appoint one or more Persons as liquidating trustee (each such Person, a “**Liquidator**”). The Liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as an expense of the Company. Until final distribution, the Liquidators shall, to the fullest extent permitted by applicable Law, continue to operate the properties of the Company with all of the power and authority of the Manager. The steps to be accomplished by the Liquidators are as follows:

- (a) as promptly as possible after dissolution and again after final liquidation, the Liquidators shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company’s assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;
- (b) the Liquidators shall pay, satisfy or discharge from the Company’s funds, or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent, conditional and unmatured liabilities in such amount and for such term as the liquidators may reasonably determine) the following: first, all of the debts, liabilities and obligations of the Company owed to creditors other than the Members in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof), including all expenses incurred in connection with the liquidations; and second, all of the debts, liabilities and obligations of the Company owed to the Members (other than any payments or distributions owed to such Members in their capacity as Members pursuant to this Agreement); and
- (c) following any payments pursuant to the foregoing Section 14.02(b), all remaining assets of the Company shall be distributed to the Members in accordance with Section 4.01(a) by the end of the Taxable Year during which the liquidation of the Company occurs (or, if later, by 90 days after the date of the liquidation).

The distribution of cash or property to the Members in accordance with the provisions of this Section 14.02 and Section 14.03 below shall constitute a complete return to the Members of their Capital Contributions, a complete distribution to the Members of their interest in the Company and all of the Company’s property and shall constitute a compromise to which all Members have consented within the meaning of the Delaware Act; *provided* that, unless and until a Vesting Event has occurred with respect to the Restricted Units (including a Vesting Event as a result of a Change of Control Transaction or liquidation of the Company), and in which case, solely with respect to that portion of the Restricted Units to which such Vesting Event relates, the Restricted Units shall not have any economic rights under this Agreement.

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Section 14.03 Deferment; Distribution in Kind. Notwithstanding the provisions of Section 14.02, but subject to the order of priorities set forth therein, if upon dissolution of the Company the Liquidators determine that an immediate sale of part or all of the Company’s assets would be impractical or would cause undue loss (or would otherwise not be beneficial) to the Members, the Liquidators may, in their sole discretion and the fullest extent permitted by applicable Law, defer for a reasonable time the liquidation of any assets except those necessary to satisfy the Company’s liabilities (other than loans to the Company by any Member(s)) and reserves. Subject to the order of priorities set forth in Section 14.02, the Liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining assets in-kind of the Company in accordance with the provisions of Section 14.02(c), (b) as tenants in common and in accordance with the provisions of Section 14.02(c), undivided interests in all or any portion of such assets of the Company or (c) a combination of the foregoing. Any such Distributions in-kind shall be subject to (y) such conditions relating to the disposition and management of such assets as the Liquidators deem reasonable and equitable and (z) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any assets of the Company distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Article V. The Liquidators shall determine the Fair Market Value of any property distributed.

Section 14.04 Cancellation of Certificate. On completion of the winding up of the Company as provided herein, the Manager (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation of the Certificate with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that should be canceled and take such other actions as may be necessary to terminate the existence of the Company. The Company shall continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 14.04.

Section 14.05 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Sections 14.02 and 14.03 in order to minimize any losses otherwise attendant upon such winding up.

Section 14.06 Return of Capital. The Liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from assets of the Company).

ARTICLE XV GENERAL PROVISIONS

Section 15.01 Power of Attorney.

(a) Each Member hereby constitutes and appoints the Manager (or the Liquidator, if applicable) with full power of substitution, as his or her true and lawful agent and attorney-in-fact, with full power and authority in his, her or its name, place and stead, to:

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(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) this Agreement, all certificates and other instruments and all amendments thereof which the Manager deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments which the Manager deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (C) all conveyances and other instruments or documents which the Manager deems appropriate or necessary to reflect the dissolution, winding up and termination of the Company pursuant to the terms of this Agreement, including a certificate of cancellation; and (D) all instruments relating to the admission, substitution or resignation of any Member pursuant to Article XII or Article XIII; and

(ii) sign, execute, swear to and acknowledge all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the reasonable judgment of the Manager, to evidence, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Members hereunder or is consistent with the terms of this Agreement, in the reasonable judgment of the Manager, to effectuate the terms of this Agreement.

(b) The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member and the transfer of all or any portion of his, her or its Units and shall extend to such Member's heirs, successors, assigns and personal representatives.

Section 15.02 Confidentiality.

(a) Each of the Members (other than the Corporation) agrees that, without limiting the applicability of any other agreement to which any Member may be subject, no Member shall directly or indirectly disclose or use (other than solely for the purpose of such Member monitoring and analyzing such Member's investment made herein) at any time, including use for commercial or proprietary advantage or profit, either during his, her or its association or employment with the Company or thereafter, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft. "**Confidential Information**" as used herein includes all nonpublic information concerning the Company or its Subsidiaries including, but not limited to, ideas, business strategies, innovations and materials, all aspects of the Company's business plan, proposed operation and products, operating practices and methods, corporate structure, financial and organizational information, analyses, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, designs, employees and their identities, equity ownership, the methods and means by which the Company plans to conduct its business, all trade secrets, trademarks, tradenames and all intellectual property associated with the Company's business. With respect to each Member, Confidential Information does not include information or material that: (i) is rightfully in the possession of such Member at the time of disclosure by the Company; (ii) before or after it has been disclosed to such Member by the Company, becomes part of public knowledge, not as a result of any action or inaction of such Member in violation of this Agreement; or (iii) is approved for release by written authorization of the Corporate Board or the Manager, or any other officer designated by the Manager.

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(b) Notwithstanding the foregoing, a Member may disclose Confidential Information to the extent (i) the disclosure is necessary for the Member or the Company's employees, agents, representatives and advisors to fulfill their duties to the Company pursuant to this Agreement or other written agreements or (ii) the disclosure is required by Law, court order, subpoena or legal process or to comply with the requirements of a state or federal regulatory authority.

(c) Upon expiration or other termination of a Member's interest in the Company, that Member may not take any of the Confidential Information, and that Member shall promptly return to the Company all Confidential Information in that Member's possession or control.

Section 15.03 Amendments. Except as otherwise contemplated by this Agreement, this Agreement may be amended or modified upon the written consent of the Manager, together with the written consent of the holders of a majority of the Common Units then outstanding (excluding all Common Units held directly or indirectly by the Corporation). Notwithstanding the foregoing, no amendment or modification:

(a) to this Section 15.03 may be made without the prior written consent of the Manager and the holders of a majority of the Units;

(b) to any of the terms and conditions of this Agreement which terms and conditions expressly require the approval or action of certain Persons may be made without obtaining the consent of the requisite number or specified percentage of such Persons who are entitled to approve or take action on such matter; and

(c) to any of the terms and conditions of this Agreement which would (i) reduce the amounts distributable to a Member pursuant to Articles IV and XIV in a manner that is not *pro rata* with respect to all Members, (ii) increase the liabilities of such Member hereunder, (iii) otherwise adversely affect a holder of Units (with respect to such Units) in a manner disproportionate to any other holder of Units of the same class or series (with respect to such Units) (other than amendments, modifications and waivers necessary to implement the provisions of Article XII) or (iv) adversely affect the rights of any Member under Sections 3.04, 3.05, 7.01 or 7.04 or Articles X or XI, shall be effective against such affected Member or holder of Units, as the case may be, without the prior written consent of the holders a majority of such affected Units, as the

case may be.

Notwithstanding any of the foregoing, the Manager may make any amendment (i) of an administrative nature that is necessary in order to implement the substantive provisions hereof, without the consent of any other Member; *provided* that, any such amendment does not adversely change the rights of the Members hereunder in any respect, (ii) to reflect any changes to the Class A Common Stock or Class B Common Stock or the issuance of any other capital stock of the Corporation, (iii) to issue Units in accordance with Section 3.02(b), (iv) to the extent reasonably necessary or advisable to avoid the Company being treated as a “publicly traded partnership” or being taxed as a corporation pursuant to Section 7704 of the Code or any successor provision thereto under the Code; *provided* that, in the case of each of the foregoing clauses and notwithstanding anything herein to the contrary, so long as the Tax Receivable Agreement remains outstanding and in effect, no amendment or modification may be made to this Agreement that is adverse to the TRA Holders without the prior written consent of the Agent (as each such term is defined in the Tax Receivable Agreement) or (v) in accordance with Section 5.08.

Section 15.04 Title to Company Assets. Company assets shall be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof. The Company shall hold title to all of its property in the name of the Company and not in the name of any Member. All assets of the Company shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such assets is held. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

Section 15.05 Addresses and Notices. All notices and other communications to be given to any party hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or when received in the form of an electronic transmission (receipt confirmation requested), and shall be directed to the address set forth, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the Company or the sending party.

To the Company:

Authentic Brands LLC
1144 S. 500 W
Salt Lake City, UT 84101
Attn: Tom Davin, Co-CEO
Email: tom.davin@blackriflecoffee.com

with a copy (which copy shall not constitute notice) to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attn: Steven V. Napolitano, P.C.
John A. Kaercher, P.C.
Email: stephen.napolitano@kirkland.com
john.kaercher@kirkland.com

To the Corporation:

Authentic Brands LLC
1144 S. 500 W
Salt Lake City, UT 84101
Attn: Tom Davin, Co-CEO
Email: tom.davin@blackriflecoffee.com

with a copy (which copy shall not constitute notice) to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attn: Joshua N. Korff, P.C.
Peter S. Seligson
Email: joshua.korff@kirkland.com
peter.seligson@kirkland.com

To the Members, as set forth on Schedule 2.

Section 15.06 Binding Effect; Intended Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.07 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Profits, Losses, Distributions, capital or property of the Company other than as a secured creditor.

Section 15.08 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 15.09 Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

Section 15.10 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any suit, dispute, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be heard in the state or federal courts of the State of Delaware, and the parties hereby consent to the exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such suit, action or proceeding and waives any objection to venue laid therein. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE SERVED ON ANY PARTY ANYWHERE IN THE WORLD, WHETHER WITHIN OR WITHOUT THE JURISDICTION OF ANY SUCH COURT (INCLUDING BY PREPAID CERTIFIED MAIL WITH A VALIDATED PROOF OF MAILING RECEIPT) AND SHALL HAVE THE SAME LEGAL FORCE AND EFFECT AS IF SERVED UPON SUCH PARTY PERSONALLY WITHIN THE STATE OF DELAWARE. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT SERVICE OF PROCESS UPON SUCH PARTY AT THE ADDRESS REFERRED TO IN SECTION 15.05 (INCLUDING BY PREPAID CERTIFIED MAIL WITH A VALIDATED PROOF OF MAILING RECEIPT), TOGETHER WITH WRITTEN NOTICE OF SUCH SERVICE TO SUCH PARTY, SHALL BE DEEMED EFFECTIVE SERVICE OF PROCESS UPON SUCH PARTY.

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Section 15.11 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 15.12 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.13 Execution and Delivery by Electronic Signature and Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby or entered into by the Company in accordance herewith, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic signature or electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic signature or electronic transmission to execute or deliver a document or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

Section 15.14 Right of Offset. Whenever the Company or the Corporation is to pay any sum (other than pursuant to Article IV) to any Member, any amounts that such Member owes to the Company or the Corporation which are not the subject of a good faith dispute may be deducted from that sum before payment. For the avoidance of doubt, the distribution of Units to the Corporation shall not be subject to this Section 15.14.

Section 15.15 Entire Agreement. This Agreement, those documents expressly referred to herein (including the Investor Rights Agreement and the Tax Receivable Agreement), any indemnity agreements entered into in connection with the Initial LLC Agreement with any member of the board of directors at that time and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. For the avoidance of doubt, the Initial LLC Agreement is superseded by this Agreement as of the Effective Date and shall be of no further force and effect thereafter.

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Section 15.16 Remedies. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any Law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by Law.

Section 15.17 Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word "including" in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the words "or," "either" and "any" shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Third Amended and Restated Limited Liability Company Agreement as of the date first written above.

COMPANY:

AUTHENTIC BRANDS LLC

By: /s/ Tom Davin

Name:

Tom Davin

Title: Co-Chief Executive Officer

MEMBERS:

ACP LEGACY PE, LLC

By: /s/ Tyler Coretz
Name: Tyler Coretz
Title: President of Managing Member

ACP PE, LLC

By: /s/ Tyler Coretz
Name: Tyler Coretz
Title: President of Managing Member

AGP BRC LLC

By: /s/ Richard Wallington
Name: Richard Wallington
Title: CFO and CCO of Anderson Growth Partners, LLC

/s/ Alan R. Christensen
Alan R. Christensen

/s/ Andrew McCormick
Andrew McCormick

BASS PRO, LLC

By: /s/ Kevin Maliszewski
Name: Kevin Maliszewski
Title: CFO

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BHB ACQUISITIONS III, LLC

By: /s/ Almog Geva
Name: Almog Geva
Title: Manager

/s/ Charles E. Sheedy
Charles E. Sheedy

/s/ Charles Waldron
Charles Waldron

/s/ Christopher B. Sarofim
Christopher B. Sarofim

CROSSCOUNTRY MTG CAPITAL II, LLC

By: /s/ Madhur Agarwal
Name: Madhur Agarwal
Title: CFO

/s/ Dan Shimoda
Name: Dan Shimoda

/s/ Daniel Kaepernik
Name: Daniel Kaepernik

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DNS-ICED COFFEE, LLC

By: /s/ Derek Arend

Name: Derek Arend
Title: President

EKNRH HOLDINGS LLC

By: /s/ Evan Hafer
Name: Evan Hafer
Title: Authorized Signatory

ELI BRONFMAN VENTURES LLC

By: /s/ Eli Bronfman
Name: Eli Bronfman
Title: Manager

FAYEZ SAROFIM & CO.

By: /s/ Raye G. White
Name: Raye G. White
Title: Executive Vice President

/s/ Fayeze Sarofim
Fayeze Sarofim

/s/ George Munoz
George Munoz

/s/ Greg Iverson
Greg Iverson

H/A PRIVATE EQUITY MANAGEMENT

By: /s/ David C. Humphrey
Name: David C. Humphrey
Title: Manager

/s/ Jarred Taylor
Jarred Taylor

/s/ Katy Dickson
Katy Dickson

/s/ Kim Ellis
Kim Ellis

/s/ Logan Stark
Logan Stark

LOUISE CORTEZI FAMILY RESOURCE TRUST

By: /s/ Nicholas Cortezi
Name: Nicholas Cortezi
Title: Trustee

M. COHN INVESTMENTS LTD.

By: /s/ Morton A. Cohn
Name: Morton A. Cohn
Title: Managing Partner

M2G2 INVESTMENTS LLC

By: /s/ J.R. Menard
Name: J.R. Menard
Title: E.V.P. & Treasurer

/s/ Manuel Pineiro, Jr.
Manuel Pineiro, Jr.

/s/ Mathew Best

Mathew Best

/s/ Matthew Altenau
Matthew Altenau

/s/ Matthew Glass
Matthew Glass

/s/ Molly Schweickert
Molly Schweickert

/s/ Nicholas J. Zdeblick
Nicholas J. Zdeblick

/s/ Raye G. White
Raye G. White

/s/ Reynaldo Reza
Reynaldo Reza

/s/ Richard Ryan
Richard Ryan

/s/ Robert Baker
Robert Baker

/s/ Robert Modarelli
Robert Modarelli

SAGE ENTERPRISES, LLC

By: /s/ Jayson Orvis
Name: Jayson Orvis
Title: Manager

/s/ Sandy Garner
Sandy Garner

/s/ Scott Bollinger
Scott Bollinger

/s/ Scott Harvey
Scott Harvey

/s/ Steven Taslitz
Steven Taslitz

TEXAN LAND AND CATTLE II LTD.

By: /s/ Henry J.N. Taub II
Name: Henry J.N. Taub II
Title: President of General Partner

TEXBY ASSOCIATES INC.

By: /s/ Matthew Glass
Name: Matthew Glass
Title: CIO

THE TREETOPS FOUNDATION

By: /s/ Matthew Bromfman
Name: Matthew Bromfman
Title: Trustee (Sole)

/s/ Tim Kennedy
Tim Kennedy

/s/ Toby Johnson
Toby Johnson

/s/ Tom Davin

Tom Davin

TPO-JAVA LLC

By: /s/ Derek Arend

Name: Derek Arend

Title: President

/s/ William Gentry Lee, Jr.

William Gentry Lee, Jr.

TAX RECEIVABLE AGREEMENT

by and among

BRC INC.,

AUTHENTIC BRANDS LLC,

and

THE AGENT

DATED AS OF

FEBRUARY 9, 2022

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TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (this “Agreement”), dated as of February 9, 2022, is hereby entered into by and among BRC Inc., a Delaware public benefit corporation (the “Corporation”), Authentic Brands LLC, a Delaware limited liability company (the “Company”), and the Agent.

RECITALS

WHEREAS, the Company, which is classified as a partnership for U.S. federal income tax purposes, has issued (and may after the Closing Date issue) limited liability company interests (“Units”) to certain Persons, providing such Persons an interest in the profits and/or losses of and distributions from the Company;

WHEREAS, the Corporation is the managing member of the Company;

WHEREAS, as a result of the Blocker Merger and the Business Combination, the Corporation is expected to obtain or be entitled to certain Tax benefits as further described herein;

WHEREAS, from and after the Closing, under certain circumstances, (i) each TRA Holder will have the right from time to time to require the Company to redeem all or a portion of such member’s Units (together with any corresponding shares of Class B Common Stock) for shares of Class A Common Stock or, at the election of the Corporation, cash, which may be effected by the Corporation effecting a direct exchange of shares of Class A Common Stock or cash for such Units (together with any such corresponding shares of Class B Common Stock), and (ii) the Company may make one or more distributions (including deemed distributions) to its members in respect of their Units that result in a Basis Adjustment (in each case, an “Exchange”), and as a result of any such Exchange, the Corporation is expected to obtain or be entitled to certain Tax benefits as further described herein;

WHEREAS, the Company and each of its direct and indirect Subsidiaries that is treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Internal Revenue Code of 1986, as amended (the “Code”), and any corresponding provisions of state and local Tax law for the Taxable Year that includes the Closing Date and each Taxable Year in which an Exchange (as defined below) occurs, which election is expected to result, with respect to the Corporation, in an adjustment to the Tax basis of the assets owned by the Company and such Subsidiaries in connection with the Business Combination and each Exchange;

WHEREAS, this Agreement is intended to set forth the agreements among the parties hereto regarding the sharing of the Tax benefits realized by the Corporation as a result of (i) the Business Combination, (ii) the Exchanges, and (iii) certain of the payments made pursuant to this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“Accrued Amount” has the meaning set forth in Section 3.1(b).

“Actual Tax Liability” means, with respect to any Taxable Year, the sum of (a) the actual liability for U.S. federal income Taxes for such Taxable Year of (i) the Corporation and (ii) without duplication, the Company, but only with respect to U.S. federal income Taxes imposed on the taxable income of the Company that is allocable to the Corporation and (b) the product of (i) the actual amount of taxable income for U.S. federal income Tax purposes for such Taxable Year of (A) the Corporation and (B) without duplication, the Company, but only with respect to the taxable income of the Company that is allocable to the Corporation for U.S. federal income Tax purposes multiplied by (ii) the Assumed State and Local Tax Rate for such Taxable Year; provided that, to avoid duplication with the calculation of the Assumed State and Local Tax Rate, the foregoing shall be determined assuming deductions of (and other impacts of) state and local Taxes are excluded.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person. For purposes of this Agreement, no TRA Holder shall be considered to be an Affiliate of the Corporation or the Company.

“Agent” means Sterling New Investment Holdings LLC, a Delaware limited liability company, or such other Person designated as the Agent pursuant to Section 7.6 or Section 7.17.

“Agreed Rate” means a per annum rate of SOFR plus 100 basis points.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Amended Schedule” has the meaning set forth in Section 2.4(b).

“Assumed State and Local Tax Rate” means, with respect to any Taxable Year, the tax rate equal to the sum of the product of (x) the Company’s income and franchise Tax apportionment factor(s) for each state and local jurisdiction in which the Company files income or franchise Tax Returns for the relevant Taxable Year and (y) the highest corporate income and franchise Tax rate(s) for each such state and local jurisdiction in which the Company files income or franchise Tax Returns for such Taxable Year; provided, that the Assumed State and Local Tax Rate calculated pursuant to the foregoing shall be reduced by the assumed federal income Tax benefit received by the Corporation with respect to state and local jurisdiction income and franchise Taxes (with such benefit calculated as the product of (a) the Corporation’s marginal U.S. federal income tax rate for the relevant Taxable Year and (b) the Assumed State and Local Tax Rate (without regard to this proviso)); provided, further, that if there is a change in

applicable Tax law that impacts the federal income Tax benefit received by the Corporation with respect to state and local Taxes, then the Corporation may modify the calculation of the assumed federal income Tax benefit using reasonable estimation methodologies for calculating the portion of any Realized Tax Benefit or Realized Tax Detriment attributable to U.S. state or local Taxes.

“Attributable” has the meaning set forth on Exhibit A.

“Authorized Recipients” has the meaning set forth in Section 7.14.

“Bankruptcy Code” means Title 11 of the United States Code or any other insolvency statute.

“Basis Adjustment” means any adjustment to the Tax basis of a Reference Asset as a result of (a) the Business Combination, (b) an Exchange or (c) the payments made pursuant to this Agreement with respect to the Business Combination or such Exchange (other than to the extent treated as Imputed Interest) (as calculated under Article II), including:

- (i) under Sections 734(b), 743(b), 754 and 755 of the Code (in the case of the Business Combination and in situations where, following an Exchange, the Company remains classified as a partnership for U.S. federal income tax purposes); and
- (ii) under Sections 732(b), 734(b) and 1012 of the Code and, without duplication, as a result of any basis adjustment to which the Company succeeds, including pursuant to proposed Treasury Regulations Section 1.743-1(g) and any subsequent similar guidance and comparable sections of U.S. state and local income and franchise tax law (in situations where, as a result of one or more Exchanges, the Company or any of the Company’s Subsidiaries becomes an entity that is disregarded as separate from its owner for U.S. federal income tax purposes), and in the case of each of clause (i) and clause (ii), comparable sections of state and local Tax laws.

The amount of any Basis Adjustment resulting from the Business Combination shall include any adjustment under Section 734(b) or Section 743(b) of the Code attributable to the applicable Units prior to the Business Combination, and the amount of any Basis Adjustment resulting from an Exchange of Units shall include any adjustment under Section 734(b) or Section 743(b) of the Code attributable to such Units prior to such Exchange (in each case, including comparable sections of state and local Tax laws). For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest. The amount of any Basis Adjustment shall be determined using the Market Value at the time of the Exchange except, for the avoidance of doubt, to the extent otherwise required by a Determination.

“Beneficial Owner” means, with respect to a security, a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares:

- (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or
- (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

The terms “Beneficially Own” and “Beneficial Ownership” shall have correlative meanings.

“Blocker Basis” means the existing Tax basis in the Reference Assets (including under Sections 734(b), 743(b) and 754 of the Code, including for the avoidance of doubt, Section 1.743-1(h) of the Treasury Regulations and, in each case, the comparable sections of U.S. state and local tax law) determined as of immediately prior to the Blocker Merger that is attributable to Units owned (directly or indirectly) by the Blocker as of immediately prior to the Blocker Merger and directly or indirectly acquired by the Corporation.

“Blocker Basis Schedule” has the meaning set forth in Section 2.2.

“Blocker Corp” means Grand Opal Investment Holdings, Inc., a Delaware corporation.

“Blocker Merger” has the meaning ascribed thereto in the Business Combination Agreement.

“Board” means the board of directors of the Corporation.

“Business Combination” means the transactions contemplated by Section 2.1(f) of the Business Combination Agreement, including, for the avoidance of doubt, the transactions contemplated by Section 2.7 of the Business Combination Agreement.

“Business Combination Agreement” means that certain Business Combination Agreement, dated as of November 2, 2021, by and among SilverBox Engaged Merger Corp I, a Delaware corporation, the Corporation, SBEA Merger Sub LLC, a Delaware limited liability company, Merger Sub 2, Blocker Corp and the Company, as amended by that certain First Amendment to Business Combination Agreement, dated as of January 4, 2022.

“Business Day” has the meaning ascribed thereto in the Business Combination Agreement.

“Change of Control” means the occurrence of any of the following events:

- (i) any “person” or “group” (within the meaning of Sections 13(d) of the Exchange Act (excluding any “person” or “group” who, on the Closing Date, is the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities)) becomes the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities;
- (ii) (A) the shareholders of the Corporation approve a plan of complete liquidation or dissolution of Corporation or (B) there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation’s assets, other than such sale or other disposition by the Corporation of all or substantially all of the Corporation’s assets to an entity at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporation in substantially the same proportions as their ownership of the Corporation immediately prior to such sale or other disposition;

(iii) there is consummated a merger or consolidation of the Corporation with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the board of directors of the Corporation immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) all of the Persons who were the respective Beneficial Owners of the voting securities of the Corporation immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation; or

(iv) the following individuals cease for any reason to constitute a majority of the number of directors of the Corporation then serving: individuals who were directors of the Corporation on the Closing Date or any new director whose appointment or election to the Board or nomination for election by the Corporation's shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors of the Corporation on the Closing Date or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (iv).

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and Class B Common Stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions.

"Change of Control Date" means the date on which a Change of Control occurs.

"Class A Common Stock" has the meaning ascribed to "Pubco Class A Share" in the Business Combination Agreement.

"Class B Common Stock" has the meaning ascribed to "Pubco Class B Share" in the Business Combination Agreement.

"Closing" has the meaning ascribed thereto in the Business Combination Agreement.

"Closing Date" has the meaning ascribed thereto in the Business Combination Agreement.

"Code" has the meaning set forth in the recitals of this Agreement.

"Company" has the meaning set forth in the recitals of this Agreement.

"Confidential Information" has the meaning set forth in Section 7.14.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. The terms "Controlled" and "Controlling" shall have correlative meanings.

"Corporation" has the meaning set forth in the preamble to this Agreement.

"Corporation Letter" means a letter prepared by the Corporation in connection with the performance of its obligations under this Agreement, which states that the relevant Schedules, notices or other information to be provided by the Corporation to the Agent, along with all supporting schedules and work papers, were prepared in a manner that is consistent with the terms of this Agreement and, to the extent not expressly provided in this Agreement, on a reasonable basis in light of the facts and law in existence on the date such Schedules, notices or other information were delivered by the Corporation to the Agent. Such letter shall identify any material assumptions or operating procedures or principles that were used for purposes of the underlying calculations.

"Corporation Return" means the U.S. federal and/or state and/or local Tax Return of the Corporation (including any consolidated group of which the Corporation is a member, as further described in Section 7.13(a)) filed with respect to any Taxable Year.

"Cumulative Net Realized Tax Benefit" for a Taxable Year means the cumulative amount (but not less than zero) of Realized Tax Benefits for all Taxable Years of the Corporation, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination; provided, that, for the avoidance of doubt, the computation of the Cumulative Net Realized Tax Benefit shall be adjusted to reflect any applicable Determination with respect to any Realized Tax Benefits and/or Realized Tax Detriments.

"Default Rate" means a per annum rate of SOFR plus 500 basis points.

"Determination" shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of any state or local Tax law or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

"Disinterested Majority" means a majority of the directors of the Board who are disinterested as determined by the Board in accordance with the General Corporation Law of the State of Delaware with respect to the matter being considered by the Board; provided that to the extent a matter being considered by the Board is required to be considered by disinterested directors under the rules of the national securities exchange on which the Class A Common Stock is then listed, the Securities Act or the Exchange Act, such rules with respect to the definition of disinterested director shall apply solely with respect to such matter.

"Disputing Party" has the meaning set forth in Section 7.9.

"Early Termination" has the meaning set forth in Section 4.1.

“Early Termination Date” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“Early Termination Effective Date” means the date on which an Early Termination Schedule becomes binding pursuant to Section 4.4.

“Early Termination Notice” has the meaning set forth in Section 4.4.

“Early Termination Payment” has the meaning set forth in Section 4.5(b).

“Early Termination Rate” means a per annum rate of SOFR plus 100 basis points.

“Early Termination Schedule” has the meaning set forth in Section 4.4.

“Exchange” has the meaning set forth in the recitals in this Agreement, and “Exchanged” has a correlative meaning.

“Exchange Act” has the meaning ascribed thereto in the LLC Agreement.

“Exchange Date” means the effective date of any Exchange.

“Exchange Schedule” has the meaning set forth in Section 2.1.

“Expert” has the meaning set forth in Section 7.9.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the liability for Taxes of the Corporation and, without duplication, the Company, but only with respect to Taxes imposed on the taxable income of the Company that is allocable to the Corporation, for such Taxable Year (in each case, using the same methods, elections, conventions, and similar practices used on the relevant Corporation Return), but without taking into account any Tax Attributes. The Hypothetical Tax Liability shall be determined (A) without taking into account the carryover or carryback of any Tax item (or portions thereof) that is attributable to any Tax Attribute, (B) using the Assumed State and Local Tax Rate, solely for purposes of calculating the state and local Hypothetical Tax Liability of the Corporation, (C) to avoid duplication with the calculation of the Assumed State and Local Tax Rate, assuming deductions of (and other impacts of) state and local Taxes are excluded, and (D) to the extent not addressed in clause (B) or clause (C) of this sentence, using reasonable estimation methodologies for calculating the portion of any of the foregoing items attributable to U.S. state or local Taxes.

“Imputed Interest” means any interest imputed under Section 1272, 1274 or 483 or other provision of the Code and any similar provision of any state and local Tax law with respect to the Corporation’s payment obligations under this Agreement.

“IRS” means the U.S. Internal Revenue Service.

“LLC Agreement” means the Amended and Restated Limited Liability Company Agreement of the Company dated as of the date hereof, as the same may be amended, amended and restated, replaced, supplemented or otherwise modified from time to time.

“Market Value” shall mean, with respect to a Unit, the Common Unit Redemption Price (as defined in the LLC Agreement) on the applicable Exchange Date for such Unit (determined as if such Unit were subject to a Redemption (as defined in the LLC Agreement) effective on the Exchange Date); provided that, to the extent property is exchanged for cash in a transaction, the Market Value shall be determined by reference to the amount of cash transferred in such transaction.

“Material Objection Notice” has the meaning set forth in Section 4.4.

“Merger Sub 2” means BRCC Blocker Merger Sub LLC, a Delaware limited liability company.

“Net Tax Benefit” has the meaning set forth in Section 3.1(b).

“Objection Notice” has the meaning set forth in Section 2.4(a).

“Payment Date” means any date on which a payment is required to be made pursuant to this Agreement.

“Person” has the meaning ascribed thereto in the Business Combination Agreement.

“Realized Tax Benefit” means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority for any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

“Realized Tax Detriment” means, for a Taxable Year, the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority for any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

“Reconciliation Dispute” has the meaning set forth in Section 7.9.

“Reconciliation Procedures” means the procedures described in Section 7.9.

“Reference Asset” means any asset that is held by the Company, or any Person in which the Company owns a direct or indirect interest that is treated as a partnership or disregarded entity for purposes of the applicable Tax (but only to the extent such Person is not held through any entity treated as a corporation for purposes of the applicable Tax), immediately prior to the Business Combination or at the time of an Exchange, as applicable. A Reference Asset also includes any asset the Tax basis of which is determined, in whole or in part, for purposes of the applicable Tax, by reference to the Tax basis of an asset that is described in the immediately preceding sentence, including, for U.S. federal income Tax purposes, any asset that is “substituted basis property” under Section 7701(a)(42) of the Code with respect to a Reference Asset.

“Schedule” means any of the following: (i) an Exchange Schedule, (ii) a Blocker Basis Schedule, (iii) a Tax Benefit Schedule or (iv) the Early Termination Schedule, including, in each case, any amendments thereto pursuant to this Agreement.

“Securities Act” has the meaning ascribed thereto in the LLC Agreement.

“Senior Obligations” has the meaning set forth in Section 5.1.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Subsidiaries” means, with respect to any Person, as of the date of any determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

“Tax Attributes” means (a) Basis Adjustments, (b) Blocker Basis and (c) deductions attributable to any Imputed Interest.

“Tax Benefit Payment” has the meaning set forth in Section 3.1(b).

“Tax Benefit Schedule” has the meaning set forth in Section 2.3(a).

“Tax Proceeding” has the meaning set forth in Section 6.1.

“Tax Return” means any return, declaration, report or similar statement filed or required to be filed with respect to Taxes (including any attached schedules), including any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxable Year” means a taxable year of the Corporation as defined in Section 441(b) of the Code or comparable section of state or local Tax law, as applicable (which, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is made), ending on or after the date hereof.

“Taxes” means any and all U.S. federal, state and local taxes, assessments or similar charges that are based on or measured with respect to net income or profits, and any interest related to such Tax.

“Taxing Authority” means any federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi- governmental body, in each case, exercising any taxing authority or any other authority exercising Tax regulatory authority.

“TRA Holders” means, collectively, the Initial Common Member TRA Holders and the Purchaser TRA Holders (each as defined on Exhibit A).

“Treasury Regulations” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant Taxable Year.

“Units” has the meaning set forth in the recitals of this Agreement.

“Valuation Assumptions” means, as of an Early Termination Date, the assumptions that in each Taxable Year ending on or after such Early Termination Date, (i) the Corporation will have taxable income sufficient to fully utilize the Tax items, including deductions, arising from all Tax Attributes during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions, further assuming that such future Tax Benefit Payments would be paid on the due date, without extensions, for filing the U.S. federal Corporation Return for the applicable Taxable Year) in which such deductions or other Tax items would become available, (ii) any loss or credit carryovers generated by deductions or losses arising from any Tax Attributes that are available in the Taxable Year that includes the Early Termination Date will be utilized by the Corporation in the earliest possible Taxable Year permitted by the Code and the Treasury Regulations, (iii) the U.S. federal income tax rates that will be in effect for each Taxable Year ending on or after such Early Termination Date will be those specified for each such Taxable Year by the Code and the tax rates for U.S. state and local income taxes shall be the Assumed State and Local Tax Rate, in each case as in effect on the Early Termination Date, except to the extent any change to such tax rates for such Taxable Years have already been enacted into law, in which case such enacted changes to tax rates for such Taxable Years shall apply to such Taxable Years (and, in the case of the tax rate for the latest Taxable Year for which there is any such enacted change, to all future Taxable Years), (iv) any non-amortizable, non-depreciable Reference Assets to which any Basis Adjustment or Blocker Basis is attributable will be disposed of for cash at their fair market value in a fully taxable transaction for Tax purposes on the later of (A) the fifteenth anniversary of (x) the Business Combination or Exchange which gave rise to such Basis Adjustment or (y) the Business Combination in the case of the Blocker Basis and (B) the Early Termination Date, provided, that in the event of a Change of Control, such non-amortizable, non-depreciable assets shall be deemed disposed of at the time of sale (if applicable) of the relevant asset in the Change of Control (if earlier than the applicable fifteenth (15th) anniversary), and (v) if, on the Early Termination Date, there are Units (other than Units directly or indirectly owned by the Corporation) that have not been transferred in an Exchange, then all such Units and (if applicable) shares of Class B Common Stock shall be deemed to be transferred in exchange for the Market Value per Unit that would be transferred in an Exchange effective on the Early Termination Date.

Section 1.2 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II
DETERMINATION OF CERTAIN REALIZED TAX BENEFITS

Section 2.1 Exchange Schedule. Within ninety (90) calendar days after the extended due date of the U.S. federal Corporation Return for each Taxable Year in which the Business Combination occurs or any Exchange has been effected by a TRA Holder, the Corporation shall deliver to the Agent a schedule (an “Exchange Schedule”) that shows, in reasonable detail necessary to perform the calculations required by this Agreement, including with respect to each TRA Holder participating in the Business Combination or any Exchange during such Taxable Year, (i) the Basis Adjustments with respect to the Reference Assets as a result of the Business Combination and the Exchanges effected by such TRA Holder in such Taxable Year and (ii) the period (or periods) over which such Basis Adjustments are amortizable and/or depreciable.

Section 2.2 Blocker Basis Schedule. Within ninety (90) calendar days after the extended due date of the U.S. federal Corporation Return for each Taxable Year that ends on or after the Closing Date, the Corporation shall deliver to the Agent a schedule (a “Blocker Basis Schedule”) that shows, in reasonable detail necessary to perform the calculations required by this Agreement, (i) the Tax attributes comprising Blocker Basis that remain available for use by the Corporation with respect to such Taxable Year and future Taxable Years, and (ii) any applicable limitations on the use of such attributes for Tax purposes.

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Section 2.3 Tax Benefit Schedule.

(a) Tax Benefit Schedule. Within ninety (90) calendar days after the extended due date of the U.S. federal Corporation Return for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment that is Attributable to a TRA Holder, the Corporation shall provide to the Agent: (i) a schedule showing, in reasonable detail, (A) the calculation of the Realized Tax Benefit or Realized Tax Detriment and the components thereof for such Taxable Year, (B) the Accrued Amount with respect to any related Net Tax Benefit, (C) the Tax Benefit Payment determined pursuant to Section 3.1(b) due to each such TRA Holder, and (D) the portion of such Tax Benefit Payment and Accrued Amount that the Corporation intends to treat as Imputed Interest (a “Tax Benefit Schedule”), (ii) a reasonably detailed calculation by the Corporation of the Hypothetical Tax Liability (the “without” calculation), (iii) a reasonably detailed calculation by the Corporation of the Actual Tax Liability (the “with” calculation), (iv) a copy of the Corporation Return for such Taxable Year, (v) a Corporation Letter supporting such Tax Benefit Schedule and (vi) any other work papers relating to the items in the foregoing clauses (i) through (v) as are reasonably requested by the Agent. All costs and expenses incurred in connection with the provision and preparation of any Schedules, calculations, other work papers, or the Corporation Letter to the Agent or any TRA Holder in connection with this Article II shall be borne by the Company. In addition, the Corporation shall allow the Agent reasonable access at no cost to the appropriate representatives of the Corporation in connection with a review of any of the foregoing. The Tax Benefit Schedule will become final as provided in Section 2.4(a) and may be amended as provided in Section 2.4(b) (subject to the procedures set forth in Section 2.4(b)).

(b) Applicable Principles. The Realized Tax Benefit or Realized Tax Detriment for each Taxable Year is intended to measure the decrease or increase in the Corporation’s actual liability for Taxes for such Taxable Year that is attributable to the Tax Attributes, determined using a “with and without” methodology. For the avoidance of doubt, (i) such actual liability for Taxes will take into account any Imputed Interest based upon the characterization of Tax Benefit Payments and Accrued Amounts as additional consideration payable by the Corporation, and (ii) in addition to using the Assumed State and Local Tax Rate for purposes of determining the state and local Hypothetical Tax Liability, the Corporation may use reasonable estimation methodologies for calculating the portion of any Realized Tax Benefit or Realized Tax Detriment attributable to U.S. state or local Taxes. For purposes of calculating the Realized Tax Benefit or Realized Tax Detriment for any Taxable Year, carryforwards or carrybacks of any Tax item (such as a net operating loss) attributable to any of the Tax Attributes shall be considered to be subject to the rules of the Code and the Treasury Regulations and the corresponding provisions of state and local Tax laws, as applicable, governing the use, limitation, and expiration of carryforwards or carrybacks of the relevant type. If a carryforward or carryback of any Tax item includes a portion that is attributable to any Tax Attribute (a “TRA Portion”) and another portion that is not so attributable (a “Non-TRA Portion”), such respective portions shall be considered to be used in accordance with the “with and without” methodology so that: (x) the amount of any Non-TRA Portion is deemed utilized first, followed by the amount of any TRA Portion; and (y) in the case of a carryback of a Non-TRA Portion, such carryback shall not affect the original “with and without” calculation made in the applicable prior Taxable Year. For the avoidance of doubt, the TRA Portion of any Tax item when such item is incurred shall be determined using a marginal “with and without” methodology by calculating (A) the amount of such Tax item for all Tax purposes taking into account the Tax Attributes and (B) the amount of such Tax item for all Tax purposes without taking into account the Tax Attributes, with the TRA Portion equal to the excess of the amount specified in clause (A) over the amount specified in clause (B) (but only if such excess is greater than zero). The parties agree that (I) except to the extent otherwise required by law, any payment under this Agreement to the TRA Holders, including the Accrued Amount (but other than amounts accounted for as Imputed Interest), will be treated as a subsequent upward adjustment to the purchase price of Units surrendered in the Business Combination or an Exchange, as applicable, and will have the effect of creating additional Basis Adjustments to Reference Assets for the Corporation in the year of payment, and (II) as a result, such additional Basis Adjustments will be incorporated into the calculation for the year of payment and into future year calculations, as appropriate.

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Section 2.4 Procedure: Amendments.

(a) Whenever the Corporation delivers to the Agent (or any TRA Holder) a Schedule under this Agreement, including any Amended Schedule delivered pursuant to Section 2.4(b), and any Early Termination Schedule or amended Early Termination Schedule, the Corporation shall also (x) deliver to the Agent schedules, valuation reports, if any, and work papers, as determined by the Corporation or reasonably requested by the Agent, providing reasonable detail regarding the preparation of the Schedule, and (y) allow the Agent reasonable access at no cost to the appropriate representatives of the Corporation, as determined by the Corporation or requested by the Agent, in connection with the review of such Schedule. Subject to Section 2.4(b), an applicable Schedule or amendment thereto shall become final and binding on all parties thirty (30) calendar days from the first date on which the Agent has received the applicable Schedule or amendment thereto unless (i) the Agent, within thirty (30) calendar days after receiving an applicable Schedule or amendment thereto, provides the Corporation with notice of a material objection to such Schedule or amendment thereto (“Objection Notice”) made in good faith or (ii) the Agent provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date a waiver from the Agent has been received by the Corporation. If the Corporation and Agent, for any reason, are unable to successfully resolve the issues raised in an Objection Notice within thirty (30) calendar days after receipt by the Corporation of such Objection Notice, the Corporation and Agent shall employ the Reconciliation Procedures under Section 7.9.

(b) The applicable Schedule for any Taxable Year may be amended from time to time by the Corporation (i) in connection with a Determination affecting such Schedule, (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to the Agent, (iii) to comply with the Expert’s determination under the Reconciliation Procedures, (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Corporation Return filed for such Taxable Year or (vi) to adjust an Exchange Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an “Amended Schedule”). Unless otherwise agreed to in writing by the Agent, the Corporation shall provide an Amended Schedule to the Agent (A) within sixty (60) calendar days of the occurrence of an event referenced in clauses (i) through (v) of the immediately preceding sentence and (B) in connection with the delivery of the Tax Benefit Schedule for the year of the applicable payment in the event of an adjustment pursuant to clause (vi) of the immediately preceding sentence. For the avoidance of doubt, in the event a Schedule is amended after such Schedule becomes final pursuant to Section 2.4(a), or, if applicable, the Reconciliation Procedures, the Amended Schedule shall not be taken into account in calculating any Tax Benefit Payment in the Taxable

ARTICLE III TAX BENEFIT PAYMENTS

Section 3.1 Payments.

(a) Subject to Exhibit A, within five (5) calendar days after a Tax Benefit Schedule delivered to the Agent becomes final in accordance with Section 2.4(a), or, if applicable, the Reconciliation Procedures, the Corporation shall pay to each TRA Holder the Tax Benefit Payment in respect of such TRA Holder for such Taxable Year. Each such payment shall be made by check, by wire transfer of immediately available funds to the bank account previously designated by the TRA Holder to the Corporation, or as otherwise agreed by the Corporation and the TRA Holder. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated Tax payments, including U.S. federal or state estimated income Tax payments.

(b) A “Tax Benefit Payment” in respect of a TRA Holder for a Taxable Year means an amount, not less than zero, equal to the sum of the portion of the Net Tax Benefit that is Attributable to such TRA Holder and the Accrued Amount with respect thereto for such Taxable Year. Subject to Section 3.3, the “Net Tax Benefit” for a Taxable Year shall be an amount equal to the excess, if any, of (i) eighty-five percent (85%) of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over (ii) the total amount of payments previously made under this Section 3.1 (excluding payments attributable to Accrued Amounts); provided, for the avoidance of doubt, that no TRA Holder shall be required to return any portion of any previously made Tax Benefit Payment. The “Accrued Amount” with respect to any portion of a Net Tax Benefit for a Taxable Year shall equal the amount of interest on such portion calculated at the Agreed Rate from the due date (without extensions) for filing the U.S. federal Corporation Return for such Taxable Year until the date of payment of such portion of such Net Tax Benefit under this Section 3.1. Notwithstanding the foregoing, for each Taxable Year ending on or after the date of a Change of Control that occurs after the Closing Date, all Tax Benefit Payments shall be calculated by utilizing Valuation Assumptions (i), (ii), and (iv), substituting in each case the terms “date of a Change of Control” for an “Early Termination Date.”

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. It is also intended that the provisions of this Agreement will result in eighty-five percent (85%) of the Cumulative Net Realized Tax Benefit, and the Accrued Amount thereon, being paid to the TRA Holders. The provisions of this Agreement shall be construed in the appropriate manner to achieve these fundamental results.

Section 3.3 Pro Rata Payments. Notwithstanding anything in Section 3.1 to the contrary, to the extent that the aggregate Realized Tax Benefit of the Corporation is limited in a particular Taxable Year because the Corporation does not have sufficient taxable income, the aggregate Net Tax Benefit for such Taxable Year shall be deemed Attributable to each TRA Holder for purposes of Section 3.1(b), in accordance with Exhibit A.

Section 3.4 Coordination of Benefits. (a) If for any reason the Corporation does not fully satisfy its payment obligations to make all Tax Benefit Payments due under this Agreement in respect of a particular Taxable Year, then (i) the Corporation will pay the same proportion of each Tax Benefit Payment due to each TRA Holder in respect of such Taxable Year, without favoring one obligation over the other, and (ii) no Tax Benefit Payment shall be considered to have been made in respect of any Taxable Year until all Tax Benefit Payments in respect of prior Taxable Years have been made in full.

(b) To the extent the Corporation makes a payment to a TRA Holder in respect of a particular Taxable Year under Section 3.1(a) (taking into account Section 3.3 and Section 3.4(a)) in an amount in excess of the amount of such payment that should have been made to such TRA Holder in respect of such Taxable Year, then (i) such TRA Holder shall not receive further payments under Section 3.1(a) until such TRA Holder has foregone an amount of payments equal to such excess and (ii) the Corporation will pay the amount of such TRA Holder’s foregone payments to the other Persons to whom a payment is due under this Agreement in a manner such that each such Person to whom a payment is due under this Agreement, to the maximum extent possible, receives aggregate payments under Section 3.1(a) (taking into account Section 3.3 and Section 3.4(a), but excluding payments attributable to Accrued Amounts) in the amount it would have received if there had been no excess payment to such TRA Holder.

ARTICLE IV TERMINATION

Section 4.1 Early Termination by the Corporation. With the written approval of the Disinterested Majority and the Agent, the Corporation may terminate this Agreement at any time by paying to each TRA Holder the Early Termination Payment due to such TRA Holder pursuant to Section 4.5, provided, however, that this Agreement shall only terminate upon the receipt of the applicable Early Termination Payment by each TRA Holder (such termination, an “Early Termination”) and payments described in the immediately succeeding sentence, if any. Upon payment of the Early Termination Payment by the Corporation, the Corporation shall not have any further payment obligations under this Agreement, other than for any (i) Tax Benefit Payments previously due and payable but unpaid as of the date of the Early Termination Notice (which Tax Benefit Payments, for the avoidance of doubt, shall not be included in the Early Termination Payment) and that remain unpaid and (ii) any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the Early Termination Date (except to the extent that the amount described in this clause (ii) is included in the Early Termination Payment or is included in clause (i)).

Section 4.2 Early Termination upon Change of Control. In the event of a Change of Control, unless otherwise waived in writing by the Agent, all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the Change of Control Date and shall include the following: (a) payment of the Early Termination Payment calculated as if an Early Termination Notice had been delivered on such Change of Control Date, (b) any Tax Benefit Payments due and payable and that remain unpaid as of the Change of Control Date (which Tax Benefit Payments, for the avoidance of doubt, shall not be included in the Early Termination Payment described in clause (a)), and (c) any Tax Benefit Payments due for any Taxable Year ending prior to, with or including such Change of Control Date (except to the extent that the amount described in this clause (c) is included in the Early Termination Payment or is included in clause (b)). In the event of a Change of Control, the Early Termination Payment shall be calculated utilizing the Valuation Assumptions and by substituting in each case the term “Change of Control Date” for the term “Early Termination Date.”

(a) In the event that the Corporation (1) breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, as a result of failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise or (2)(A) shall commence any case, proceeding or other action (x) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate a bankruptcy or insolvency, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or (y) seeking an appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or it shall make a general assignment for the benefit of creditors or (B) shall have commenced against it any case, proceeding or other action of the nature referred to in clause (A) above that remains undismissed or undischarged for a period of sixty (60) calendar days, then, in each case of clause (1) or clause (2), unless otherwise waived or directed in writing by the Agent (which may be retroactive), all obligations hereunder shall be automatically accelerated and shall be immediately due and payable and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such event (a "Breach") and shall include (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of such Breach, (ii) any Tax Benefit Payment previously due and payable but unpaid as of the date of such Breach (which Tax Benefit Payments, for the avoidance of doubt, shall not be included in the Early Termination Payment described in clause (i)), and (iii) any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the date of such Breach (except to the extent that the amount described in this clause (iii) is included in the Early Termination Payment or is included in clause (ii)). Notwithstanding the foregoing, in the event of a Breach, then, unless otherwise waived in writing by the Agent, the TRA Holders shall be entitled to elect to receive the amounts set forth in clauses (i), (ii), and (iii) above or to seek specific performance of the terms hereof.

(b) The parties agree that the failure to make any payment due pursuant to this Agreement within three (3) months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it shall not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three (3) months of the date such payment is due. The Corporation shall use its commercially reasonable efforts to maintain sufficient available funds for the purpose of making required payments under this Agreement and shall use its commercially reasonable efforts to avoid entering into agreements that could reasonably be anticipated to materially delay the timing of any payments under this Agreement. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Agreement if the Corporation fails to make any payment due pursuant to this Agreement as a result of and to the extent the Corporation has insufficient funds to make such payment despite using commercially reasonable efforts to obtain funds to make such payment (including by causing the Company or any of its Subsidiaries to distribute or lend funds to facilitate such payment, and by accessing any revolving credit facilities or other sources of available credit to fund any such amounts); provided that the interest provisions of Section 5.2 shall apply to such late payment; provided, further, that the Corporation shall promptly (and in any event, within two (2) Business Days), pay all such unpaid payments, together with accrued and unpaid interest thereon, immediately following such time that the Corporation has, and to the extent the Corporation has, sufficient funds to make such payment, and the failure of the Corporation to do so shall constitute a breach of this Agreement; provided, further, for the avoidance of doubt, the penultimate sentence of this Section 4.3(b) shall not apply to any payments due pursuant to Section 4.2. For the avoidance of doubt, all cash and cash equivalents used or to be used to pay dividends by, or repurchase equity securities of, the Corporation shall be deemed to be funds sufficient and available to pay such unpaid payments, together with any accrued and unpaid interest thereon.

Section 4.4 Early Termination Notice. If the Corporation chooses to exercise its right of early termination under Section 4.1 above, the Corporation shall deliver to the Agent notice of such intention to exercise such right (the "Early Termination Notice"). Upon delivery of the Early Termination Notice or the occurrence of an event described in Section 4.2 or a Breach described in Section 4.3(a), the Corporation shall deliver to the Agent (i) a schedule showing in reasonable detail the calculation of the Early Termination Payment and the amount due to each TRA Holder (the "Early Termination Schedule"), (ii) any other work papers reasonably requested by the Agent. In addition, the Corporation shall allow the Agent reasonable access at no cost to the appropriate representatives of the Corporation in connection with a review of such Early Termination Schedule, and (iii) a Corporation Letter supporting such Early Termination Schedule. The Early Termination Schedule shall become final and binding on all parties thirty (30) calendar days from the first date on which the Agent has received such Schedule or amendment thereto unless (x) the Agent, within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporation with notice of a material objection to such Schedule made in good faith ("Material Objection Notice") or (y) the Agent provides a written waiver of such right of a Material Objection Notice within the period described in clause (x) above, in which case such Schedule becomes binding on the date a waiver from the Agent has been received by the Corporation. If the Corporation and Agent, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporation of the Material Objection Notice, the Corporation and Agent shall employ the Reconciliation Procedures under Section 7.9.

Section 4.5 Payment upon Early Termination

(a) Except as otherwise provided in Section 4.3(a), within three (3) calendar days after the Early Termination Effective Date, the Corporation shall pay to each TRA Holder its Early Termination Payment. Each such payment shall be made by check, by wire transfer of immediately available funds to a bank account or accounts designated by the TRA Holder, or as otherwise agreed by the Corporation and the TRA Holder.

(b) The "Early Termination Payment" shall equal, with respect to each TRA Holder, the present value, discounted at the Early Termination Rate as of the Early Termination Date, of all Tax Benefit Payments that would be required to be paid by the Corporation to such TRA Holder beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied and that each Tax Benefit Payment for the relevant Taxable Year would be due and payable on the due date (without extensions) under applicable law as of the Early Termination Effective Date for filing the U.S. federal Corporation Return for such relevant Taxable Year.

**ARTICLE V
SUBORDINATION AND LATE PAYMENTS**

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment, Early Termination Payment or any other payment required to be made by the Corporation to any TRA Holder under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of the Corporation and its Subsidiaries (such obligations, "Senior Obligations") and shall rank *pari passu* with all current or future unsecured obligations of the Corporation that are not Senior Obligations. Notwithstanding any other provision of this Agreement to the contrary, to the extent that the Corporation or any of its Affiliates enters into future Tax receivable or other similar agreements ("Future TRAs"), the Corporation shall ensure that the terms of any such Future TRA shall provide that the Tax Attributes subject to this Agreement shall be senior in priority in all respects to any Tax attributes subject to any such Future TRA for purposes of calculating the amount and timing of payments under any such Future TRA. For the avoidance of doubt, notwithstanding the above, the determination of whether it is a breach of this Agreement if the Corporation fails to make any payment when due is governed by Section 4.3.

Section 5.2 Late Payments by the Corporation. The amount of all or any portion of any Tax Benefit Payment, Early Termination Payment or any other payment under this Agreement not made to any TRA Holder when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate and commencing from the date on which such Tax Benefit Payment, Early Termination Payment or any other payment under this Agreement was due and payable.

ARTICLE VI
PARTICIPATION IN TAX MATTERS; CONSISTENCY; COOPERATION

Section 6.1 Participation in the Corporation's Tax Matters. Except as otherwise provided herein, the Corporation shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporation, including preparing, filing or amending any Tax Return and defending, contesting or settling any issue pertaining to Taxes of the Corporation. Notwithstanding the foregoing, the Corporation (i) shall notify the Agent of, and keep the Agent reasonably informed with respect to, the portion of any audit, examination, or any other administrative or judicial proceeding of the Corporation, the Company, or any of their respective Affiliates by a Taxing Authority (a "Tax Proceeding") the outcome of which is reasonably expected to affect the rights and obligations of the TRA Holders under this Agreement, (ii) shall provide the Agent with reasonable opportunity to provide information and other input to the Corporation and its advisors concerning the conduct of any such portion of a Tax Proceeding, and (iii) shall not enter into any settlement with respect to any such portion of a Tax Proceeding that could have a material effect on the TRA Holders' rights (including the right to receive payments) under this Agreement without the written consent of the Agent, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that the Corporation shall not be required to take any action, or refrain from taking any action, that is inconsistent with any provision of the LLC Agreement; provided, further, that, notwithstanding anything to the contrary contained herein, the Corporation shall prepare, file, and/or amend all Tax Returns in accordance with applicable law (including with respect to the calculation of taxable income and any calculations required to be made under this Agreement) and nothing in this Agreement shall prevent the Agent or any TRA Holder from disputing such Tax matters in accordance with Section 7.9.

Section 6.2 Consistency. The Corporation and the TRA Holders agree to report and cause their respective Affiliates to report for all purposes, including U.S. federal, state and local Tax purposes and financial reporting purposes, all Tax-related items (including the Tax Attributes and each Tax Benefit Payment) in a manner consistent with that set forth in this Agreement and in any Schedule that has become final and binding pursuant to the terms of this Agreement, in each case, except to the extent otherwise required by applicable law. If the Corporation and any TRA Holder, for any reason, are unable to successfully resolve any disagreement concerning such treatment within thirty (30) calendar days, the Corporation and such TRA Holder shall employ the Reconciliation Procedures under Section 7.9. The Corporation shall (and shall cause the Company and its other Affiliates to) use commercially reasonable efforts (for the avoidance of doubt, taking into account the interests and entitlements of all TRA Holders under this Agreement) to defend the Tax treatment contemplated by this Agreement and any Schedule that has become final and binding pursuant to the terms of this Agreement in any Tax Proceeding.

Section 6.3 Cooperation. The Agent shall (i) furnish to the Corporation in a timely manner such information, documents and other materials in the Agent's possession as the Corporation may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any Tax Proceeding, (ii) make itself available to the Corporation and its representatives to provide explanations of documents and materials and such other information as the Corporation or its representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter. The Corporation shall reimburse the Agent for any reasonable third-party costs and expenses incurred pursuant to this Section 6.3.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) delivered by means of electronic mail (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day) if emailed before 5:00 p.m. Pacific time on a Business Day, and otherwise on the next Business Day, or (c) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid). All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporation or the Company, to:

c/o BRC Inc.
 1144 S 500 W
 Salt Lake City, UT 84101
 Attention: Tom Davin
 E-mail: tom.davin@blackriflcoffee.com

with a copy (which shall not constitute notice to the Corporation or the Company) to:

Kirkland & Ellis LLP
 601 Lexington Avenue
 New York, NY 10022

Attention: Michael Beinus, P.C.
 Tara Rhoades

E-mail: michael.beinus@kirkland.com
 tara.rhoades@kirkland.com

Kirkland & Ellis LLP
 300 North LaSalle
 Chicago, IL 60654

Attention: Steven V. Napolitano, P.C.
 John A. Kaercher, P.C.
 Joshua N. Korff, P.C.
 Peter S. Seligson

E-mail: stephen.napolitano@kirkland.com
john.kaercher@kirkland.com
joshua.korff@kirkland.com
peter.seligson@kirkland.com

If to the Agent, to:

Sterling New Investment Holdings LLC
c/o Sterling Partners
401 N. Michigan Avenue, 33rd Floor
Chicago, IL 60611
Attention: Office of the General Counsel; M. Avi Epstein
E-mail: aepstein@sterlingpartners.com

with a copy (which shall not constitute notice to the Agent) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022

Attention: Michael Beinus, P.C.
Tara Rhoades

E-mail: michael.beinus@kirkland.com
tara.rhoades@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654

Attention: Steven V. Napolitano, P.C.
John A. Kaercher, P.C.
Joshua N. Korff, P.C.
Peter S. Seligson

E-mail: stephen.napolitano@kirkland.com
john.kaercher@kirkland.com
joshua.korff@kirkland.com
peter.seligson@kirkland.com

If to a TRA Holder other than the Agent, to the address set forth in the records of the Company.

Any party may change its address or e-mail address by giving the other party written notice of its new address or e-mail address in the manner set forth above.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors, permitted assigns, heirs, executors, administrators and legal representatives. The parties to this Agreement agree that the TRA Holders are expressly made third party beneficiaries to this Agreement. Other than as provided in the immediately preceding sentence, nothing in this Agreement, express or implied, is intended to, or shall, confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Successors; Assignment. Each party agrees that Agent and each TRA Holder may assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any of its rights or obligations under this Agreement to any Person by delivering notice thereof to the Corporation. For the avoidance of doubt, if a TRA Holder transfers Units in accordance with the terms of the LLC Agreement but does not assign to the transferee of such Units all of its rights and obligations under this Agreement with respect to such transferred Units, (a) such TRA Holder shall remain a TRA Holder under this Agreement for all purposes and shall continue to be entitled to receive the Tax Benefit Payments arising in respect of a subsequent Exchange of such Units to the extent payable hereunder, and (b) the transferee of such Units shall not be a TRA Holder. The Corporation may not assign any of its rights or obligations under this Agreement to any Person without the prior written consent of the Agent; provided that, without the prior written consent of the Agent, the Corporation shall be permitted to cause such an assignment to any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, so long as the Corporation requires and causes such successor, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place. Any purported assignment in violation of the terms of this Section 7.6 shall be null and void.

Section 7.7 Amendments; Waivers. No provision of this Agreement may be amended unless such amendment is approved in writing by each of the Disinterested Majority, the Company and the Agent; provided, that no such amendment shall be effective if such amendment would have a disproportionate effect on the payments one or more TRA Holders would be entitled to receive under this Agreement unless such amendment is consented to in writing by such TRA Holders disproportionately affected.

Section 7.8 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.9 Reconciliation. In the event that the Corporation and the Agent or any TRA Holder (as applicable, the “Disputing Party”) are unable to resolve a disagreement with respect to any Schedule, including the calculations required to produce the schedules described in Section 2.4 and Section 4.4, or Section 6.2, within the relevant period designated in this Agreement (“Reconciliation Dispute”), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert in the particular area of disagreement, acting as an expert and not as an arbitrator (the “Expert”), mutually acceptable to the Corporation and the Disputing Party. Unless the Corporation and the Disputing Party agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation or the Disputing Party or other actual or potential conflict of interest. If the Corporation and the Disputing Party are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondents of written notice of a Reconciliation Dispute, then the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise (the “ICC”) in accordance with the criteria set forth above in this Section 7.9. The Expert shall resolve (a) any matter relating to the Exchange Schedule or an amendment thereto, a Blocker Basis Schedule or an amendment thereto, or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days, (b) any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days, and (c) any matter related to treatment of any tax-related item as contemplated in Section 6.2 within fifteen (15) calendar days or, in each case, as soon thereafter as is reasonably practicable after such matter has been submitted to the Expert for resolution. Notwithstanding the immediately preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, any portion of such payment that is not under dispute shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation, subject to adjustment or amendment upon resolution. The sum of (i) the costs and expenses relating to the engagement (and, if applicable, selection by the ICC) of such Expert and (ii) the reasonable out-of-pocket costs and expenses of the Corporation and the Disputing Party incurred in the conduct of such proceeding shall be allocated between the Corporation, on the one hand, and the Disputing Party (on behalf of all TRA Holders if the Disputing Party is the Agent), on the other hand, in the same proportion that the aggregate amount of the disputed items so submitted to the Expert that is unsuccessfully disputed by each such party (as finally determined by the Expert) bears to the total amount of such disputed items so submitted, and each such party shall promptly reimburse the other party for the excess that such other party has paid in respect of such costs and expenses over the amount it has been so allocated. Any dispute as to the allocation of expenses pursuant to the immediately preceding sentence or whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.9 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporation and its Subsidiaries and the Disputing Party (including all TRA Holders if the Disputing Party is the Agent) and may be entered and enforced in any court having jurisdiction.

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Section 7.10 Consent to Jurisdiction. Each party hereto irrevocably submits to the exclusive jurisdiction of the United States District Court for the State of Delaware and the state courts of the State of Delaware for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party hereto further agrees that service of any process, summons, notice or document by United States certified or registered mail (in each such case, prepaid return receipt requested) to such party’s respective address set forth in the Company’s books and records or such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party shall be effective service of process in any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the United States District Court for the State of Delaware or the state courts of the State of Delaware and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

Section 7.11 Waiver of Jury Trial. Because disputes arising in connection with complex transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, each party to this agreement (including the Company) hereby waives all rights to trial by jury in any action or proceeding brought to resolve any dispute between or among any of the parties hereto, whether arising in contract, tort, or otherwise, arising out of, connected with, related or incidental to this agreement, the transactions contemplated hereby and/or the relationships established among the parties hereunder.

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Section 7.12 Withholding. The Corporation shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporation is required to deduct and withhold with respect to the making of such payment under the Code or any provision of U.S. federal, state, local or non-U.S. Tax law; provided, however, that, prior to deducting or withholding any such amounts, the Corporation shall notify the Agent and the applicable TRA Holder and shall reasonably cooperate therewith regarding the basis for such deduction or withholding and in obtaining any available exemption or reduction of, or otherwise minimizing to the extent permitted by applicable law, such deduction and withholding. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such withholding was made. To the extent that any payment pursuant to this Agreement is not reduced by such required deductions or withholdings applicable to the recipient of such payment, such recipient shall indemnify the applicable withholding agent for any amounts imposed by any Taxing Authority with respect to such deductions or withholdings, together with any reasonable and documented out-of-pocket costs and expenses related thereto. Prior to the date of any payment under this Agreement and from time to time as reasonably requested by the Corporation, the Agent and each TRA Holder shall promptly provide the Corporation with any applicable Tax forms and certifications (including IRS Form W-9 or the applicable version of IRS Form W-8) reasonably requested and shall promptly provide an update of any such Tax form or certificate previously delivered if the same has become incorrect or has expired.

Section 7.13 Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets

(a) If the Corporation is or becomes a member of an affiliated, consolidated, combined, or unitary group of corporations that files a consolidated, combined, or unitary income Tax Return pursuant to Sections 1501 *et seq.* of the Code or any corresponding provisions of U.S. state or local Tax law, or would be eligible to become a member of such a group at the election of one of the members of that group, then, subject to the application of the Valuation Assumptions upon a Change of Control: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder or the Company or any Subsidiary of the Company (or any member of a group described in Section 7.13(a)) transfers or is deemed to transfer one or more assets to a corporation (or a Person classified as a corporation for Tax

purposes) with which the Corporation does not file a consolidated Tax Return pursuant to Section 1501 of the Code or any provisions of state or local Tax law, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment (e.g. calculating the gross income of the entity and determining the Realized Tax Benefit or Realized Tax Detriment of such entity) due hereunder, shall be treated as having disposed of such asset in a fully taxable transaction on the date of such transfer. The consideration deemed to be received by such entity shall be equal to the fair market value of the transferred asset, plus (i) the amount of debt to which such asset is subject, in the case of a transfer of an encumbered asset or (ii) the amount of debt allocated to such asset, in the case of a transfer of a partnership interest. Thus, for example, in determining the Hypothetical Tax Liability of the entity, the taxable income of the entity shall be determined by treating the entity as having sold the asset for the consideration described above, recovering any basis applicable to such asset (using the Tax basis that such asset would have had at such time if there were no Tax Attributes), while the Actual Tax Liability of the entity would be determined by recovering the actual Tax basis of the asset that reflects any Tax Attributes. If any member of a group described in Section 7.13(a) that owns any Reference Asset (or is deemed to own such Reference Asset for Tax purposes) deconsolidates from such group (or the Corporation deconsolidates from a group described in Section 7.13(a)), then the Corporation shall cause such member (or the parent of the consolidated group in a case where the Corporation deconsolidates from the group and such parent or any of its remaining consolidated Subsidiaries owns any Reference Asset (or is deemed to own such Reference Asset for Tax purposes)) to assume the obligation to make payments hereunder with respect to the applicable Tax Attributes associated with any Reference Asset it owns (directly or indirectly) in a manner consistent with the terms of this Agreement as such entity (or one of its Affiliates) actually realizes Tax benefits as a result of such Tax Attributes in a manner consistent with the terms of this Agreement, and the Corporation shall guarantee such obligation assumed. For purposes of this Section 7.13, a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership and ownership of a partnership interest shall be treated as ownership of such partner's share of each of the assets and liabilities of that partnership.

Section 7.14 Confidentiality. Each TRA Holder and the Agent agrees to hold, and to use its reasonable efforts to cause its authorized representatives to hold, in strict confidence, the books and records of the Corporation and all information relating to the Corporation's properties, operations, financial condition or affairs, in each case, which are furnished to it pursuant to the terms of this Agreement (collectively, the "Confidential Information"). Notwithstanding anything herein to the contrary, Confidential Information shall not include any information that (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure by a TRA Holder or the Agent, (ii) is or becomes available to a TRA Holder, the Agent, or any of their respective Authorized Recipients (as defined below) on a nonconfidential basis from a third-party source, which source, to the knowledge of such TRA Holder or the Agent, as applicable, is not bound by a legal duty of confidentiality to the Corporation in respect of such Confidential Information, or (iii) is independently developed by a TRA Holder, the Agent or their Authorized Recipients. Notwithstanding anything herein to the contrary, a TRA Holder or the Agent may disclose any Confidential Information to (x) any of its representatives, (y) any Affiliates or (z) in the case of a TRA Holder, any bona fide prospective assignee of such TRA Holder's rights under this Agreement, or prospective merger or other business combination partner of such TRA Holder (the persons in clauses (x), (y) and (z), collectively, the "Authorized Recipients"). If a TRA Holder, the Agent or any of their respective Authorized Recipients is required or requested by law or regulation or any legal or judicial process to disclose any Confidential Information, if disclosure of Confidential Information is required by any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of government with authority over such TRA Holder, Agent or Authorized Recipient, or if disclosure of Confidential Information is required in connection with the tax affairs of such TRA Holder, Agent or Authorized Recipient, such TRA Holder, the Agent or Authorized Recipient, as the case may be, may disclose only such portion of such Confidential Information as may be required or requested without liability hereunder.

Section 7.15 No Similar Agreements. Neither the Corporation nor any of its Subsidiaries shall enter into any additional agreement providing rights similar to this Agreement to any Person (including any agreement pursuant to which the Corporation is obligated to pay amounts with respect to tax benefits resulting from any net operating losses or other tax attributes to which the Corporation becomes entitled as a result of a transaction) without the prior written consent of the Agent.

Section 7.16 Change in Law. Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a TRA Holder reasonably believes that the existence of this Agreement could cause income (other than income arising from receipt of a payment under this Agreement) recognized by such TRA Holder upon any Exchange to be treated as ordinary income rather than capital gain (or otherwise taxed at ordinary income rates) for U.S. federal income or applicable state or local Tax purposes or would have other material adverse Tax consequences to the TRA Holder and/or its direct or indirect owners, then at the election of the TRA Holder (with the prior written consent of the Agent) and to the extent specified by the TRA Holder, this Agreement (i) shall cease to have further effect with respect to such TRA Holder, or (ii) shall otherwise be amended in a manner determined by the TRA Holder to waive any benefits to which such TRA Holder would otherwise be entitled under this Agreement, provided that such amendment shall not result in (I) an increase in or acceleration of payments by the Corporation, or (II) a decrease or delay in the amounts payable to other TRA Holders, in each case, under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section 7.17 Agent.

(a) Appointment. Without further action of any party hereto or any TRA Holder, and as partial consideration of the benefits conferred by this Agreement, the Agent is hereby irrevocably constituted and appointed to act as the sole representative, agent and attorney-in-fact for the TRA Holders and their successors and assigns with respect to the taking by the Agent of any and all actions and the making of any decisions required or permitted to be taken by the Agent under this Agreement. The power of attorney granted herein is coupled with an interest and is irrevocable and may be delegated by the Agent. No bond shall be required of the Agent, and the Agent shall receive no compensation for its services.

(b) Expenses. If at any time the Agent shall incur out-of-pocket expenses in connection with the exercise of its duties hereunder, upon written notice to the Corporation from the Agent of documented costs and expenses (including fees and disbursements of counsel and accountants) incurred by the Agent in connection with the performance of its rights or obligations under this Agreement and the taking of any and all actions in connection therewith, the Corporation shall reduce any future payments (if any) due to the TRA Holders hereunder, proportionately, by the amount of such expenses which it shall instead remit directly to the Agent. In connection with the performance of its rights and obligations under this Agreement and the taking of any and all actions in connection therewith, the Agent shall not be required to expend any of its own funds (though, for the avoidance of doubt, it may do so at any time and from time to time in its sole discretion).

(c) Limitation on Liability. The Agent shall not be liable to any TRA Holder for any act of the Agent arising out of or in connection with the acceptance or administration of its duties under this Agreement, except to the extent any liability, loss, damage, penalty, fine, cost or expense is actually incurred by such TRA Holder as a proximate result of the gross negligence, bad faith or willful misconduct of the Agent (it being understood that any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith and reasonable judgment). The Agent shall not be liable for, and shall be indemnified by the TRA Holders (on a several but not joint basis) for, any liability, loss, damage, penalty or fine incurred by the Agent (and any cost or expense incurred by the Agent in connection therewith and herewith and not previously reimbursed pursuant to subsection (b) above) arising out of or in connection with the acceptance or administration of its duties under this Agreement, except to the extent that any such liability, loss, damage, penalty, fine, cost or expense is the proximate result of the gross negligence, bad faith or willful misconduct of the Agent (it being

understood that any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith and reasonable judgment); provided, however, in no event shall any TRA Holder be obligated to indemnify the Agent hereunder for any liability, loss, damage, penalty, fine, cost or expense to the extent (and only to the extent) that the aggregate amount of all liabilities, losses, damages, penalties, fines, costs and expenses indemnified by such TRA Holder hereunder is or would be in excess of the aggregate payments under this Agreement actually remitted to such TRA Holder. Each TRA Holder's receipt of any and all benefits to which such TRA Holder is entitled under this Agreement, if any, is conditioned upon and subject to such TRA Holder's acceptance of all obligations, including the obligations of this Section 7.17(c), applicable to such TRA Holder under this Agreement.

(d) Actions of the Agent. Any decision, act, consent or instruction of the Agent shall constitute a decision of all TRA Holders and shall be final, binding and conclusive upon each TRA Holder, and the Corporation may rely upon any decision, act, consent or instruction of the Agent as being the decision, act, consent or instruction of each TRA Holder. The Corporation is hereby relieved from any liability to any Person for any acts done by the Corporation in accordance with any such decision, act, consent or instruction of the Agent.

(e) Approved Assignment. Each TRA Holder hereby agrees that the Agent may, at any time and in its sole discretion, elect to make an assignment, in whole or in part, of this Agreement to a Person (upon such election, an "Approved Assignment"), and each such TRA Holder will raise no objections against such Approved Assignment, regardless of the consideration (if any) being paid in such Approved Assignment, so long as such Approved Assignment does not materially and adversely impact such TRA Holders in a manner materially disproportionate to the other TRA Holders. Each TRA Holder will take all actions requested by the Agent in connection with the consummation of an Approved Assignment, including the execution of all agreements, documents and instruments in connection therewith requested by the Agent of such TRA Holder. If at any time the Agent becomes unable or unwilling to continue in its capacity as Agent or resigns as Agent without making an Approved Assignment, then in each case the TRA Holders may, by a plurality vote of such Persons ratably in accordance with their respective rights to receive Early Termination Payments under this Agreement, appoint a new representative to replace the then serving Agent. Notice of such appointment must be delivered to the Corporation. Such appointment will be effective upon the later of the date indicated in such notice or the date such notice is received by the Corporation. The Agent may resign upon thirty (30) calendar days' written notice to the Corporation.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Corporation, the Company, and the Agent have duly executed this Agreement as of the date first written above.

BRC INC.

By: /s/ Tom Davin
Name: Tom Davin
Title: Co-Chief Executive Officer

AUTHENTIC BRANDS LLC

By: /s/ Tom Davin
Name: Tom Davin
Title: Co-Chief Executive Officer

STERLING NEW INVESTMENT HOLDINGS LLC

AS AGENT

By: /s/ Avi Epstein
Name: Avi Epstein
Title: Authorized Signatory

[Signature Page – Tax Receivable Agreement]

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT (as it may be amended, supplemented or restated from time to time in accordance with the terms hereof, this “Agreement”), dated as of February 9, 2022 (the “Effective Date”), is made by and among (i) BRC Inc., a Delaware public benefit corporation (including any of its successors or assigns, “PubCo”); (ii) SilverBox Engaged Sponsor LLC, a Delaware limited liability company (the “Sponsor”); (iii) the Engaged Capital Investors (as defined herein); (iv) Evan Hafer (the “Founder”), (v) the persons and entities listed on Schedule B hereto (collectively, the “NCH Equityholders”), (vi) Mathew Best, (vii) Jarred Taylor, (viii) Richard Ryan, (ix) Tom Davin and (x) the persons and entities listed on Schedule A hereto (collectively, the “Legacy Equityholders”). Each of the persons listed under clauses (i) to (x) may be referred to herein as a “Party” and collectively as the “Parties” and each of the persons listed under clauses (ii) to (x) may be referred to herein collectively as the “Equityholders.”

RECITALS

WHEREAS, PubCo entered into that certain Business Combination Agreement, dated as of November 2, 2021 (as amended, and as it may be further amended from time to time in accordance with the terms thereof, the “BCA”), by and among PubCo, SilverBox, Merger Sub 1 (as defined in the BCA), Merger Sub 2 (as defined in the BCA), Blocker Corp (as defined in the BCA) and Authentic Brands, LLC, a Delaware limited liability company (the “Operating Company”), in connection with the business combination of PubCo and the Operating Company (the “Business Combination”) and other transactions contemplated therein;

WHEREAS, pursuant to the BCA, at the Closing, among other things (i) the Operating Company became a subsidiary of PubCo and PubCo acquired a certain number of common units in the Operating Company (“Common Units”) and (ii) (A) the Sponsor received a certain number of shares of Class A Common Stock and Class C Common Stock, (B) the holders of Equity Securities of the Operating Company (excluding Blocker Corp) immediately prior to the Effective Time (as defined in the BCA), (1) retained a certain number of Common Units and received the same number of shares of Class B Common Stock, (2) received a certain number of unvested performance-based restricted Common Units (“Restricted Common Units”) and (3) received cash, and (C) Blocker Corp, immediately prior to the Effective Time received (1) a certain number of shares of Class A Common Stock and Class C Common Stock (2) and cash, in each case in accordance with the terms of the BCA;

WHEREAS, upon the consummation of the Business Combination, PubCo and the other persons holding Common Units and Restricted Common Units entered into that certain third amended and restated limited liability company agreement of the Operating Company dated as of February 9, 2022 (as it may be further amended, supplemented or restated from time to time in accordance with the terms of such agreement, the “LLC Agreement”);

WHEREAS, pursuant to the LLC Agreement and the Certificate of Incorporation, upon satisfaction of the conditions set forth in the LLC Agreement, (i) the Restricted Common Units will vest and become Common Units and (ii) PubCo will issue to the holders of such Common Units an additional number of shares of Class B Common Stock such that each such holder holds the same number of Common Units and shares of Class B Common Stock;

WHEREAS, each of the Equityholders holding Common Units (including any Restricted Common Units that have vested) has the right to exchange such Common Units, along with the cancelation of an equal number of shares of Class B Common Stock, for shares of Class A Common Stock pursuant to the terms and conditions of the LLC Agreement;

WHEREAS, SilverBox, the Sponsor and Engaged Capital, LLC (in its capacity as investment advisor on behalf of investment funds and accounts, “Engaged Capital”) entered into that certain Registration Rights Agreement, dated as of February 25, 2021 (the “Original RRA”);

WHEREAS, in connection with Closing, SilverBox, the Sponsor and Engaged Capital hereto desire to terminate the Original RRA in its entirety and replace it with this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Action” means any action, suit, charge, litigation, arbitration, or other proceeding at law or in equity (whether civil, criminal or administrative) by or before any Governmental Entity.

“Adverse Disclosure” means any public disclosure of material non-public information, which disclosure, in the good faith determination of the Board, after consultation with counsel to PubCo, (a) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any Prospectus and any preliminary Prospectus, in the light of the circumstances under which they were made) not misleading, (b) would not be required to be made at such time if the Registration Statement were not being filed, and (c) PubCo has a *bona fide*, material business purpose for not making such information public.

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, its capacity as a sole or managing member or otherwise; provided that no Party shall be deemed an Affiliate of PubCo or any of its subsidiaries for purposes of this Agreement.

“Agreement” has the meaning set forth in the Preamble.

“Automatic Shelf Registration Statement” has the meaning set forth in Rule 405 promulgated by the SEC pursuant to the Securities Act.

“BCA” has the meaning set forth in the Recitals.

“Beneficially Own” has the meaning set forth in Rule 13d-3 promulgated under the Exchange Act; provided, that, a Transfer with respect to any Equity Securities shall, for purposes of this Agreement, means that the Transferor no longer Beneficially Owns such Equity Securities (except, for the avoidance of doubt, for any Transfer to

Permitted Transferees or with respect to pledges or encumbrances which do not Transfer economic risk). “Beneficially Owns,” “Beneficially Owned,” and “Beneficial Ownership” shall have correlative meanings.

“Block Trade” means any non-marketed underwritten offering taking the form of a block trade to a financial institution, “qualified institutional buyer” (as defined in Rule 144A under the Securities Act) or institutional “accredited” investor (as defined in Rule 501(a) of Regulation D under the Securities Act), bought deal, over-night deal or similar transaction through a broker, sales agent or distribution agent, whether as agent or principal, that does not include “road show” presentations to potential investors requiring substantial marketing effort from management over multiple days, the issuance of a “comfort letter” by PubCo’s auditors, or the issuance of a legal opinion by PubCo’s legal counsel.

“Board” means the board of directors of PubCo.

“Business Combination” has the meaning set forth in the Recitals.

“Business Day” means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in the State of New York.

“Bylaws” means the bylaws of PubCo, as in effect on the Effective Date, as the same may be amended from time to time.

“Certificate of Incorporation” means the certificate of incorporation of PubCo, as in effect on the Effective Date, as the same may be amended from time to time.

“Class A Common Stock” means, as applicable, (a) the Class A common stock, par value \$0.0001 per share, of PubCo, or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person that are issued or issuable in consideration for the Class A common stock or into which the Class A common stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Class B Common Stock” means, as applicable, (a) the Class B common stock, par value \$0.0001 per share, of PubCo, or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person that are issued or issuable in consideration for the Class B common stock or into which the Class B common stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Class C Common Stock” means, as applicable, (a) the Class C common stock, par value \$0.0001 per share, of PubCo, or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person that are issued or issuable in consideration for the Class C common stock or into which the Class C common stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Closing” has the meaning given to such term in the BCA.

“Closing Date” has the meaning given to such term in the BCA, which date is February 9, 2022.

“Common Stock” means shares of the Class A Common Stock, Class B Common Stock and Class C Common Stock, including any shares of the Class A Common Stock and Class B Common Stock issuable upon the exercise of any warrant or other right to acquire shares of the Class A Common Stock and Class B Common Stock.

“Common Units” has the meaning set forth in the Recitals.

“Company Units” means the Common Units and the Restricted Common Units.

“Demanding Holders” has the meaning set forth in Section 4.1(c).

“Economic Interests” mean (a) for the Founder, the NCH Equityholders and the Legacy Equityholders, (i) Company Units and (ii) shares of Class A Common Stock, in each case held by the Founder, the NCH Equityholders and the Legacy Equityholders, as applicable, or their respective Permitted Transferees or (b) for the Sponsor or the Engaged Capital Investors, shares of Class A Common Stock held by the Sponsor or its Permitted Transferees or the Engaged Capital Investors or their Permitted Transferees, as applicable. For purposes of computing the percentage of Economic Interests in Sections 3.1 and 6.4, in each case, Restricted Common Units and Class C Common Stock shall (x) not be included as held as of the Closing Date or at the applicable time while unvested and (y) be included as being held as of the Closing Date and at the applicable time beginning only if and when they vest, are exchanged for or convert into Company Units or Class A Common Stock, as applicable.

“Effective Date” has the meaning set forth in the Preamble.

“Engaged Capital” has the meaning set forth in the Preamble.

“Engaged Capital Director” has the meaning set forth in Section 3.1(a).

“Engaged Capital Investors” means the Engaged Capital Flagship Master Fund, LP and Arango Trading and Finance Corp.

“Equity Securities” means, with respect to any Person, all of the shares of capital stock or equity of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock or equity of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock or equity of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares or equity (or such other interests), restricted stock awards, restricted stock units, equity appreciation rights, phantom equity rights, profit participation and all of the other ownership or profit interests of such Person (including partnership or member interests therein), whether voting or nonvoting.

“Equityholders” has the meaning set forth in the Preamble.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

“Family Member” means with respect to any Person, a spouse, lineal descendant (whether natural or adopted) or spouse of a lineal descendant of such Person or any trust created for the benefit of such Person or of which any of the foregoing is a beneficiary.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Form S-1 Shelf” has the meaning set forth in Section 4.1(a).

“Form S-3 Shelf” has the meaning set forth in Section 4.1(a).

“Forward Purchase Agreement” means that certain Amended and Restated Forward Purchase Agreement, dated as of November 2, 2021, among SilverBox, Engaged Capital, the Operating Company and the Sponsor pursuant to which the Engaged Capital Investors purchased 10,000,000 SilverBox Class C Shares in a private placement prior to Closing, which SilverBox Class C Shares were exchanged for 10,000,000 shares of Class A Common Stock concurrently with Closing.

“Founder” has the meaning set forth in the Preamble.

“Governmental Entity” means any nation or government, any state, province or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any court, arbitrator (public or private) or other body or administrative, regulatory or quasi-judicial authority, agency, department, board, commission or instrumentality of any federal, state, local or foreign jurisdiction.

“Holder” means any holder of Registrable Securities who is a Party to, or who succeeds to rights under, this Agreement pursuant to Article VI; provided that a Party who does not hold Registrable Securities as of the Effective Date and who acquires Registrable Securities after the Effective Date will not be a Holder until such Party gives PubCo a representation in writing of the number of Registrable Securities it holds.

“Holder Information” has the meaning set forth in Section 4.10(b).

“Initial Form S-1 Shelf” has the meaning set forth in Section 4.1(a).

“Laws” means all laws, acts, statutes, constitutions, treaties, ordinances, codes, rules, regulations, and rulings of a Governmental Entity, including common law. All references to “Laws” shall be deemed to include any amendments thereto, and any successor Law, unless the context otherwise requires.

“LLC Agreement” has the meaning set forth in the Recitals.

“Lock-Up Period” has the meaning set forth in Section 5.1(a).

“Lock-Up Shares” has the meaning set forth in Section 5.1(a).

“Maximum Number of Securities” has the meaning set forth in Section 4.1(c).

“Minimum Takedown Threshold” has the meaning set forth in Section 4.1(c).

“Misstatement” means an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus, or necessary to make the statements in a Registration Statement or Prospectus, in the light of the circumstances under which they were made, not misleading.

“NCH Equityholders” has the meaning set forth in the Preamble.

“Necessary Action” means, with respect to any Party and a specified result, all actions (to the extent such actions are not prohibited by applicable Law and within such Party’s control, and in the case of any action that requires a vote or other action on the part of the Board to the extent such action is consistent with fiduciary duties that PubCo’s directors may have in such capacity) necessary to cause such result, including (a) calling special meetings of stockholders, (b) voting or providing a written consent or proxy, if applicable in each case, with respect to shares of Common Stock, (c) causing the adoption of stockholders’ resolutions and amendments to the Organizational Documents, (d) executing agreements and instruments, (e) making, or causing to be made, with Governmental Entities, all filings, registrations or similar actions that are required to achieve such result and (f) nominating certain Persons for election to the Board in connection with the annual or special meeting of stockholders of PubCo.

“Operating Company” has the meaning set forth in the Recitals.

“Organizational Documents” means the Certificate of Incorporation and the Bylaws.

“Original RRA” has the meaning set forth in the Recitals.

“Participation Conditions” has the meaning set forth in Section 4.1(d).

“Party” has the meaning set forth in the Preamble.

“Permitted Transferee” means with respect to any Person, (i) any Family Member of such Person and (ii) any Affiliate of such Person (including any partner, shareholder or member controlling or under common control with such Person and any Affiliated investment fund or vehicle of such Person).

“Person” means any natural person, sole proprietorship, partnership, trust, unincorporated association, corporation, limited liability company, entity or Governmental Entity.

“Piggyback Registration” has the meaning set forth in Section 4.2(a).

“Potential Takedown Participant” has the meaning set forth in Section 4.1(d).

“Prospectus” means the prospectus included in any Registration Statement, all amendments (including post-effective amendments) and supplements to such prospectus, and all material incorporated by reference in such prospectus.

“PubCo” has the meaning set forth in the Preamble.

“Registrable Securities” means (a) any shares of Class A Common Stock, including Class A Common Stock to be issued pursuant to (i) the LLC Agreement upon exchange of Company Units (along with the cancellation of an equal number of shares of Class B Common Stock) and (ii) the Certificate of Incorporation upon conversion of Class C Common Stock, (b) any Warrants or any shares of Class A Common Stock issued or issuable upon the exercise thereof and (c) any Equity Securities of PubCo or any Subsidiary of PubCo that may be issued or distributed or be issuable with respect to the securities referred to in clauses (a) or (b) by way of conversion, dividend, stock split or other distribution, merger, consolidation, exchange, recapitalization or reclassification or similar transaction, in each case held by a Holder; provided, however, that any such Registrable Securities shall cease to be Registrable Securities to the extent (A) a Registration Statement with respect to the sale of such Registrable Securities has become effective under the Securities Act and such Registrable Securities have been sold, transferred, disposed of or exchanged in accordance with the plan of distribution set forth in such Registration Statement, (B) such Registrable Securities shall have ceased to be outstanding or (C) such Registrable Securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

“Registration” means a registration, including any related Shelf Takedown, effected by preparing and filing a registration statement, prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“Registration Expenses” means the out-of-pocket expenses of a Registration, including the following:

- (a) all registration and filing fees (including fees with respect to filings required to be made with FINRA) and any securities exchange on which the Class A Common Stock is then listed;
- (b) fees and expenses of compliance with securities or blue sky Laws (including reasonable fees and disbursements of counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);
- (c) printing, messenger, telephone and delivery expenses;

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- (d) fees and disbursements of counsel for PubCo;
- (e) reasonable fees and disbursements of all independent registered public accountants of PubCo incurred specifically in connection with such Registration; and
- (f) reasonable fees and expenses of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders in an Underwritten Offering in an amount not to exceed \$75,000 for each Registration (including if such Underwritten Offering is in the form of a Block Trade).

“Registration Statement” means any registration statement that covers the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all material incorporated by reference in such registration statement.

“Representatives” means, with respect to any Person, any of such Person’s officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person acting on behalf of such Person.

“Requesting Holder” means any Equityholder requesting piggyback rights pursuant to Section 4.2 of this Agreement with respect to an Underwritten Shelf Takedown.

“Restricted Common Units” has the meaning set forth in the Recitals.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and any successor thereto, as the same shall be in effect from time to time.

“Shelf” has the meaning set forth in Section 4.1(a).

“Shelf Registration” means a registration of securities pursuant to a Registration Statement filed with the SEC in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

“Shelf Takedown” means an Underwritten Shelf Takedown or any proposed transfer or sale using a Registration Statement, including a Piggyback Registration.

“Shelf Takedown Notice” has the meaning set forth in Section 4.1(d).

“Shelf Takedown Request” has the meaning set forth in Section 4.1(c).

“SilverBox” means SilverBox Engaged Merger Corp I, a Delaware corporation.

“Special Holder” means each of the Founder, the Sponsor, the Engaged Capital Investors, the NCH Equityholders, Mathew Best, Jarred Taylor, Richard Ryan and Tom Davin, at such times as such Party is a Holder and any Permitted Transferee of the foregoing (except as set forth in Section 4.16 hereof).

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“Sponsor” has the meaning set forth in the Preamble.

“Subsequent Shelf Registration” has the meaning set forth in Section 4.1(b).

“Subsidiaries” means, of any Person, any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than fifty percent (50%) of the voting power or equity is owned or controlled directly or indirectly by such Person, or one (1) or more of the Subsidiaries of such Person, or a combination thereof.

“Transfer” means, when used as a noun, any voluntary or involuntary, direct or indirect, transfer, sale, pledge, hedge, encumbrance, or hypothecation or other disposition, contract or legally binding agreement to undertake any of the foregoing, by the Transferor (whether by operation of law or otherwise) and, when used as a verb, the

Transferor voluntarily or involuntarily, directly or indirectly, transfers, sells, pledges, hedges, encumbers or hypothecates or otherwise disposes of (whether by operation of law or otherwise), contracts or agrees (in a legally binding manner) to do any of the foregoing, including, in each case, (a) the establishment or increase of a put equivalent position or liquidation with respect to, or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security or (b) entry into any swap or other arrangement that transfers to another Person, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise. The terms “Transferee,” “Transferor,” “Transferred,” and other forms of the word “Transfer” shall have the correlative meanings.

“Underwriter” means any investment banker(s) and manager(s) appointed to administer the offering of any Registrable Securities as principal in an Underwritten Offering.

“Underwritten Offering” means a Registration in which securities of PubCo are sold to an Underwriter for distribution to the public.

“Underwritten Shelf Takedown” has the meaning set forth in Section 4.1(f).

“Voting Party” means each of the Sponsor, the Engaged Capital Investors, Mathew Best and the NCH Equityholders.

“Voting Securities” means Equity Securities of PubCo which are entitled to vote generally in the election of directors to the Board.

“Warrants” means the outstanding warrants of PubCo, each exercisable for one share of Class A Common Stock, issued to the Sponsor pursuant to that certain private placement warrants purchase agreement, dated February 25, 2021, by and among the Sponsor and SilverBox, for a purchase price of \$11.50 per warrant.

“Well-Known Seasoned Issuer” has the meaning set forth in Rule 405 promulgated by the SEC pursuant to the Securities Act.

“Withdrawal Notice” has the meaning set forth in Section 4.1(f).

Section 1.2 Interpretive Provisions. For all purposes of this Agreement, except as otherwise provided in this Agreement or unless the context otherwise requires:

- (a) the meanings of defined terms are applicable to the singular as well as the plural forms of such terms.
- (b) the words “hereof”, “herein”, “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (c) references in this Agreement to any Law shall be deemed also to refer to such Law, and all rules and regulations promulgated thereunder.
- (d) whenever the words “include”, “includes” or “including” are used in this Agreement, they shall mean “without limitation.”
- (e) the captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.
- (f) pronouns of any gender or neuter or, as appropriate, the other pronoun forms.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Each of the Parties to this Agreement hereby represents and warrants to each other Party to this Agreement that as of the date such Party executes this Agreement:

Section 2.1 Existence; Authority; Enforceability. Such Party has the power and authority to enter into this Agreement and to carry out its obligations hereunder. Such Party who is not an individual is duly organized and validly existing under the laws of its respective jurisdiction of organization, and the execution of this Agreement, and the consummation of the transactions contemplated herein, have been authorized by all necessary action, and no other act or proceeding on its part is necessary to authorize the execution of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.

Section 2.2 Absence of Conflicts. The execution and delivery by such Party of this Agreement and the performance of its obligations hereunder does not and will not (a) conflict with, or result in the breach of any provision of the constitutive documents of such Party who is not an individual; (b) result in any violation, breach, conflict, default or event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default), or give rise to any right of acceleration or termination or any additional payment obligation, under the terms of any contract, agreement or permit to which such Party is a Party or by which such Party’s assets or operations are bound or affected; or (c) violate any law applicable to such Party.

Section 2.3 Consents. Other than any consents which have already been obtained, no consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by such Party in connection with (a) the execution, delivery or performance of this Agreement or (b) the consummation of any of the transactions contemplated herein.

ARTICLE III GOVERNANCE

Section 3.1 Board of Directors.

(a) Composition of the Board. Each of the Equityholders severally and not jointly, agrees with PubCo to take all Necessary Action to cause (x) the Board to be comprised of seven (7) directors initially and (y) those individuals to be nominated in accordance with this Article III, initially (i) two (2) of whom have been or will be nominated by Engaged Capital (acting on behalf of the Engaged Capital Investors), initially Glenn Welling and Roland Smith, one of whom shall meet the independence requirements of the Exchange Act and the applicable stock exchange regulations, and thereafter designated pursuant to Section 3.1(b) or Section 3.1(e) of this Agreement (each, an “Engaged Capital Director”), (ii) two (2) of whom have been or will be nominated by the Founder, initially George Munoz and Steven Taslitz, both of whom shall meet the independence requirements of the Exchange Act and the applicable stock exchange regulations and thereafter designated pursuant to Section 3.1(c) or Section 3.1(e) of this Agreement (each, a “Founder Director”), which Founder Directors shall meet the independence requirements under the Exchange Act and applicable stock exchange

regulations, and (iii) Evan Hafer, Katy Dickson and Tom Davin. The foregoing directors shall be divided into three classes of directors, with each class serving for staggered three year-terms as follows:

- (i) the Class I directors shall include Katy Dickson, initially, and up to one (1) Engaged Capital Director, initially Roland Smith;
- (ii) the Class II directors shall include Tom Davin, initially, and up to one (1) Founder Director, initially George Munoz; and
- (iii) the Class III directors shall include Evan Hafer, initially, up to one (1) Engaged Capital Director, initially Glenn Welling, and up to one (1) Founder Director, initially Steven Taslitz.

Any vacancies existing on the Board as of the date hereof shall be filled in accordance with Section 3.1(e). The initial term of the Class I directors shall expire immediately following PubCo's 2023 annual meeting of stockholders at which directors are elected. The initial term of the Class II directors shall expire immediately following PubCo's 2024 annual meeting of stockholders at which directors are elected. The initial term of the Class III directors shall expire immediately following PubCo's 2025 annual meeting at which directors are elected.

(b) Engaged Capital Investors Representation. For so long as the Engaged Capital Investors and their Permitted Transferees Beneficially Own Economic Interests representing the percentage of the Economic Interests held by the Engaged Capital Investors immediately after the Closing shown below (or the percentage of Voting Securities shown below, if relevant), PubCo shall take all Necessary Action to include in the slate of nominees recommended by the Board and/or the applicable committee for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected, subject to Section 3.1(f) below, that number of individuals designated by Engaged Capital (acting on behalf of the Engaged Capital Investors) that, if elected, will result in the Engaged Capital Investors having the number of directors serving on the Board that is shown in the column labeled "Number of Engaged Capital Directors" below; provided, that after the number of Engaged Capital Directors is reduced because the percentage Beneficially Owned of such Economic Interests is reduced, the Engaged Capital Investors and their Permitted Transferees cannot subsequently increase the number of Engaged Capital Directors entitled to be designated as a result of their acquisition of Beneficial Ownership of additional Economic Interests (in PubCo and the Operating Company, without duplication); provided, further, that, at any time, at least one Engaged Capital Director shall be a veteran of the U.S. military and at least one Engaged Capital Director shall meet the independence requirements of the Exchange Act and the applicable stock exchange regulations.

Economic Interests Beneficially Owned by the Engaged Capital Investors (and their Permitted Transferees) as a Percentage of the Economic Interests Held by the Engaged Capital Investors immediately after the Closing

50% or greater	2
33% or greater, but less than 50%	1
Less than 33%	0

Number of Engaged Capital Directors

(c) Founder Representation. For so long as the Founder and its Permitted Transferees Beneficially Own Economic Interests representing at least the percentage, shown below, of the Economic Interests Beneficially Owned by the Founder immediately after the Closing shown below, PubCo shall take all Necessary Action to include in the slate of nominees recommended by the Board and/or the applicable committee for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected, subject to Section 3.1(f) below, that number of individuals designated by the Founder that, if elected, will result in the Founder having the number of directors serving on the Board that is shown below; provided, that after the number of Founder Directors is reduced because the percentage Beneficially Owned of such Economic Interests is reduced, the Founder and its Permitted Transferees cannot subsequently increase the number of Founder Directors entitled to be designated as a result of its acquisition of Beneficial Ownership of additional Economic Interests (in PubCo and the Operating Company, without duplication); provided, further, that, at any time, the Founder Directors (except the Founder) shall meet the independence requirements of the Exchange Act and the applicable stock exchange regulations.

Economic Interests Beneficially Owned by the Founder (and its Permitted Transferees) as a Percentage of the Economic Interests Beneficially Owned by the Founder immediately after the Closing

35% or greater	2 <u>plus</u> the Founder
25% or greater, but less than 35%	2 (including the Founder)
15% or greater, but less than 25%	1 (including the Founder)
Less than 15%	0

Number of Founder Directors

(d) Decrease in Directors. Upon any decrease in the number of directors that the Engaged Capital Investors or the Founder, as applicable, is entitled to designate for nomination to the Board pursuant to Section 3.1(b), Section 3.1(c), Engaged Capital (acting on behalf of the Engaged Capital Investors) or the Founder, as applicable, shall take all Necessary Action to cause the appropriate number of Engaged Capital Directors or Founder Directors, as applicable, to offer to tender their resignation promptly, and no later than sixty (60) days prior to the expected date of PubCo's next annual meeting of stockholders, provided, however, that the Board may, in its sole discretion, elect not to accept any such offer of resignation from an Engaged Capital Director or Founder Director, as applicable, and require that such director withdraw such offer of resignation in order to avoid the resulting vacancy. In furtherance and without limitation of the foregoing, the Nominating and Corporate Governance Committee may, in its sole discretion and with the express written consent of such individual, recommend for nomination an Engaged Capital Director or Founder Director that has tendered his or her resignation pursuant to this Section 3.1(d).

(e) Removal; Vacancies. Except as provided in Section 3.1(d), and subject to the Organizational Documents, Engaged Capital (acting on behalf of the Engaged Capital Investors) and the Founder, as applicable, shall have the exclusive right to (i) remove their nominees from the Board, and PubCo shall take all Necessary Action to cause the removal of any such nominee at the request of the applicable Party and (ii) designate directors for election to the Board to fill vacancies existing on the date hereof or created by reason of death, incapacity, removal or resignation of its nominees to the Board, and PubCo, the Sponsor, the Engaged Capital Investors, the Founder and the Legacy Equityholders shall take all Necessary Action to cause any such vacancies created pursuant to clause (i) or (ii) above to be filled by replacement directors designated by the applicable Party as promptly as practicable after such designation (and in any event prior to the next meeting or action of the Board or applicable committee). Notwithstanding anything to the contrary contained in this Section 3.1(e), no Party shall have the right to designate a replacement director, and PubCo shall not be required to take any action to cause any vacancy to be filled by any such designee, to the extent that election or appointment of such designee to the Board would result in a number of directors nominated by such Party in excess of the number of directors that such Party is then entitled to nominate for membership on the Board pursuant to this Agreement.

(f) Nominee Background. Any nominee designated by Engaged Capital (on behalf of the Engaged Capital Investors) or the Founder pursuant to Section 3.1(b), Section 3.1(c) and Section 3.1(e), as applicable, will be subject to PubCo's customary due diligence process, including its review of a completed questionnaire and a background check. Based on the foregoing, PubCo may reasonably object to any nominee (i) provided it does so in good faith and (ii) solely to the extent such objection is based upon any of the following: (1) such nominee was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses); (2) such nominee was the subject of any order, judgment, or decree not subsequently reversed, suspended or vacated of any court of competent jurisdiction, permanently or temporarily enjoining such proposed director from, or otherwise limiting, the following activities: (A) engaging in any type of business practice, or (B) engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of federal or state securities laws; (3) such nominee was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in clause (2)(B), or to be associated with persons engaged in such activity; (4) such nominee was found by a court of competent jurisdiction in a civil action or by the SEC to have violated any federal or state securities law, and the judgment in such civil action or finding by the SEC has not been subsequently reversed, suspended or vacated; or (5) such nominee was the subject of, or a party to any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to a violation of any federal or state securities laws or regulations. In the event the Board reasonably finds the nominee to be unsuitable based upon one or more of the foregoing clauses (1) through (5) and reasonably objects to the identified director, Engaged Capital (acting on behalf of the Engaged Capital Investors) or the Founder, as applicable, shall be entitled to propose a different nominee to the Board within thirty (30) days of PubCo's notice to such person of its objection to the nominee and such replacement nominee shall be subject to the review process outlined above.

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(g) Committees. In accordance with PubCo's Organizational Documents, (i) the Board shall establish and maintain committees of the Board for (x) Audit, (y) Compensation and (z) Nominating and Corporate Governance, and (ii) the Board may from time to time by resolution establish and maintain other committees of the Board. For so long as the Founder is on the Board, the Founder shall chair the Nominating and Corporate Governance Committee, subject to applicable Laws and applicable stock exchange regulations, and subject to requisite independence requirements applicable to such committee.

(h) Reimbursement of Expenses. PubCo shall reimburse the directors for all reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of the Board and any committees thereof, including travel, lodging and meal expenses.

(i) Indemnification. For so long as the Founder, any Engaged Capital Director or Founder Director serves as a director of PubCo, (i) PubCo shall provide the Founder, such Engaged Capital Director or Founder Director with the same expense reimbursement, benefits, indemnity, exculpation and other arrangements provided to the other directors of PubCo and (ii) PubCo shall not amend, alter or repeal any right to indemnification or exculpation covering or benefiting the Founder, any Engaged Capital Director or Founder Director nominated pursuant to this Agreement as and to the extent consistent with applicable Law, the last sentence of Section 10.1(G) of the Certificate of Incorporation, Article VIII of the Certificate of Incorporation, Article IV of the Bylaws and any indemnification agreements with directors (whether such right is contained in the Organizational Documents or another document) (except to the extent such amendment or alteration permits PubCo to provide broader indemnification or exculpation rights on a retroactive basis than permitted prior thereto).

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Section 3.2 Voting Agreement and Proxy.

(a) Engaged Capital Directors and Founder Directors. From the Effective Date until, and including, February 9, 2027 (such period, the "Voting Period"), each of the Equityholders, severally and not jointly, agrees with PubCo to cause all Equity Securities such Person has the right to vote as of the applicable record date, to be present in person or by proxy for quorum purposes and to be voted at any meeting of stockholders or at any adjournments or postponements thereof, and to consent in connection with any action by written consent in lieu of a meeting, in favor of each director recommended by the Board for election at any such meeting or through any such written consent. Each of the Equityholders, severally and not jointly, agree with PubCo not to take action to remove any director (other than a director nominated by such person) from office unless such removal is for cause or if the applicable Party nominating such director is no longer entitled to nominate such director pursuant to Section 3.1.

(b) Agreement to Vote on Election of Directors. During the Voting Period and to the extent he or she is entitled under PubCo's Organizational Documents to vote on such matter, each of the Voting Parties, severally and not jointly, agrees to vote all securities of PubCo that may vote in the election of PubCo's directors on the Board that such Voting Party owns or controls from time to time (hereinafter referred to as the "Voting Shares") in accordance with the provisions of Sections 3.2(c) and (d), whether at an annual or special meeting of stockholders or any class or series of stockholders or by written consent.

(c) Election of Board of Directors – Proxy. During the Voting Period, and subject to PubCo's Organizational Documents, each Voting Party agrees, severally and not jointly, to vote (or cause to be voted), or to act by written consent in respect of, all Voting Shares in the same manner ("for," "against," "withheld," "abstain" or otherwise) (i) as directed by the Founder (to give effect to the Voting Parties' intention to provide the Founder with an irrevocable proxy during the Voting Period) or (ii) (A) to the extent the treatment of securities of PubCo as Voting Shares would result, from time to time, in the Founder having a reporting acquisition in excess of two percent of the class within the meaning of Section 13(d)(6)(B) of the Exchange Act and the rules and guidance relating thereto, or (B) solely in the event that no such direction is provided by the Founder after inquiry by such Voting Party, as recommended by the Board, in each case with respect to:

(i) the election to the Board at any meeting of stockholders at which directors are to be elected (other than the Engaged Capital Directors subject to Section 3.1(b));

(ii) the appointment to fill any vacancy created by the failure of any director to complete a term on the Board (other than the Engaged Capital Directors subject to Section 3.1(b)); and

(iii) any removal of directors from the Board (other than the Engaged Capital Directors subject to Section 3.1(e));

in each case, so long as the applicable nominee subject to election or appointment satisfies PubCo's normal procedures regarding suitability of director nominees.

(d) Other Obligations. The obligations of the Voting Party pursuant to this Section 3.2(c) shall include any stockholder vote to amend the Organizational Documents of PubCo as required to effect the intent of Section 3.2(c). Each of the Voting Parties and PubCo agree not to take any actions that would materially and adversely affect the provisions of this Section 3.2(c) and the intention of the parties with respect to the composition of the Board as stated herein.

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(e) Successors in Interest of the Voting Parties and PubCo. The provisions of this Section 3.2 shall be binding upon the successors in interest of any Voting Party with respect to any of the Voting Party's Voting Shares or any voting rights therein, unless (i) such Voting Shares are sold in the public markets or in a public offering (whether or not such offering is underwritten) (a "Sale") or (ii) such Voting Shares are transferred as a bona fide charitable gift to an unrelated third party non-government or non-profit organizations (a "Gift"). Each Voting Party shall not, and PubCo shall not, permit the transfer of any Voting Party's Voting Shares (except for Sales and Gifts), unless and until the person to whom such securities are to be transferred shall have executed a written agreement pursuant to which such person becomes a party to this Agreement with respect to Section 3.2 and agrees to be bound by all the provisions of Section 3.2 as if such person was a Voting Party hereunder. For the avoidance of doubt, (i) no such additional written agreement shall be required if Voting Shares that are transferred remain under the control of the relevant Voting Party, and (ii) the provisions of this Section 3.2(e) shall not be construed as restricting or otherwise prohibiting the Transfer of a Voting Party's Voting Shares in the open market.

(f) Irrevocable Proxy and Power of Attorney. The Voting Party hereby grants a power of attorney to each Chief Executive Officer of PubCo, the Chief Financial Officer of PubCo, and the Secretary of PubCo, or any of them from time to time, or their designees, as the Voting Party's true and lawful proxy and attorney, with the power to act alone and with full power of substitution (each a "Proxy Holder"), to vote (or consent pursuant to an action by written consent of the stockholders, if applicable) with respect to the matters set forth under Section 3.2(c) hereof, and hereby authorizes each Proxy Holder to represent and vote, if and only if the Voting Party (i) fails to vote, or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Section 3.2(c), all of such party's Voting Shares in favor of election of persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Section 3.2(c) or to take any action necessary to effect this Section 3.2(c), respectively. Each of the proxy and power of attorney granted pursuant to the immediately preceding sentence is given in consideration of the agreements and covenants of PubCo and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable until the expiration of the Voting Period. The Voting Party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Voting Shares and shall not hereafter, until the expiration of the Voting Period, purport to grant any other proxy or power of attorney with respect to any of the Voting Shares, deposit any of the Voting Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any Person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Voting Shares, in each case, with respect to any of the matters set forth herein.

(g) Manner of Voting. The voting of Voting Shares pursuant to this Section 3.2 may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law.

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(h) Absence of Engaged Capital Directors. In the event that the Board no longer has a member that is an Engaged Capital Director and the Engaged Capital Investors no longer have the right to cause the election of any Engaged Capital Director to the Board in accordance with the terms of this Article III, then, notwithstanding anything to the contrary in this Section 3.2, Founder will not have the right under Section 3.2(c) to direct any Voting Party to vote for any person to fill the vacancy caused by the departure of such Engaged Capital Director or to cause such vacancy to be filled.

(i) Notification. Each Voting Party, for so long as it is a party to this Agreement, will, as promptly as practicable, and in any event within one Business Day, notify the Founder of any change in its Beneficial Ownership of Equity Securities of PubCo. Each Voting Party will individually make and be solely responsible for any filings or notifications as may be necessary under applicable law in connection with the entry into this Agreement and the performance of its obligations hereunder.

Section 3.3 Supermajority Board Approval. For so long as the Engaged Capital Investors are entitled to director representation pursuant to Section 3.1 hereof, prior to taking any of the following actions, PubCo shall be required to obtain the approval by an affirmative vote or consent of two-thirds of the directors then in office:

- (a) approve a transaction resulting in a Change of Control (as defined in the LLC Agreement);
- (b) alter, amend, repeal or rescind, in whole or in part, any provision of the Certificate of Incorporation or the Bylaws of PubCo;
- (c) nominate, elect, remove or otherwise change the executive officers (within the meaning of Rule 3b-7 under the Exchange Act) and Chief Executive Officer of PubCo;
- (d) pursue business activities of a type that are inconsistent with the purpose of PubCo and its subsidiaries taken as a whole as set forth in Article III of the Certificate of Incorporation and deviate materially from the type of business activities engaged in by PubCo and its subsidiaries immediately prior to the date on which approval by an affirmative vote of two-thirds of the directors then in office is obtained for any action requiring approval pursuant to this Section 3.3 (it being understood the merely expanding or contracting the scope of activities engaged in by PubCo and its subsidiaries shall not trigger application of this Section 3.3);
- (e) decrease the aggregate amount expended by PubCo and its subsidiaries in respect of charitable activities (whether or not deductible for tax purposes) in any fiscal year of PubCo by more than 10% of the aggregate amount expended by PubCo and its subsidiaries in respect of charitable activities in the immediately preceding fiscal year; or
- (f) change in any material respect the overall look and feel of the marketing materials and imagery used to market and promote PubCo and its products (it being understood that changes of individual advertisements, marketing images, promotional campaigns, product labeling and packaging and website content that occurs from time to time in the ordinary course and is consistent with the overall look and feel of the marketing materials and imagery used to market and promote PubCo and its products prior to the date on which approval by an affirmative vote of two-thirds of the directors then in office is obtained for any action requiring approval pursuant to this Section 3.3 shall not trigger application of this Section 3.3).

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ARTICLE IV REGISTRATION RIGHTS

Section 4.1 Shelf Registration.

(a) Filing. PubCo shall file, within thirty (30) Business Days of the Closing Date, a Registration Statement for a Shelf Registration on Form S-1 (the "Form S-1 Shelf" and, together with any Registration Statement for a Shelf Registration on Form S-3 (the "Form S-3 Shelf") and any Subsequent Shelf Registration, the "Shelf") covering the resale of all Registrable Securities (including, for the avoidance of doubt, Registrable Securities of any distributees or contributors pursuant to Section 4.16 hereof). PubCo shall use its commercially reasonable efforts to cause the Form S-1 Shelf to become effective under the Securities Act as soon as practicable after the initial filing thereof. The Form S-1 Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Special Holder. PubCo shall maintain the Form S-1 Shelf in accordance with the terms hereof, and shall prepare and file with the SEC such

amendments, including post-effective amendments, and supplements as may be necessary to keep such Form S-1 Shelf continuously effective, available for use and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. PubCo shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration) to a Form S-3 Shelf as soon as practicable after PubCo is eligible to use Form S-3.

(b) Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while there are any Registrable Securities, PubCo shall use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional Registration Statement as a Shelf Registration (a “Subsequent Shelf Registration”) registering the resale of all outstanding Registrable Securities from time to time, and pursuant to any method or combination of methods legally available to, and requested by, any Special Holder. If a Subsequent Shelf Registration is filed, PubCo shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration shall be an Automatic Shelf Registration Statement if PubCo is then a Well-Known Seasoned Issuer at the time of filing) and (ii) keep such Subsequent Shelf Registration continuously effective, available for use and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration shall be on Form S-3 to the extent that PubCo is eligible to use such form. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form. In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, PubCo, upon request of a Holder, shall promptly use its commercially reasonable efforts to cause the resale of such Registrable Securities to be covered by either, at PubCo’s option, the Shelf (including by means of a post-effective amendment) or a Subsequent Shelf Registration and cause the same to become effective as soon as practicable after such filing and such Shelf or Subsequent Shelf Registration shall be subject to the terms hereof.

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(c) Requests for Underwritten Shelf Takedowns. At any time and from time to time after the relevant Shelf has been declared effective by the SEC, the Special Holders may request (each, a “Shelf Takedown Request”) to sell all or any portion of their Registrable Securities in an underwritten offering that is registered pursuant to the Shelf (each, an “Underwritten Shelf Takedown”); provided that PubCo shall only be obligated to effect an Underwritten Shelf Takedown if such offering shall include securities with a total offering price (exclusive of piggyback securities and before deduction of underwriting discounts) reasonably expected to exceed, in the aggregate, \$30.0 million (the “Minimum Takedown Threshold”). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to PubCo, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown and the expected price range of such Underwritten Shelf Takedown, provided that each Holder agrees that the fact that such a notice has been delivered shall constitute Confidential Information. The Special Holders that requested such Underwritten Shelf Takedown (the “Demanding Holders”) shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally or regionally recognized investment banks), and to agree to the pricing and other terms of such offering; provided that such selection shall be subject to the consent of PubCo, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary herein, in no event shall any Special Holder or any Transferee thereof request an Underwritten Shelf Takedown during the Lock-Up Period. There shall be no limit to the number of Underwritten Shelf Takedowns that may be requested by any Special Holder, subject to the proviso in the first sentence of this Section 4.1(c) and provided, further, that, PubCo shall not be obligated to effect more than one (1) Underwritten Shelf Takedown in any six-month period.

(d) Shelf Takedown Participation. Except in the case of a requested Underwritten Shelf Takedown in the form of a Block Trade, promptly upon receipt of a Shelf Takedown Request (but in no event more than two (2) Business Days thereafter) for any Underwritten Shelf Takedown, PubCo shall deliver a notice (a “Shelf Takedown Notice”) to each other Special Holder with Registrable Securities covered by the Shelf (each, a “Potential Takedown Participant”). The Shelf Takedown Notice shall offer each such Potential Takedown Participant the opportunity to include in any Underwritten Shelf Takedown such number of Registrable Securities as each such Potential Takedown Participant may request in writing (such requesting Potential Takedown Participant, a “Takedown Participant”). PubCo shall include in the Underwritten Shelf Takedown all such Registrable Securities with respect to which PubCo has received written requests for inclusion therein within three (3) Business Days after the date that the Shelf Takedown Notice has been delivered. Any Potential Takedown Participant’s request to participate in an Underwritten Shelf Takedown shall be binding on the Potential Takedown Participant; provided that each such Potential Takedown Participant that elects to participate may condition its participation on the Underwritten Shelf Takedown being completed within ten (10) Business Days of its acceptance at a price per share (after giving effect to any underwriters’ discounts or commissions) to such Potential Takedown Participant of not less than a percentage of the closing price for the shares on their principal trading market on the Business Day immediately prior to such Potential Takedown Participant’s election to participate, as specified in such Potential Takedown Participant’s request to participate in such Underwritten Shelf Takedown (the “Participation Conditions”). Notwithstanding the delivery of any Shelf Takedown Notice, but subject to the Participation Conditions (to the extent applicable), all determinations as to whether to complete any Underwritten Shelf Takedown and as to the timing, manner, price and other terms of any Underwritten Shelf Takedown contemplated by this Section 4.1(d) shall be determined by the Demanding Holder.

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(e) Reduction of Underwritten Shelf Takedowns. If the managing Underwriter or Underwriters in an Underwritten Shelf Takedown, in good faith, advise PubCo, the Demanding Holders and the Takedown Participants (if any) in writing that the dollar amount or number of Registrable Securities that the Demanding Holders and the Takedown Participants (if any) desire to sell, taken together with all other shares of Common Stock or other Equity Securities that PubCo desires to sell and all other Common Stock or other Equity Securities, if any, that have been requested to be sold in such Underwritten Offering pursuant to separate written contractual piggyback registration rights held by any other stockholders, exceeds the maximum dollar amount or maximum number of Equity Securities that can be sold in the Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the “Maximum Number of Securities”), then PubCo shall include in such Underwritten Offering, as follows: at all times (i) first, the Registrable Securities of the Demanding Holders and the Takedown Participants (if any) (pro rata based on the respective number of Registrable Securities that each Demanding Holder and Takedown Participant (if any) has requested be included in such Underwritten Shelf Takedown) that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Common Stock or other Equity Securities that PubCo desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the Common Stock or other Equity Securities of other Persons that PubCo is obligated to include in such Underwritten Offering pursuant to separate written contractual arrangements with such Persons and that can be sold without exceeding the Maximum Number of Securities.

(f) Withdrawal. Any of the Demanding Holders initiating an Underwritten Shelf Takedown shall have the right to withdraw from such Underwritten Shelf Takedown for any or no reason whatsoever upon written notification (a “Withdrawal Notice”) to PubCo and the Underwriter or Underwriters (if any) of such Demanding Holder’s intention to withdraw from such Underwritten Shelf Takedown, prior to the public announcement of the Underwritten Shelf Takedown by PubCo; provided that a Special Holder may elect to have PubCo continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied or if the Underwritten Shelf Takedown would be made with respect to all of the Registrable Securities of such Special Holder. Following the receipt of any Withdrawal Notice, PubCo shall promptly forward such Withdrawal Notice to any other Special Holders that had elected to participate in such Underwritten Shelf Takedown. Notwithstanding anything to the contrary contained herein, PubCo shall be responsible for the Registration Expenses incurred in connection with the Underwritten Shelf Takedown prior to delivery of a Withdrawal Notice under this Section 4.1(f).

(g) Long-Form Demands. Upon the expiration of the applicable Lock-Up Period and during such times as no Shelf is effective, each Special Holder may demand that PubCo file a Registration Statement on Form S-1 for the purpose of conducting an Underwritten Offering of any or all of such Special Holder's Registrable Securities. PubCo shall file such Registration Statement within thirty (30) days of receipt of such demand and use its commercially reasonable efforts to cause the same to be declared effective within sixty (60) days of filing. The provisions of Sections 4.1(c)-(f) shall apply to this Section 4.1(g) as if a demand under this Section 4.1(g) were an Underwritten Shelf Takedown, provided that in order to withdraw a demand under this Section 4.1(g), such withdrawal must be received by PubCo prior to PubCo having publicly filed a Registration Statement pursuant to this Section 4.1(g).

(h) SEC Cutback. Notwithstanding the registration obligations set forth in this Section 4.1, in the event that the SEC informs PubCo that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, PubCo agrees to promptly (i) inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Shelf Registration Statement as required by the SEC and/or (ii) withdraw the Shelf Registration Statement and file a new registration statement (a "New Registration Statement") on Form S-3, or if Form S-3 is not then available to PubCo for such registration statement, on such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment or New Registration Statement, PubCo shall use its commercially reasonable efforts to advocate with the SEC for the registration of all of the Registrable Securities in accordance with any publicly available written or oral guidance, comments, requirements or requests of the SEC staff (the "SEC Guidance"). Notwithstanding any other provision of this Agreement, if any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that PubCo used diligent efforts to advocate with the SEC for the registration of all or a greater number of Registrable Securities), unless otherwise directed in writing by a Holder as to further limit its Registrable Securities to be included on the Registration Statement, the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis based on the total number of Registrable Securities held by the Holders, subject to a determination by the SEC that certain Holders must be reduced first based on the number of Registrable Securities held by such Holders. In the event PubCo amends the Shelf Registration Statement or files a New Registration Statement, as the case may be, under clauses (i) or (ii) above, PubCo will use its commercially reasonable efforts to file with the SEC, as promptly as allowed by the SEC or SEC Guidance provided to PubCo or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Shelf Registration Statement, as amended, or the New Registration Statement.

(i) Block Trades. If PubCo shall receive a request from a Special Holder of Registrable Securities with an estimated market value of at least \$15,000,000 that PubCo effect the sale of all or any portion of such Registrable Securities in an Underwritten Shelf Takedown in the form of a Block Trade, then PubCo shall, as expeditiously as possible, cooperate and effect the offering in such Block Trade of the Registrable Securities for which such requesting Special Holder has requested such offering, without giving any effect to any required notice periods or delivery of notices to any other Holders.

Section 4.2 Piggyback Registration.

(a) Piggyback Rights. If PubCo proposes to conduct a registered offering of, or if PubCo proposes to file a Registration Statement under the Securities Act with respect to an offering of Equity Securities of PubCo, or securities or other obligations exercisable or exchangeable for, or convertible into Equity Securities of PubCo, for its own account or for the account of stockholders of PubCo, other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to PubCo's existing stockholders, (iii) for an offering of debt that is convertible into equity securities of PubCo, (iv) for a dividend reinvestment plan or (v) for any Underwritten Shelf Takedown, then PubCo shall give written notice of such proposed offering to all Special Holders as soon as practicable but not less than three (3) Business Days before the anticipated filing date of such Registration Statement or, in the case of an underwritten offering pursuant to a Shelf Registration, the launch date of such offering, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any and if known, in such offering, and (B) offer to all of the Special Holders the opportunity to include in such registered offering such number of Registrable Securities as such Special Holders may request in writing within five (5) Business Days after receipt of such written notice (such registered offering, a "Piggyback Registration"); provided that each Special Holder agrees with PubCo that the fact that such a notice has been delivered shall constitute Confidential Information subject to Section 3.3. PubCo shall cause such Registrable Securities to be included in such Piggyback Registration and shall use its reasonable best efforts to cause the managing Underwriter or Underwriters of a proposed Underwritten Offering to permit the Registrable Securities requested by the Special Holders pursuant to this Section 4.2(a) to be included in a Piggyback Registration on the same terms and conditions as any similar securities of PubCo included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. The inclusion of any Special Holder's Registrable Securities in a Piggyback Registration shall be subject to such Special Holder's agreement to abide by the terms of Section 4.6 below.

(b) Reduction of Piggyback Registration. If the managing Underwriter or Underwriters in an Underwritten Offering that is to be a Piggyback Registration (other than an Underwritten Shelf Takedown), in good faith, advises PubCo and the Special Holders, in each case, participating in the Piggyback Registration in writing that the dollar amount or number of shares of Common Stock or other Equity Securities that PubCo desires to sell, taken together with (i) the Common Stock or other Equity Securities, if any, as to which Registration or a registered offering has been demanded pursuant to separate written contractual arrangements with Persons other than the Special Holders hereunder and (ii) the Common Stock or other Equity Securities, if any, as to which registration has been requested pursuant to this Section 4.2, exceeds the Maximum Number of Securities, then:

(i) If the Registration is initiated and undertaken for PubCo's account, PubCo shall include in any such Registration (A) first, the Common Stock or other Equity Securities that PubCo desires to sell, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Special Holders exercising their rights to register their Registrable Securities pursuant to Section 4.2(a) (pro rata based on the respective number of Registrable Securities that each Special Holder has requested be included in such Registration), which can be sold without exceeding the Maximum Number of Securities; and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the Common Stock or other Equity Securities, if any, as to which Registration has been requested pursuant to written contractual piggyback registration rights of other stockholders of PubCo, which can be sold without exceeding the Maximum Number of Securities; or

(ii) If the Registration is pursuant to a request by Persons other than the Special Holders, then PubCo shall include in any such Registration (A) first, the Common Stock or other Equity Securities, if any, of such requesting Persons, other than the Special Holders, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Special Holders exercising their rights to register their Registrable Securities pursuant to Section 4.2(a) (pro rata based on the respective number of Registrable Securities that each Special Holder has requested be included in such Registration) which can be sold without exceeding the Maximum Number of Securities; (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the Common Stock or other Equity Securities that PubCo desires to sell, which

can be sold without exceeding the Maximum Number of Securities; and (D) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A), (B) and (C), the Common Stock or other Equity Securities, if any, for the account of other Persons that PubCo is obligated to register pursuant to separate written contractual piggyback registration rights of such Persons, which can be sold without exceeding the Maximum Number of Securities.

(c) Piggyback Registration Withdrawal. Any Special Holder shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to PubCo and the Underwriter or Underwriters (if any) of such Special Holder's intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the SEC with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable "red herring" prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. PubCo (whether on its own good faith determination or as the result of a request for withdrawal by Persons pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the SEC in connection with a Piggyback Registration (which, in no circumstance, shall include the Shelf) at any time prior to the effectiveness of such Registration Statement. Notwithstanding anything to the contrary set forth herein, PubCo shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 4.2(c).

Section 4.3 Restriction on Transfer. In connection with any Underwritten Offering of Equity Securities of PubCo, (i) each Holder that holds more than 1.0% of the issued and outstanding Common Stock (after giving effect to the exchange of all outstanding Company Units), agrees that it shall not Transfer any Common Stock (other than those included in such offering pursuant to this Agreement), without the prior written consent of PubCo, during the seven (7) days prior to and the 90-day period beginning on the date of pricing of such offering, except in the event the Underwriter managing the offering otherwise agrees by written consent, and further agrees to execute a customary lock-up agreement in favor of the Underwriter or Underwriters to such effect (in each case on substantially the same terms and conditions as all such Holders) and (ii) PubCo will cause each of its directors and officers to execute a lock-up on terms at least as restrictive as that contemplated by the preceding clause (i). Notwithstanding the foregoing, a Holder shall not be subject to this Section 4.3 with respect to an Underwritten Offering unless each Holder that holds at least 1.0% of the issued and outstanding Common Stock (after giving effect to the exchange of all outstanding Company Units) and each of PubCo's directors and officers have executed a lock-up on terms at least as restrictive with respect to such Underwritten Offering as requested of the Holders.

Section 4.4 General Procedures. In connection with effecting any Registration and/or Shelf Takedown, subject to applicable Law and any regulations promulgated by any securities exchange on which PubCo's Equity Securities are then listed, each as interpreted by PubCo with the advice of its counsel, PubCo shall use its commercially reasonable efforts to effect such Registration to permit the sale of the Registrable Securities included in such Registration in accordance with the intended plan of distribution thereof, and pursuant thereto PubCo shall, as expeditiously as possible:

(a) prepare and file with the SEC as soon as practicable a Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective until all Registrable Securities covered by such Registration Statement have been sold;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Special Holder or as may be required by the rules, regulations or instructions applicable to the registration form used by PubCo or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus;

(c) prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto, furnish without charge to the Underwriters, if any, and the Special Holders that are Holders of Registrable Securities included in such Registration, and such Special Holders' respective legal counsel, if any, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters or the Special Holders that are Holders of Registrable Securities included in such Registration or the respective legal counsel for any such Special Holders, if any, may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Special Holders;

(d) prior to any public offering of Registrable Securities, use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" Laws of such jurisdictions in the United States as the Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence satisfactory to such Holders that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other Governmental Entities as may be necessary by virtue of the business and operations of PubCo and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that PubCo shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

(e) cause all such Registrable Securities to be listed on each securities exchange or automated quotation system on which similar securities issued by PubCo are then listed;

(f) provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

(g) advise each Holder of Registrable Securities covered by a Registration Statement, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

(h) advise each Holder of Registrable Securities covered by a Registration Statement promptly after PubCo receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed;

(i) at least three (3) calendar days prior to the filing of any Registration Statement or Prospectus or any amendment or supplement to such Registration Statement or Prospectus furnish a draft copy thereof to each Special Holder that is a Holder of Registrable Securities included in such Registration Statement, or its counsel, if any (excluding any exhibits thereto and any filing made under the Exchange Act that is to be incorporated by reference therein);

(j) notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 4.7 hereof;

(k) permit Representatives of the Special Holders, the Underwriters, if any, and any attorney, consultant or accountant retained by such Special Holders or Underwriter to participate, at each such Person's own expense except to the extent such expenses constitute Registration Expenses, in the preparation of the Registration Statement, and cause PubCo's officers, directors and employees to supply all information reasonably requested by any such Representative, Underwriter, attorney, consultant or accountant in connection with the Registration; provided, however, that such Persons agree to confidentiality arrangements in form and substance reasonably satisfactory to PubCo, prior to the release or disclosure of any such information;

(l) obtain a "cold comfort" letter, and a bring-down thereof, from PubCo's independent registered public accountants in the event of an Underwritten Offering which the participating Special Holders may rely on, in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the managing Underwriter may reasonably request, and reasonably satisfactory to the participating Special Holders;

(m) on the date the Registrable Securities are delivered for sale pursuant to such Registration, if requested by the Underwriter(s), if any, obtain an opinion and negative assurance letter, dated such date, of counsel representing PubCo for the purposes of such Registration, addressed to the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion and negative assurance letter are being given as are customarily included in such opinions and negative assurance letters;

(n) in the event of any Underwritten Offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing Underwriter of such offering;

(o) make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of PubCo's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule promulgated thereafter by the SEC);

(p) if an Underwritten Offering involves Registrable Securities with a total offering price (including piggyback securities and before deduction of underwriting discounts) reasonably expected to exceed, in the aggregate, \$50.0 million, use its commercially reasonable efforts to make available senior executives of PubCo to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

(q) otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested, by the Special Holders, in connection with such Registration.

Section 4.5 Registration Expenses. The Registration Expenses of all Registrations shall be borne by PubCo. It is acknowledged by the Holders that the Holders selling any Registrable Securities in an offering shall bear all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees, Underwriter marketing costs and, other than as set forth in the definition of "Registration Expenses," all reasonable fees and expenses of any legal counsel representing such Holders, in each case pro rata based on the number of Registrable Securities that such Holders have sold in such Registration.

Section 4.6 Requirements for Participating in Underwritten Offerings. Notwithstanding anything to the contrary contained herein, if any Holder does not provide PubCo with its requested Holder Information, PubCo may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if PubCo determines, based on the advice of counsel, that such information is necessary to effect the registration and such Holder continues thereafter to withhold such information. No Person may participate in any Underwritten Offering of Equity Securities of PubCo pursuant to a Registration hereunder unless such Person (a) agrees to sell such Person's Registrable Securities on the basis provided in any underwriting and other arrangements approved by PubCo in the case of an Underwritten Offering initiated by PubCo, and approved by the Demanding Holders in the case of an Underwritten Offering initiated by the Demanding Holders and (b) completes and executes all customary questionnaires, custody agreements, powers of attorney, indemnities, lock-up agreements, underwriting agreements and other customary documents as may be reasonably required under the terms of such underwriting arrangements. Subject to the minimum thresholds set forth in Section 4.1(c) and Section 4.4(p) of this Agreement, the exclusion of a Holder's Registrable Securities as a result of this Section 4.6 shall not affect the registration of the other Registrable Securities to be included in such Registration.

Section 4.7 Suspension of Sales; Adverse Disclosure. Upon receipt of written notice from PubCo that a Registration Statement or Prospectus contains a Misstatement, each of the Holders shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement (and PubCo hereby covenants to prepare and file such supplement or amendment as soon as practicable after giving such notice), or until it is advised in writing by PubCo that the use of the Prospectus may be resumed. If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would require PubCo to make an Adverse Disclosure or would require the inclusion in such Registration Statement of financial statements that are unavailable to PubCo for reasons beyond PubCo's control, PubCo may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event more than one hundred twenty (120) days in any 12-month period, determined in good faith by PubCo to be necessary for such purpose. In the event PubCo exercises its rights under the preceding sentence, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to such Registration in connection with any sale or offer to sell Registrable Securities. PubCo shall immediately notify the Holders of the expiration of any period during which it exercised its rights under this Section 4.7.

Section 4.8 Reporting Obligations. As long as any Holder shall own Registrable Securities, PubCo, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by PubCo after the Effective Date pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided, that any documents publicly filed or furnished with the SEC pursuant to the Electronic Data Gathering, Analysis and Retrieval System shall be deemed to have been furnished to the Holders pursuant to this Section 4.8.

Section 4.9 Other Obligations. (i) In connection with a Transfer of Registrable Securities exempt from Section 5 of the Securities Act or through any broker-dealer transactions described in the plan of distribution set forth within the Prospectus and pursuant to the Registration Statement of which such Prospectus forms a part and (ii) at any time following the Registrable Securities being eligible for resale under Rule 144 promulgated under the Securities Act without restriction, upon a Holder's request, subject to applicable Law, as interpreted by PubCo with the advice of counsel, and the receipt of any customary documentation required from the applicable Holders in connection therewith (including a representation that a Holder will only sell the Registrable Securities in accordance with such Registration Statement or Rule 144 promulgated under the

Securities Act, as applicable), PubCo shall (a) promptly instruct its transfer agent to remove any restrictive legends applicable to the Registrable Securities being Transferred and (b) cause its legal counsel (which may be internal counsel to PubCo) to deliver the necessary legal opinions, if any, to the transfer agent in connection with the instruction under clause (a). In addition, PubCo shall cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holders, in connection with the aforementioned Transfers; provided, however, that PubCo shall have no obligation to participate in any “road shows” or assist with the preparation of any offering memoranda or related documentation with respect to any Transfer of Registrable Securities in any transaction that does not constitute an Underwritten Offering. PubCo agrees to indemnify the transfer agent for the Registrable Securities as reasonably necessary and requested by the transfer agent to avoid a Holder of Registrable Securities having to provide a stock power with medallion guarantee in connection with a Transfer of Registrable Securities.

Section 4.10 Indemnification and Contribution.

(a) PubCo agrees to indemnify, to the extent permitted by Law, each Holder of Registrable Securities, its officers, managers, directors and Representatives and each Person who controls such Holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses (including attorneys’ fees) caused by any untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information furnished in writing to PubCo by or on behalf of such Holder expressly for use therein. PubCo shall indemnify the Underwriters, their officers and directors and each Person who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing sentence with respect to the indemnification of each Holder.

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(b) In connection with any Registration Statement in which a Holder of Registrable Securities is participating, such Holder shall furnish to PubCo in writing such information and affidavits as PubCo reasonably requests for use in connection with any such Registration Statement or Prospectus (the “Holder Information”) and, to the extent permitted by Law, such Holder shall indemnify PubCo, its directors and officers and each Person who controls PubCo (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses (including without limitation reasonable attorneys’ fees) resulting from any untrue statement of material fact contained in the Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by or on behalf of such Holder expressly for use therein; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders of Registrable Securities, and the liability of each such Holder of Registrable Securities shall be in proportion to and limited to the net proceeds actually received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders of Registrable Securities shall indemnify the Underwriters, their officers, directors and each Person who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing sentence with respect to indemnification of PubCo.

(c) Any Person entitled to indemnification under this Section 4.10 shall (i) give prompt written notice to the indemnifying party of any claim with respect to which such Person seeks indemnification (provided that the failure to give prompt notice shall not impair any Person’s right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(d) The indemnification provided hereunder shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, manager, director, Representative or controlling Person of such indemnified party and shall survive the Transfer of securities. PubCo and each Holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution (pursuant to Section 4.10(e) below) to such party in the event PubCo’s or such Holder’s indemnification is unavailable for any reason.

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(e) If the indemnification provided in this Section 4.10 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such indemnifying party or indemnified party, and the indemnifying party’s and indemnified party’s relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of any Holder under this Section 4.10(e) shall be limited to the amount of the net proceeds actually received by such Holder in such offering giving rise to such liability. The amount paid or payable by a Party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 4.10(a), 4.10(b) and 4.10(c), any legal or other fees, charges or expenses reasonably incurred by such Party in connection with any investigation or proceeding. The Parties agree that it would not be just and equitable if contribution pursuant to this Section 4.10(e) were determined by pro rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 4.10(e). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 4.10(e) from any Person who was not guilty of such fraudulent misrepresentation.

(f) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in any underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provision in the underwriting agreement shall control.

Section 4.11 Other Registration Rights. Other than the registration rights set forth in the Subscription Agreements and the Transaction Support Agreements (each as defined in the BCA), PubCo represents and warrants that no Person, other than a Holder of Registrable Securities pursuant hereto, has any right to require PubCo to register any securities of PubCo for sale or to include such securities of PubCo in any Registration Statement filed by PubCo for the sale of securities for its own account or for the account of any other Person. Further, each of PubCo, the Sponsor and the Engaged Capital Investors represents and warrants that this Agreement supersedes any other registration rights agreement or other similar agreement, other than the registration rights set forth in the Forward Purchase Agreement and the Subscription Agreements.

Section 4.12 Rule 144. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act, PubCo covenants that it will (a) make available at all times information necessary to comply with Rule 144, if such Rule is available with respect to resales of the Registrable Securities under the Securities Act, and (b) take such further action as the Holders may reasonably request, all to the extent required from time to time to enable them to sell Registrable Securities without

Section 4.13 Term. Article IV shall terminate with respect to any Holder on the date that such Holder no longer holds any Registrable Securities. The provisions of Section 4.8 and Section 4.10 shall survive any such termination with respect to such Holder.

Section 4.14 Holder Information. Each Holder agrees, if requested in writing by PubCo, to represent to PubCo the total number of Registrable Securities held by such Holder in order for PubCo to make determinations hereunder, including for purposes of Section 4.12 hereof.

Section 4.15 Termination of Original RRA. Upon the Closing, SilverBox, the Sponsor and Engaged Capital terminated the Original RRA, and the Original RRA and all of the respective rights and obligations of the parties thereunder, as and from the Closing, were and are of no further force or effect.

Section 4.16 Distributions.

(a) In the event that the Sponsor or an Engaged Capital Investor, as applicable, (i) distributes its Registrable Securities to its direct equity holders or (ii) contributes its Registrable Securities to a controlled Affiliate, which Affiliate must be a Permitted Transferee, the distributees or contributees, as applicable, shall be treated as “Holders” hereunder (whether or not any such distributees would be a Permitted Transferee); provided, however, that any distributees or contributees, as applicable, holding 10.0% or more of all of the Registrable Securities of the Sponsor or the Engaged Capital Investors, as applicable, immediately following such distribution or contribution shall each be “Special Holder”; provided, further, that (x) such distributees or contributees, taken as a whole, shall not be entitled to rights in excess of those conferred on the Sponsor or the Engaged Capital Investors, as applicable, as if they each remained a single party to this Agreement and (y) such distributees or contributees shall be required, at the time of and as a condition to such distribution or contribution, to become a party to this Agreement.

(b) In the event that an NCH Equityholder (i) distributes its Registrable Securities to its direct equity holders or (ii) contributes its Registrable Securities to a controlled Affiliate, which Affiliate must be a Permitted Transferee, the distributees or contributees, as applicable, shall be treated as “Holders” hereunder (whether or not any such distributees would be a Permitted Transferee); provided, however, that any distributees or contributees, as applicable, holding 10.0% or more of all of the Registrable Securities of the NCH Equityholders immediately following such distribution or contribution shall each be “Special Holder”; provided, further, that (x) such distributees or contributees, taken as a whole, shall not be entitled to rights in excess of those conferred collectively on the NCH Equityholders, as if they remained a single party to this Agreement and (y) such distributees or contributees shall be required, at the time of and as a condition to such distribution or contribution, to become a party to this Agreement.

Section 4.17 Adjustments. If there are any changes in the Common Stock as a result of stock split, stock dividend, combination or reclassification, or through merger, consolidation, recapitalization or other similar event, appropriate adjustment shall be made in the provisions of this Agreement, as may be required, so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Common Stock as so changed.

**ARTICLE V
LOCK-UP**

Section 5.1 Lock-Up.

(a) Other than pursuant to the LLC Agreement, no Equityholder shall Transfer, or make a public announcement of any intention to effect such Transfer, of any Lock-Up Shares (as defined below) Beneficially Owned or otherwise held by such Person during the Lock-Up Period (as defined below); provided, that such prohibition shall not apply to Transfers permitted pursuant to Section 5.2. The “Lock-Up Period” shall be the period commencing on the Closing Date and ending on the date that is six (6) months following the Closing Date. The “Lock-Up Shares” means (i) the Class A Common Stock, Class B Common Stock, Class C Common Stock, Common Units, Restricted Common Units, Warrants and Class A Common Stock issuable upon exercise of Warrants held by the Equityholders and (ii) shares of Class A Common Stock issued pursuant to (i) the LLC Agreement upon exchange of Company Units held as of the Closing Date, along with an equal number of Class B Common Stock, for Class A Common Stock and (ii) the Certificate of Incorporation upon conversion of Class C Common Stock into Class A Common Stock; provided, however, that (x) any Equity Securities purchased by the Engaged Capital Investors pursuant to the Forward Purchase Agreement, and (y) any Equity Securities purchased by (aa) the Sponsor or any members of the Sponsor, any Affiliates of a member of the Sponsor or any employees of a member of the Sponsor or a member’s Affiliates and (bb) Rellim Investment Company, LLC, in each case pursuant to any Subscription Agreement entered into with SilverBox and/or PubCo in connection with the entry into the BCA shall not be “Lock-Up Shares” under this Agreement.

(b) During the Lock-Up Period, any purported Transfer of Lock-Up Shares other than in accordance with this Agreement shall be null and void, and PubCo shall refuse to recognize any such Transfer for any purpose.

(c) The Equityholders acknowledge and agree that, notwithstanding anything to the contrary herein, the Equity Securities in the Operating Company (including Common Units and Restricted Common Units), shares of Class B Common Stock and shares of Class A Common Stock, in each case, Beneficially Owned by such Person, if any, shall remain subject to any restrictions on Transfer under applicable securities Laws of any Governmental Entity, including all applicable holding periods under the Securities Act and other rules of the SEC, and under the LLC Agreement.

Section 5.2 Permitted Transfers. Notwithstanding anything to the contrary contained in this Agreement, during the Lock-Up Period the Equityholders may Transfer, without the consent of PubCo, any of such Person’s Lock-Up Shares to (i) any of such Person’s Permitted Transferees, upon written notice to PubCo, (ii) any members of such Person, any Affiliates of a member of such Person or any employees of a member of such Person or a member’s Affiliates or (iii) (a) a charitable organization, upon written notice to PubCo; (b) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (c) in the case of an individual, pursuant to a qualified domestic relations order; or (d) pursuant to any liquidation, merger, stock exchange or other similar transaction which results in all of PubCo’s stockholders having the right to exchange their shares of Common Stock for cash, securities or other property subsequent to the Business Combination; provided, that in connection with any Transfer of such Lock-Up Shares pursuant to clause (i) above, (x) the restrictions and obligations contained in Section 5.1 and this Section 5.2 will continue to apply to such Lock-Up Shares after any Transfer of such Lock-Up Shares, and (y) the Transferee of such Lock-Up Shares shall have no rights under this Agreement, unless as otherwise set forth herein. Any Transferee of Lock-Up Shares shall be required, at the time of and as a condition to such Transfer, to become a party to this Agreement by executing and delivering a joinder in the form attached to this Agreement as Exhibit A, whereupon such Transferee will be treated as a Party (with the same rights and obligations as the Transferor) for all purposes of this Agreement.

**ARTICLE VI
GENERAL PROVISIONS**

Section 6.1 Assignment; Successors and Assigns; No Third Party Beneficiaries.

(a) Except as otherwise permitted hereunder, no Party may assign such Party's rights and obligations under this Agreement, in whole or in part, without the prior written consent of PubCo. Any such assignee may not again assign those rights, other than in accordance with this Article VI. Any attempted assignment of rights or obligations in violation of this Article VI shall be null and void.

(b) Notwithstanding anything to the contrary herein (other than the succeeding sentence of this Section 6.1(b) and subject to Section 3.2(e) and Section 4.16), no Holder may Transfer such Holder's rights or obligations under this Agreement, in whole or in part, except in connection with a Transfer of such Holder's Registrable Securities, in whole or in part, to (a) any Person with the prior written consent of PubCo or (b) any of such Holder's Permitted Transferees. In no event can the Engaged Capital Investors or the Founder assign any of such Person's rights under Sections 3.1. Any Transferee of Registrable Securities pursuant to this Section 6.1(b) shall be required, at the time of and as a condition to such Transfer, to become a party to this Agreement, whereupon such Transferee will be treated as a Party (with the same rights and obligations as the Transferor unless as otherwise set forth herein) for all purposes of this Agreement, as applicable and to the extent in accordance with this Section 6.1(b).

(c) All of the terms and provisions of this Agreement shall be binding upon the Parties and their respective successors, assigns, heirs and representatives, but shall inure to the benefit of and be enforceable by the successors, assigns, heirs and representatives of any Party only to the extent that they are permitted successors, assigns, heirs and representatives pursuant to the terms hereof; provided, however, notwithstanding anything to the contrary herein, Section 3.1, Section 3.2, Section 3.3, Section 4.3 and Section 5.1 shall only inure to the benefit of and be enforceable by (i) PubCo (with respect to each other Party) and (ii) each other Party (with respect to PubCo's obligations to such other Party, as applicable).

(d) Nothing in this Agreement, express or implied, is intended to confer upon any Party, other than the Parties and their respective permitted successors, assigns, heirs and representatives, any rights or remedies under this Agreement or otherwise create any third party beneficiary hereto (provided, that, Engaged Capital shall be an intended third-party beneficiary for purposes of exercising the rights of the Engaged Capital Investors hereunder).

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Section 6.2 Termination. Section 3.1 shall terminate in accordance with its terms. Sections 3.2 shall terminate at the end of the Voting Period. Article IV of this Agreement shall terminate as set forth in Section 4.13. The remainder of this Agreement shall terminate automatically (without any action by any Party) as to each Holder when such Holder ceases to hold any Registrable Securities; provided, that, a Party may elect to terminate all of its rights and obligations under this Agreement prior to such time (which termination shall terminate such Party's rights under Section 6.4(b), but shall not, for the avoidance of doubt, terminate such Party's obligations under Section 3.1, Section 3.2, Section 3.3, Article V and Article VI).

Section 6.3 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Entity, the remaining provisions hereof, to the extent permitted by Law shall remain in full force and effect.

Section 6.4 Entire Agreement; Amendments; No Waiver.

(a) This Agreement, together with Exhibit A to this Agreement, the LLC Agreement, the Sponsor Letter Agreement (as such term is defined in the BCA) and, solely with respect to the terms defined therein and incorporated herein by reference, the BCA constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings and discussions, whether oral or written, relating to such subject matter in any way and there are no warranties, representations or other agreements among the Parties in connection with such subject matter except as set forth in this Agreement and therein.

(b) No provision of this Agreement may be amended or modified in whole or in part at any time without the express written consent of (i) PubCo, (ii) for so long as the Sponsor and its Permitted Transferees Beneficially Own Economic Interests (in the Operating Company and PubCo, without duplication) representing 33.0% or more of the Economic Interests held by the Sponsor after the Closing, the Sponsor, (iii) for so long as the Engaged Capital Investors and their Permitted Transferees Beneficially Own Economic Interests (in the Operating Company and PubCo, without duplication) representing 33.0% or more of the Economic Interests held by the Engaged Capital Investors after the Closing, Engaged Capital, (iv) for so long as the Founder and its Permitted Transferees collectively Beneficially Own Economic Interests (in the Operating Company and PubCo, without duplication) representing 15% or more of the Economic Interests held by the Founder immediately after the Closing, the Founder, and (v) for so long as the NCH Equityholders and their Permitted Transferees collectively Beneficially Own Economic Interests (in the Operating Company and PubCo, without duplication) representing 15% or more of the Economic Interests held by the NCH Equityholders immediately after the Closing, the NCH Equityholders; provided that any such amendment or modification that would be materially adverse in any respect to any Holder shall require the prior written consent of such Holder; provided, further that a provision that has terminated with respect to a Party shall not require any consent of such Party (and such Party's Economic Interests shall not be considered in computing any percentages) with respect to amending or modifying such provision.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement shall be effective unless in writing and signed by the Party to be bound and then only to the specific purpose, extent and instance so provided.

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Section 6.5 Counterparts; Electronic Delivery. This Agreement and any other agreements, certificates, instruments and documents delivered pursuant to this Agreement may be executed and delivered in one or more counterparts and by fax, email or other electronic transmission, each of which shall be deemed an original and all of which shall be considered one and the same agreement. No Party shall raise the use of a fax machine or email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a fax machine or email as a defense to the formation or enforceability of a contract and each Party forever waives any such defense.

Section 6.6 Notices. All notices, demands and other communications to be given or delivered under this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered (or, if delivery is refused, upon presentment) or received by email (with confirmation of transmission) prior to 5:00 p.m. eastern time on a Business Day and, if otherwise, on the next Business Day, (b) one (1) Business Day following sending by reputable overnight express courier (charges prepaid) or (c) three (3) calendar days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing pursuant to the provisions of this Section 6.6, notices, demands and other communications shall be sent to the addresses indicated below.

if to PubCo, to:

BRC Inc.
1144 S 500 W
Salt Lake City, UT 84101
Attention: Tom Davin, Co-CEO and Andrew McCormick, General Counsel
Email: tom.davin@blackriflecoffee.com
andrew.mccormick@blackriflecoffee.com

with a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Steven V. Napolitano, P.C.
Joshua N. Korff, P.C.
Peter Seligson
Email: steven.napolitano@kirkland.com
joshua.korff@kirkland.com
peter.seligson@kirkland.com

if to the Sponsor, to:

SilverBox Engaged Sponsor LLC
1250 S. Capital of Texas Highway
Building 2, Suite 285
Austin, TX 78746
Attention: Joseph Reece
Stephen Kadenacy
Email: jr@sbcap.com
sk@sbcap.com

with a copy (which shall not constitute notice) to:

Paul Hastings LLP
1999 Avenue of the Stars, 27th Floor
Los Angeles, CA 90067
Attention: David M. Hernand
Jonathan Ko
Email: davidhernand@paulhastings.com
jonathanko@paulhastings.com

if to any Engaged Capital Investor, to:

c/o Engaged Capital, LLC
610 Newport Center Drive, Suite 250
Newport Beach, California 92660
Attention: Glenn Welling
Email: glenn@engagedcapital.com

if to the Founder, to:

Evan Hafer
c/o BRC Inc.
1144 S 500 W
Salt Lake City, UT 84101
Email: evan.hafer@blackriflecoffee.com

if to the NCH Equityholders, to:

c/o Sterling Partners
401 N. Michigan Avenue, 33rd Floor
Chicago, Illinois 60601-1003
Attention: Office of the General Counsel
Email: aepstein@sterlingpartners.com

Section 6.7 Governing Law; Waiver of Jury Trial; Jurisdiction. The Law of the State of Delaware shall govern (a) all Actions, claims or matters related to or arising from this Agreement (including any tort or non-contractual claims) and (b) any questions concerning the construction, interpretation, validity and enforceability of this Agreement, and the performance of the obligations imposed by this Agreement, in each case without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Law of any jurisdiction other than the State of Delaware. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION BROUGHT TO RESOLVE ANY DISPUTE BETWEEN OR AMONG ANY OF THE PARTIES (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND/OR THE RELATIONSHIPS ESTABLISHED AMONG THE PARTIES UNDER THIS AGREEMENT. EACH OF THE PARTIES FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS

WAIVER WITH SUCH PARTY'S LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES SUCH PARTY'S JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. Each of the Parties submits to the exclusive jurisdiction of first, the Chancery Court of the State of Delaware or if such court declines jurisdiction, then to the Federal District Court for the District of Delaware, in any Action arising out of or relating to this Agreement, agrees that all claims in respect of the Action shall be heard and determined in any such court and agrees not to bring any Action arising out of or relating to this Agreement in any other courts. Nothing in this Section 6.7, however, shall affect the right of any Party to serve legal process in any other manner permitted by Law or at equity. Each Party agrees that a final judgment in any Action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by Law or at equity.

Section 6.8 Specific Performance. Each Party hereby agrees and acknowledges that it will be impossible to measure in money the damages that would be suffered if the Parties fail to comply with any of the obligations imposed on them by this Agreement and that, in the event of any such failure, an aggrieved Party will be irreparably damaged and will not have an adequate remedy at Law. Any such Party shall, therefore, be entitled (in addition to any other remedy to which such Party may be entitled at Law or in equity) to injunctive relief, including specific performance, to enforce such obligations, without the posting of any bond, and if any Action should be brought in equity to enforce any of the provisions of this Agreement, none of the Parties shall raise the defense that there is an adequate remedy at Law.

Section 6.9 Subsequent Acquisition of Shares. Any Equity Securities of PubCo or Operating Company acquired subsequent to the Effective Date by a Holder shall be subject to the terms and conditions of this Agreement and such shares shall be considered to be "Registrable Securities" as such term is used in this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the Parties has duly executed this Agreement as of the Effective Date.

PUBCO:

BRC Inc.

By: /s/ Steve Kadenacy
Name: Steve Kadenacy
Title: Chief Executive Officer

FOUNDER

/s/ Evan Hafer
Evan Hafer

SPONSOR:

SILVERBOX ENGAGED SPONSOR LLC

By: /s/ Steve Kadenacy
Name: Steve Kadenacy
Title: Chief Executive Officer

[Signature Page - Investor Rights Agreement - Joinder]

ENGAGED CAPITAL INVESTORS:

ENGAGED CAPITAL FLAGSHIP MASTER
FUND, LP

By: /s/ Glenn Welling
Name: Glenn Welling
Title: Managing Member

ARANGO TRADING AND FINANCE CORP

By: /s/ Glenn Welling
Name: Glenn Welling
Title: Managing Member

[Signature Page - Investor Rights Agreement - Joinder]

NCH EQUITYHOLDERS:

AUGUSTA TRUST U/A/D 3/30/2013

By: /s/ John Miller

Name: John Miller
Title: Trustee

/s/ Bruce Goldman
Bruce Goldman

/s/ Casey Taslitz Birnbaum
Casey Taslitz Birnbaum

By: /s/ Chandler Taslitz
Name: Chandler Taslitz

COFFEE CUP LLC

By: /s/ John Miller
Name: John Miller
Title: Manager

CONCESSIONS DEVELOPMENT GROUP, LLC

By: /s/ Oscar Vila
Name: Oscar Vila
Title: Manager

/s/ Daniel Elfman
Daniel Elfman

[Signature Page - Investor Rights Agreement - Joinder]

EF INVESTCO HOLDINGS, LLC

By: /s/ Jeffrey Elburn
Name: Jeffrey Elburn
Title: Authorized Signatory

EPPY FAMILY HOLDINGS, LLC

By: /s/ M. Avi Esptein
Name: M. Avi Esptein
Title: Authorized Signatory

GI DECAF TRUST UAD 3/3/2016

By: /s/ Marianne Schmitt Hellauer
Name: Marianne Schmitt Hellauer
Title: Trustee

/s/ Jim Chiappetta
Jim Chiappetta

/s/ Justin Marku
Justin Marku

/s/ Kiley Taslitz Anderson
Kiley Taslitz Anderson

[Signature Page - Investor Rights Agreement - Joinder]

MDP CHILDREN TRUST

By: /s/ Javier Mora
Name: Javier Mora
Title: Trustee

/s/ Merrick Elfman
Merrick Elfman

/s/ Michael Brown
Michael Brown

/s/ Michael Drai

Michael Draï

/s/ Michael Gershenzon
Michael Gershenzon

NOELLE E. TASLITZ GIFT TRUST U/A/D 5/19/2020

By: /s/ Steven Taslitz
Name: Steven Taslitz
Title: Trustee

[Signature Page - Investor Rights Agreement - Joinder]

RELLIM INVESTMENT COMPANY, LLC

By: /s/ John Miller
Name: John Miller
Title: Manager

/s/ Robert Polston
Robert Polston

SOUTHERN 798 TRUST UAD 2/3/2016

By: /s/ Marianne Schmitt Hellauer
Name: Marianne Schmitt Hellauer
Title: Trustee

/s/ Stefan Weitz
Stefan Weitz

TAVAURA HOLDINGS TRUST UAD 2/3/2016

By: /s/ Marianne Schmitt Hellauer
Name: Marianne Schmitt Hellauer
Title: Trustee

TOWER 5 CAPITAL LLC

By: /s/ Thomas E. Davin
Name: Thomas E. Davin
Title: Managing Member

[Signature Page - Investor Rights Agreement - Joinder]

/s/ Whitney Krutulis
Whitney Krutulis

[Signature Page - Investor Rights Agreement - Joinder]

OTHER SPECIAL HOLDERS:

/s/ Mathew Best
Mathew Best

/s/ Jarred Taylor

Jarred Taylor

/s/ Rich Ryan

Rich Ryan

/s/ Tom Davin

Tom Davin

[Signature Page - Investor Rights Agreement - Joinder]

LEGACY EQUITYHOLDERS:

BASS PRO, LLC

By: /s/ Kevin Maliszewski

Name: Kevin Maliszewski

Title: CFO

SAGE ENTERPRISES, LLC

By: /s/ Jayson Orvis

Name: Jayson Orvis

Title: Manager

/s/ Greg Iverson

Greg Iverson

/s/ Toby Johnson

Toby Johnson

/s/ Katy Johnson

Katy Johnson

/s/ George Munoz

George Munoz

/s/ Steven Taslitz

Steven Taslitz

/s/ Charles Waldron

Charles Waldron

/s/ Logan Stark

Logan Stark

[Signature Page - Investor Rights Agreement - Joinder]

/s/ Scott Bollinger

Scott Bollinger

/s/ Robert Modarelli

Robert Modarelli

/s/ Robert Baker

Robert Baker

/s/ Sandy Garner

Sandy Garner

/s/ Molly Schweickert
Molly Schweickert

/s/ Dan Kaepernik
Dan Kaepernik

/s/ Kim Ellis
Kim Ellis

/s/ Dan Shimoda
Dan Shimoda

/s/ Andrew McCormick
Andrew McCormick

/s/ Manuel Pineiro, Jr.
Manuel Pineiro, J.

[Signature Page - Investor Rights Agreement - Joinder]

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this “Agreement”) is made and entered into as of [], 2022 between BRC Inc., a Delaware public benefit company (the “Company”), and [] (“Indemnitee”).

WHEREAS, directors, officers and other persons (“Representatives”) in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as Representatives unless they are provided with adequate protection against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (1) the bylaws of the Company (as amended or restated, the “Bylaws”) require indemnification of the officers and directors of the Company, (2) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the “DGCL”) and (3) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Company and Representatives with respect to indemnification;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (1) Indemnitee may not be willing to serve or continue to serve as a Representative without adequate protection, and the Company desires Indemnitee to serve or continue to serve in such capacity and (2) Indemnitee is willing to serve, continue to serve and take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of Indemnitee’s agreement to serve as a director or officer from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. Subject to the provisions of Section 9, the Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time, if Indemnitee was or is, or is threatened to be made, a party to, or otherwise becomes involved in, any Proceeding (as hereinafter defined) by reason of Indemnitee’s Corporate Status (as hereinafter defined). In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) *Proceedings other than Proceedings by or in the Right of the Company*: Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of Indemnitee’s Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in, or otherwise becomes involved in, any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee, or on Indemnitee’s behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee’s conduct was unlawful.

(b) *Proceedings by or in the Right of the Company*: Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of Indemnitee’s Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee’s behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company unless and only to the extent that the court in which the Proceeding was brought shall determine that Indemnitee is fairly and reasonably entitled to indemnification.

(c) *Indemnification for Expenses of a Party Who is Wholly or Partly Successful*: Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a party to or participant in and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, Indemnitee shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1(c) and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf if, by reason of Indemnitee’s Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company). The only limitation that shall exist upon the Company’s obligations pursuant to this Agreement, other than those set forth in Section 9 hereof, shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), to the fullest extent permitted by applicable law,

the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not, without the Indemnitee's prior written consent, enter into any such settlement of any action, suit or proceeding (in whole or in part) unless such settlement (i) provides for a full and final release of all claims asserted against Indemnitee and (ii) does not impose any Expense, judgment, fine, penalty or limitation on Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), to the fullest extent permitted by applicable law, the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

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(c) To the fullest extent permitted by applicable law, the Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding, and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness, is made (or asked) to respond to discovery requests, or is otherwise asked to participate, in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement (other than Section 9), the Company shall advance, to the extent not prohibited by law, all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding (or part of any Proceeding) not initiated by Indemnitee or any Proceeding initiated by Indemnitee with the prior approval of the Board as provided in Section 9(d), within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee. Any advances pursuant to this Section 5 shall be unsecured and interest free. In accordance with Section 7(d) of this Agreement, advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. This Section 5 shall not apply to claim by Indemnitee for expenses in a matter for which indemnity and advancement of expenses is excluded pursuant to Section 9.

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6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum; (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum; (3) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (4) if so directed by the Board, by the stockholders of the Company; provided, however, that if a Change in Control has occurred, the determination with respect to Indemnitee's entitlement to indemnification shall be made by Independent Counsel. For purposes hereof, Disinterested Directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel, the Independent Counsel shall be selected as provided in this Section 6(c). If a Change in Control has not occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to the Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 12 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If a Change in Control has occurred, the Independent Counsel shall be selected by the Indemnitee (unless the Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and approved by the Board within 20 days after notification by Indemnitee. If (i) an Independent Counsel is to make the determination of entitlement pursuant to this Section 6, and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected (including as a result of an objection to the selected Independent Counsel), either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by

Indemnity to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a Person selected by the court or by such other Person as the court shall designate, and the Person with respect to whom all objections are so resolved or the Person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the Person making such determination shall to the fullest extent permitted by law presume that Indemnity is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof to overcome such presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnity has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnity has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnity has not met the applicable standard of conduct.

(e) Indemnity shall be deemed to have acted in good faith if Indemnity's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnity by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnity for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(c) are satisfied, it shall in any event be presumed that Indemnity has at all times acted in good faith and in a manner Indemnity reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the Person empowered or selected under this Section 6 to determine whether Indemnity is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall to the fullest extent permitted by law be deemed to have been made and Indemnity shall be entitled to such indemnification absent (i) a misstatement by Indemnity of a material fact, or an omission of a material fact necessary to make Indemnity's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the Person making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnity shall cooperate with the Person making such determination with respect to Indemnity's entitlement to indemnification, including providing to such Person upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnity and reasonably necessary to such determination. Any costs or expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnity in so cooperating with the Person making such determination shall be borne by the Company (irrespective of the determination as to Indemnity's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnity harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnity is a party is resolved in any manner other than by adverse judgment against Indemnity (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration), it shall to the fullest extent permitted by law be presumed that Indemnity has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnity to indemnification or create a presumption that Indemnity did not act in good faith and in a manner which Indemnity reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnity had reasonable cause to believe that Indemnity's conduct was unlawful.

7. Remedies of Indemnity

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnity is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification or (iv) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnity is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnity shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnity's entitlement to such indemnification, contribution or advancement of Expenses. Alternatively, Indemnity, at Indemnity's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnity's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnity is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial, or arbitration, on the merits, and Indemnity shall not be prejudiced by reason of the adverse determination under Section 6(b). In any judicial proceeding or arbitration commenced pursuant to this Section 7, Indemnity shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proving Indemnity is not entitled to indemnification or

advancement of Expenses, as the case may be, and the Company may not refer to, or introduce into evidence, any determination pursuant to Section 6(b) of this Agreement adverse to Indemnitee for any purpose other than to establish its compliance with the terms of this Agreement. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 7, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 5 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading, in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, incurs costs, in a judicial or arbitration proceeding or otherwise, attempting to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, if any, the Company shall pay on Indemnitee's behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 12 of this Agreement) actually and reasonably incurred by Indemnitee in such efforts, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery, to the fullest extent permitted by applicable law. It is the intent of the Company that, to the fullest extent permitted by applicable law, Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder.

(e) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

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(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Amended & Restated Certificate of Incorporation of the Company (as amended or restated, the "Charter"), the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise, of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company shall, if commercially reasonable, obtain and maintain in effect during the entire period for which the Company is obligated to indemnify Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the directors and officers of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such officer or director under such policy or policies. In all such insurance policies, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement of Expenses is provided) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

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(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity or advancement of expenses in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as hereinafter defined), or similar provisions of state statutory law or common law; or

(c) for reimbursement to the Company of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, in each case as required under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act in connection with an accounting restatement of the Company or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act);

(d) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Company has joined in or the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) the Proceeding is one to enforce Indemnitee's rights under this Agreement or;

(e) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act.

10. Non-Disclosure of Payments. Except as expressly required by the securities laws of the United States of America or other applicable law, neither party shall disclose any payments under this Agreement unless prior approval of the other party is obtained. If any payment information must be disclosed, the Company shall afford the Indemnitee an opportunity to review all such disclosures and, if requested, to explain in such statement any mitigating circumstances regarding the events to be reported.

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11. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue until and terminate upon the later of (i) ten (10) years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which Indemnitee served at the request of the Company, and (ii) one (1) year after the final termination of any Proceeding (including any rights of appeal thereto) in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 7 of this Agreement relating thereto (including any rights of appeal of any Proceeding commenced pursuant to Section 7 of this Agreement). Termination of this Agreement shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to the time of such termination. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

12. Definitions. For purposes of this Agreement:

(a) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(b) "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Any Person (as defined below), and other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the Beneficial Owner (as defined above), directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities, unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding securities entitled to vote generally in the election of directors;

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(ii) Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a Person who has entered into an agreement with the Company to effect a transaction described in Section 12(b)(i), 12(b)(iii) or 12(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity; and

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, or, if such approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions.

(c) "Corporate Status" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company, any direct or indirect subsidiary of the Company, or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(g) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and disbursements of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(i) “Person” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(j) “Proceeding” includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by Indemnitee or of any inaction on Indemnitee’s part while acting as an officer or director of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise; in each case whether or not Indemnitee is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce Indemnitee’s rights under this Agreement.

13. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the fullest extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws.

14. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification and advancement of expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise at the Company’s request, and shall inure to the benefit of Indemnitee and Indemnitee’s spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the court, and the Company hereby waives any such requirement of such a bond or undertaking.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice complying with the provisions of this Section 17. Delivery of communications to the Company with respect to this Agreement shall be sent to the attention of the Company's General Counsel.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Usage of Pronouns. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

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21. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict-of-laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 7 of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, and (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first written above.

BRC INC.

By _____
Name:
Title:

Address:
144 S 500 W
Salt Lake City, UT 84101

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT

INDEMNITEE

Name:

Address:

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WAIVER

February 9, 2022

Reference is hereby made to that certain Business Combination Agreement, dated as of November 2, 2021, by and among SilverBox Engaged Merger Corp I, a Delaware corporation ("**SilverBox**"), BRC Inc., a Delaware corporation and wholly owned subsidiary of SilverBox ("**Pubco**"), SBEA Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco, BRCC Blocker Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of SilverBox, Grand Opal Investment Holdings, Inc., a Delaware corporation, and Authentic Brands, LLC, a Delaware limited liability company (the "**Company**"), as amended by that certain First Amendment to Business Combination Agreement, dated as of January 4, 2021 (as so amended, the "**Combination Agreement**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Combination Agreement.

RECITALS

WHEREAS, Section 5.19 of the Combination Agreement provides that (i) prior to the Closing, the Company shall deliver (by the applicable date required under the terms of the applicable documentation governing the Closing Date Indebtedness that shall be paid off as of Closing and otherwise in compliance with any other applicable requirements) any notices necessary to permit the prepayment, payoff, discharge and termination in full at the Closing of the Closing Date Indebtedness and (ii) at least three Business Days prior to or at the Closing, the Company shall deliver, or cause to be delivered, to SilverBox duly executed Payoff Letter (drafts of which shall be provided to SilverBox no less than five Business Days prior to the anticipated Closing Date), from the holders (or an agent (or similar Person) on behalf of all such holders) of the Closing Date Indebtedness (the "**Indebtedness Covenant**");

WHEREAS, Section 2.4(e) of the Combination Agreements provides that, at the Closing, the Company shall repay in full the Closing Date Indebtedness pursuant to the Payoff Letters (the "**Indebtedness Closing Condition**");

WHEREAS, in light of the number of SilverBox Shareholder Redemptions and its potential impact on the Company's post-closing liquidity and related opportunities with respect to deployed capital, and current market terms for indebtedness as compared to the terms of the Closing Date Indebtedness, the Company desires to forgo the prepayment, payoff, discharge and termination in full at the Closing of the Closing Date Indebtedness in order to retain the liquidity provided thereby so that such capital is available to support the Company's post-closing liquidity (the "**Indebtedness Retention**"); *provided, however*, that the Company shall repay in full, as of the Closing Date, the outstanding balance under that certain Revolving Promissory Note, dated April 12, 2021, made by the Company, Good Beens LLC, Black Rifle Coffee Company LLC, BRCC Operating Company LLC, Signal Mountain Media Works LLC, and Free Range American Media Company LLC in favor of Regions Bank in the principal amount of \$10,000,000 (the "**Regions Bank Revolver**");

WHEREAS, in connection with the Indebtedness Retention, the Company desires for SilverBox to waive, subject to Section 2 below, the Company's compliance with the Indebtedness Covenant and Indebtedness Closing Condition;

WHEREAS, pursuant to Section 9.14 of the Combination Agreement, SilverBox may (i) extend the time for the performance of any of the obligations or other acts of the Company or Blocker Corp set forth in the Combination Agreement, (ii) waive any inaccuracies in the representations and warranties of the Company or Blocker Corp set forth in the Combination Agreement or (iii) waive compliance by the Company or Blocker Corp with any of the agreements or conditions set forth in the Combination Agreement;

WHEREAS, pursuant to Section 9.14 of the Combination Agreement, any agreement on the part of SilverBox to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of SilverBox;

WHEREAS, SilverBox desires to waive the Company's compliance with the Indebtedness Covenant and Indebtedness Closing Condition in connection with the Indebtedness Retention;

WHEREAS, in connection with Closing, the Company desires to grant transaction bonuses to certain stakeholders of the Company in an aggregate amount of up to \$350,000 (the "**Transaction Bonus Grant**");

WHEREAS, pursuant to Section 5.1(b)(viii) of the Combination Agreement, except as consented to in writing by SilverBox, the Company shall not grant severance, change in control, retention or termination pay to, or adopt, enter into or amend any severance, retention, termination, employment, consulting, bonus, change in control or severance agreement with any current or former director, manager, officer, employee, individual independent contractor or other service provider of any Group Company, whose annual base salary (or, in the case of an independent contractor, annual compensation) is in excess of \$250,000; and

WHEREAS, SilverBox desires to (i) consent to the Transaction Bonus Grant pursuant to Section 5.1(b)(viii) of the Combination Agreement and (ii) waive any inaccuracies in the representations and warranties of the Company as a result of, arising from or in connection with the Transaction Bonus Grant pursuant to Section 9.14 of the Combination Agreement.

NOW, THEREFORE, the undersigned do hereby agree as follows:

1. Waiver of Indebtedness Covenant and Indebtedness Closing Condition. Pursuant to Section 9.14 of the Combination Agreement, SilverBox hereby waives, subject to Section 2, the Company's compliance with the Indebtedness Covenant and Indebtedness Closing Condition in connection with the Indebtedness Retention.

2. Repayment of Outstanding Balance under Regions Bank Revolver. The Company hereby agrees to repay in full, as of the Closing Date, the outstanding balance (including principal and interest, if any) under the Regions Bank Revolver; *provided* that the Regions Bank Revolver shall remain in place from and after the Closing Date (until terminated in accordance with its terms) so that the Company can make future draws thereon.

3. Consent to Transaction Bonus Grant. Pursuant to Section 5.1(b)(viii) of the Combination Agreement, SilverBox hereby consents to the Transaction Bonus Grant.

4. Waiver of Inaccurate Representations and Warranties in Respect of the Transaction Bonus Grant. Pursuant to Section 9.14 of the Combination Agreement,

SilverBox hereby waives any inaccuracies in the representations and warranties of the Company as a result of, arising from or in connection with the Transaction Bonus Grant.

5. Limited Waiver. This Waiver is specific and limited to the matters expressly stated herein and shall not be construed as a waiver of any other right under the Combination Agreement.

6. Enforceability. The undersigned acknowledge and agree that this Waiver is a valid and binding obligation and is enforceable in accordance with its terms.

7. Miscellaneous. Section 9.5 (Governing Law), Section 9.9 (Parties in Interest), Section 9.10 (Severability), Section 9.11 (Counterparts; Electronic Signatures) and Section 9.13 (No Recourse) of the Combination Agreement are incorporated herein by reference and shall apply to this Waiver, *mutatis mutandis*.

IN WITNESS WHEREOF, this Waiver has been executed as of the date first above written.

SILVERBOX ENGAGED MERGER CORP I

By: /s/ Steve Kadenacy

Name: Steve Kadenacy

Title: Chief Executive Officer

Acknowledged and agreed to as of
February 9, 2022

AUTHENTIC BRANDS LLC

By: /s/ Tom Davin

Name: Tom Davin

Title: Co-Chief Executive Officer

Signature Page to Payoff Letter Waiver

BRC INC.

2022 OMNIBUS INCENTIVE PLAN

ARTICLE I
PURPOSE

The purpose of this BRC Inc. 2022 Omnibus Incentive Plan, as amended from time to time (the “**Plan**”) is to promote the success of the business of BRC Inc., a Delaware public benefit corporation, and its successors by operation of law (the “**Company**”) for the benefit of its stockholders by enabling the Company to offer Eligible Individuals cash and stock-based incentives in order to attract, retain, and reward such individuals and strengthen the mutuality of interests between such individuals and the Company’s stockholders. This Plan is effective as of the date set forth in Article XV.

ARTICLE II
DEFINITIONS

For purposes of this Plan, the following terms shall have the following meanings:

2.1 “Affiliate” means a corporation or other entity controlled by, controlling, or under control with the Company. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2.2 “Applicable Law” means the requirements relating to the administration of equity-based awards and the related Shares under U.S. state corporate law, U.S. federal and state securities laws, the rules of any stock exchange or quotation system on which the shares are listed or quoted, and any other applicable laws of any jurisdiction where Awards are, or will be, granted under this Plan.

2.3 “Award” means any award under this Plan of any Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Units, Performance Award, Other Stock-Based Award, or Cash Award. All Awards shall be granted by, confirmed by, and subject to the terms of a written or electronic agreement executed by the Company and the Participant.

2.4 “Award Agreement” means the written or electronic agreement evidencing the terms and conditions of an individual Award. Each Award Agreement shall be subject to the terms and conditions of this Plan.

2.5 “Board” means the Board of Directors of the Company.

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2.6 “Business Combination Agreement” means that certain Business Combination Agreement, as amended from time to time, by and among SilverBox Engaged Merger Corp I, a Delaware corporation, BRC Inc., a Delaware corporation, SBEA Merger Sub LLC, a Delaware limited liability company, BRCC Blocker Merger Sub LLC, a Delaware limited liability company, Grand Opal Investment Holdings, Inc., a Delaware corporation and Authentic Brands, LLC, a Delaware limited liability company.

2.7 “Cash Award” means an Award granted pursuant to Section 10.3 of this Plan and payable in cash at such time or times and subject to such terms and conditions as determined by the Committee in its sole discretion.

2.8 “Cause” means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant’s Termination of Service, the following: (a) in the case where there is no employment agreement, offer letter, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award (or where there is such agreement in effect but it does not define “cause” (or words of like import)), the Participant’s (i) commission of, or plea of guilty or no contest to, a felony or a crime involving moral turpitude or the commission of any other act involving willful malfeasance or material fiduciary breach with respect to the Company or an Affiliate; (ii) substantial and repeated failure to perform duties as reasonably directed by the person to whom the Participant reports directly or indirectly; (iii) immoral or unlawful conduct that brings or is reasonably likely to bring the Company or an Affiliate negative publicity or into public disgrace, embarrassment, or disrepute; (iv) gross negligence or willful misconduct with respect to the Company or an Affiliate; (v) material violation of the Company’s written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, or ethical misconduct; or (vi) any breach of any non-competition, non-solicitation, no-hire, or confidentiality covenant between the Participant and the Company or an Affiliate; or (b) in the case where there is an employment agreement, offer letter, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award that defines “cause” (or words of like import), “cause” as defined under such agreement.

2.9 “Change in Control” means and includes each of the following, unless otherwise determined by the Committee in the applicable Award Agreement or other written agreement with a Participant approved by the Committee:

(a) any “person,” as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the Company), becoming the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities, excluding for purposes herein, acquisitions pursuant to a Business Combination (as defined below) that does not constitute a Change in Control as defined in Section 2.9(b);

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(b) a merger, reorganization, or consolidation of the Company or in which equity securities of the Company are issued (each, a “**Business Combination**”), other than a merger, reorganization or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its direct or indirect Parent) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, a direct or indirect Parent of the Company or such surviving entity) outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.9(a)) acquires more than fifty percent (50%) of the combined

voting power of the Company's then outstanding securities shall not constitute a Change in Control; or a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its direct or indirect Parent) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, a direct or indirect Parent of the Company or such surviving entity) outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.8(a)) acquires more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control;

(c) during the period of two (2) consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2.8(a) or (b)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two (2) year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(d) a complete liquidation or dissolution of the Company or the consummation of a sale or disposition by the Company of all or substantially all of the Company's assets other than the sale or disposition of all or substantially all of the assets of the Company to a person or persons who beneficially own, directly or indirectly, fifty percent (50%) or more of the combined voting power of the outstanding voting securities of the Company at the time of the sale or disposition.

For purposes of this Section 2.9, acquisitions of securities of the Company by Evan Hafer, any of his affiliates (including any related trust), or any investment vehicle or fund controlled by or managed by, or otherwise affiliated with Evan Hafer, at a time when Evan Hafer and such affiliated entities own twenty five percent (25%) or more of the combined voting power of the outstanding voting securities of the Company, shall not constitute a Change in Control.

Notwithstanding the foregoing, with respect to any Award that is characterized as "nonqualified deferred compensation" within the meaning of Section 409A of the Code, an event shall not be considered to be a Change in Control under this Plan for purposes of payment of such Award unless such event is also a "change in ownership," a "change in effective control," or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

2.10 "**Change in Control Price**" means the highest price per Share paid in any transaction related to a Change in Control of the Company.

2.11 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall also be a reference to any successor provision and any guidance and treasury regulation promulgated thereunder.

2.12 "**Committee**" means any committee of the Board duly authorized by the Board to administer this Plan; *provided, however*, that unless the Committee consists solely of two or more Qualified Members, grants intended to qualify for the exemption under Rule 16b-3 shall be instead approved by the Board or a separate sub-committee of two or more Qualified Members. If no committee is duly authorized by the Board to administer this Plan, the term "Committee" shall be deemed to refer to the Board for all purposes under this Plan. The Board may abolish any Committee or re-vest in itself any previously delegated authority from time to time, and will retain the right to exercise the authority of the Committee to the extent consistent with Applicable Law.

2.13 "**Common Stock**" means the Class A common stock, \$0.0001 par value per share, of the Company.

2.14 "**Company**" means BRC Inc., a Delaware public benefit corporation, and its successors by operation of law.

2.15 "**Consultant**" means any natural person who is an advisor or consultant to the Company or any of its Affiliates. Notwithstanding the foregoing, a person shall be treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

2.16 "**Disability**" means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant's Termination of Service, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, *provided, however*, for purposes of an Incentive Stock Option, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be determined by the Committee, and the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan in which a Participant participates that is maintained by the Company or any Affiliate.

2.17 "**Dividend Equivalents**" means a right granted to a Participant under this Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

2.18 "**Effective Date**" means the effective date of this Plan as defined in Article XV.

2.19 "**Eligible Employees**" means each employee of the Company or any of its Affiliates. An employee on a leave of absence may be an Eligible Employee.

2.20 "**Eligible Individual**" means an Eligible Employee, Non-Employee Director, or Consultant who is designated by the Committee in its discretion as eligible to receive Awards subject to the conditions set forth herein.

2.21 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.22 "**Fair Market Value**" means, for purposes of this Plan, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, as of any date and except as provided below, the last sales price reported for the Common Stock on the applicable date: (a) as reported on the principal national securities exchange in the United States on which it is then traded or (b) if the Common Stock is not traded, listed, or otherwise reported or quoted, the Committee shall determine in good faith the Fair Market Value in whatever manner it considers appropriate taking into account the requirements of Section 409A of the Code. For purposes of the grant of any Award, the applicable date shall be the trading day immediately prior to the date on which the Award is granted. For purposes of the exercise of any Award, the applicable date shall be the date a notice of exercise is received by the Committee or, if not a date on which the applicable market is open, the next day that it is open.

2.23 "**Family Member**" means "family member" as defined in Section A.1.(a)(5) of the general instructions of Form S-8.

2.24 “Incentive Stock Option” means any Stock Option that is awarded to an Eligible Employee who is an employee of the Company, its Subsidiaries, or its Parents (if any) under this Plan and that is intended to be, and designated in the Award Agreement as, an “Incentive Stock Option” within the meaning of Section 422 of the Code.

2.25 “Non-Employee Director” means a director or a member of the Board who is not an employee of the Company.

2.26 “Non-Qualified Stock Option” means any Stock Option awarded under this Plan that is not an Incentive Stock Option.

2.27 “Other Stock-Based Award” means an Award under Article X of this Plan that is valued in whole or in part by reference to, or is payable in or otherwise based on, Shares.

2.28 “Parent” means any parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.29 “Participant” means an Eligible Individual to whom an Award has been granted pursuant to this Plan.

2.30 “Performance Award” means an Award granted to a Participant pursuant to Article IX hereof contingent upon achieving certain Performance Goals.

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2.31 “Performance Goals” means goals established by the Committee as contingencies for Awards to vest and/or become exercisable or distributable.

2.32 “Performance Period” means the designated period during which the Performance Goals must be satisfied with respect to the Award to which the Performance Goals relate.

2.33 “Qualified Member” means a member of the Board who is (a) a “non-employee director” within the meaning of Rule 16b-3(b)(3), and (b) “independent” under the listing standards or rules of the securities exchange upon which the Common Stock is traded, but only to the extent such independence is required in order to take the action at issue pursuant to such standards or rules.

2.34 “Restricted Stock” means an Award of Shares under this Plan that is subject to restrictions under Article VIII.

2.35 “Restricted Stock Units” means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Committee to be of equal value as of such settlement date, subject to certain vesting conditions and other restrictions.

2.36 “Restriction Period” has the meaning set forth in Section 8.3(a) with respect to Restricted Stock.

2.37 “Rule 16b-3” means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.38 “Section 409A of the Code” means the nonqualified deferred compensation rules under Section 409A of the Code and any applicable treasury regulations and other official guidance thereunder.

2.39 “Securities Act” means the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. Reference to a specific section of the Securities Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.40 “Shares” means shares of Common Stock.

2.41 “Stock Appreciation Right” shall mean the right granted pursuant to an Award granted under Article VII.

2.42 “Stock Option” or “Option” means any option to purchase Shares granted to Eligible Individuals granted pursuant to Article VI.

2.43 “Subsidiary” means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

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2.44 “Ten Percent Stockholder” means a person owning stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, its Subsidiaries or its Parent.

2.45 “Termination of Service” means the termination of the applicable Participant’s employment with, or performance of services for, the Company and its Affiliates. Unless otherwise determined by the Committee, (a) if a Participant’s employment or services with the Company and its Affiliates terminates but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity, such change in status shall not be deemed a Termination of Service with the Company and its Affiliates and (b) a Participant employed by, or performing services for an Affiliate that ceases to be an Affiliate shall also be deemed to have incurred a Termination of Service provided the Participant does not immediately thereafter become an employee of the Company or another Affiliate. Notwithstanding the foregoing provisions of this definition, with respect to any Award that constitutes a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code, a Participant shall not be considered to have experienced a “Termination of Service” unless the Participant has experienced a “separation from service” within the meaning of Section 409A of the Code.

ARTICLE III ADMINISTRATION

3.1 Authority of the Committee This Plan shall be administered by the Committee. Subject to the terms of this Plan and Applicable Law, the Committee shall have full authority to grant Awards to Eligible Individuals under this Plan. In particular, the Committee shall have the authority to:

- (a) determine whether and to what extent Awards, or any combination thereof, are to be granted hereunder to one or more Eligible Individuals;
- (b) determine the number of Shares to be covered by each Award granted hereunder;

- (c) determine the terms and conditions, not inconsistent with the terms of this Plan, of any Award granted hereunder (including, but not limited to, the exercise or purchase price (if any), any restriction or limitation, any vesting schedule or acceleration thereof, or any forfeiture restrictions or waiver thereof, regarding any Award and the Shares relating thereto, based on such factors, if any, as the Committee shall determine, in its sole discretion);
- (d) determine the amount of cash to be covered by each Award granted hereunder;
- (e) determine whether, to what extent, and under what circumstances grants of Options and other Awards under this Plan are to operate on a tandem basis and/or in conjunction with or apart from other awards made by the Company outside of this Plan;
- (f) determine whether and under what circumstances an Award may be settled in cash, Shares, other property, or a combination of the foregoing;

- (g) determine whether, to what extent and under what circumstances cash, Shares, or other property and other amounts payable with respect to an Award under this Plan shall be deferred either automatically or at the election of the Participant;
- (h) modify, waive, amend, or adjust the terms and conditions of any Award, at any time or from time to time, including but not limited to Performance Goals;
- (i) determine whether a Stock Option is an Incentive Stock Option or Non-Qualified Stock Option;
- (j) determine whether to require a Participant, as a condition of the granting of any Award, to not sell or otherwise dispose of Shares acquired pursuant to the exercise or vesting of an Award for a period of time as determined by the Committee, in its sole discretion, following the date of the acquisition of such Award or Shares; and
- (k) modify, extend, or renew an Award, subject to Article XII and Section 6.3(I).

3.2 Guidelines. Subject to Article XII hereof, the Committee shall have the authority to adopt, alter, and repeal such administrative rules, guidelines, and practices governing this Plan and perform all acts, including the delegation of its responsibilities (to the extent permitted by Applicable Law, as it shall, from time to time, deem advisable; to construe and interpret the terms and provisions of this Plan and any Award issued under this Plan (and any agreements or sub-plans relating thereto); and to otherwise supervise the administration of this Plan. The Committee may correct any defect, supply any omission, or reconcile any inconsistency in this Plan or in any agreement relating thereto in the manner and to the extent it shall deem necessary to effectuate the purpose and intent of this Plan. The Committee may adopt special rules, sub-plans, guidelines, and provisions for persons who are residing in or employed in, or subject to, the taxes of any domestic or foreign jurisdictions to satisfy or accommodate applicable foreign laws or to qualify for preferred tax treatment of such domestic or foreign jurisdictions.

3.3 Decisions Final. Any decision, interpretation, or other action made or taken in good faith by or at the direction of the Company, the Board, or the Committee (or any of its members) arising out of or in connection with this Plan shall be within the absolute discretion of all and each of them, as the case may be, and shall be final, binding, and conclusive on the Company and all employees and Participants and their respective heirs, executors, administrators, successors, and assigns.

3.4 Procedures. If the Committee is appointed, the Board shall designate one of the members of the Committee as chairperson and the Committee shall hold meetings, subject to the by-laws of the Company, at such times and places as it shall deem advisable, including, without limitation, by telephone conference or by written consent to the extent permitted by Applicable Law. A majority of the Committee members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members. Any decision or determination reduced to writing and signed by all of the Committee members in accordance with the by-laws of the Company, shall be fully effective as if it had been made by a vote at a meeting duly called and held. The Committee shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable.

3.5 Designation of Consultants/Liability; Delegation of Authority.

(a) The Committee may designate employees of the Company and professional advisors to assist the Committee in the administration of this Plan and (to the extent permitted by Applicable Law) may grant authority to officers of the Company to grant Awards and/or execute agreements or other documents on behalf of the Committee.

(b) The Committee may employ such legal counsel, consultants, and agents as it may deem desirable for the administration of this Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant, or agent shall be paid by the Company. The Committee, its members, and any person designated pursuant to subsection (a) above shall not be liable for any action or determination made in good faith with respect to this Plan. To the maximum extent permitted by Applicable Law, no officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to this Plan or any Award granted under it.

(c) The Committee may delegate any or all of its powers and duties under this Plan to a subcommittee of directors or to any officer of the Company, including the power to perform administrative functions and grant Awards; provided, that such delegation does not (i) violate Applicable Law, or (ii) result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company. Upon any such delegation, all references in this Plan to the "Committee," shall be deemed to include any subcommittee or officer of the Company to whom such powers have been delegated by the Committee. Any such delegation shall not limit the right of such subcommittee members or such an officer to receive Awards; provided, however, that such subcommittee members and any such officer may not grant Awards to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate, or take any action with respect to any Award previously granted to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate. The Committee may also appoint agents who are not executive officers of the Company or members of the Board to assist in administering this Plan, provided, however, that such individuals may not be delegated the authority to grant or modify any Awards that will, or may, be settled in Shares.

3.6 Indemnification. To the maximum extent permitted by Applicable Law and to the extent not covered by insurance directly insuring such person, each officer or employee of the Company or any of its Affiliates and member or former member of the Committee or the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel acceptable to the Committee) or liability (including any sum paid in settlement of a claim with the approval of the Committee), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with the administration of this Plan, except to the extent arising out of such officer's, employee's, member's, or former member's own fraud or bad faith. Such indemnification shall be in addition to any right of indemnification the employees, officers, directors, or members or former officers, directors, or members may have under

ARTICLE IV SHARE LIMITATION

4.1 Shares. The aggregate number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under this Plan shall not exceed (a) 10% of the aggregate number of fully-diluted Shares and shares of ClassB Common Stock that are outstanding as of the Effective Date ~~less~~ (b) the number of Shares that would be issuable upon the conversion of Incentive Units in Authentic Brands, LLC that are outstanding on the Effective Date (subject to any increase or decrease pursuant to this Article IV), which may be either authorized and unissued Shares or Shares held in or acquired for the treasury of the Company or both. The number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under this Plan shall be (a) increased proportionally to reflect the forfeiture of any Incentive Units in Authentic Brands, LLC outstanding as of the Effective Date and (b) subject to an annual increase on January 1 of each calendar year during the term of this Plan, equal to the lesser of (i) 5% of the aggregate number of Shares and shares of ClassB common stock of the Company outstanding on the final day of the immediately preceding calendar year and (ii) such smaller number of Shares as is determined by the Board. The aggregate number of Shares that may be issued or used with respect to any Incentive Stock Option shall not exceed 19,140,130 Shares (subject to any increase or decrease pursuant to Section 4.3). The aggregate value of Awards granted during a single fiscal year to any Non-Employee Director, taken together with any cash fees paid to that Non-Employee Director during the fiscal year and the value of awards granted to the Non-Employee Director under any other equity compensation plan of the Company during the fiscal year, shall not exceed a total value of \$750,000 (calculating the value of any Awards based on the grant date fair value for financial reporting purposes). Notwithstanding anything to the contrary contained herein, Shares subject to an Award under this Plan shall again be made available for issuance or delivery under this Plan if such Shares are (A) Shares tendered in payment of an Option, (B) Shares delivered or withheld by the Company to satisfy any tax withholding obligation, (C) Shares covered by a stock-settled Stock Appreciation Right or other Awards that were not issued upon the settlement of the Award, or (D) Shares subject to an Award that expires or is canceled, forfeited, or terminated without issuance of the full number of Shares to which the Award related. Without limiting the generality of the foregoing, any Shares reserved under the Founder Share Pool that are again made available for issuance pursuant to the preceding sentence shall be generally available for issuance to Eligible Individual's under this Plan (and not limited to awards made to Evan Hafer).

4.2 Substitute Awards. In connection with an entity's merger or consolidation with the Company or the Company's acquisition of an entity's property or stock, the Committee may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its Affiliate ("Substitute Awards"). Substitute Awards may be granted on such terms as the Committee deems appropriate, notwithstanding limitations on Awards in this Plan. Substitute Awards will not count against the overall share limit (nor shall Shares subject to a Substitute Award be added to the Shares available for Awards under this Plan as provided above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under this Plan. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grants pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under this Plan and shall not reduce the Shares authorized for grant under this Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under this Plan as provided above); *provided* that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Eligible Employees or Non-Employee Directors prior to such acquisition or combination.

4.3 Adjustments.

(a) The existence of this Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize (i) any adjustment, recapitalization, reorganization, or other change in the Company's capital structure or its business, (ii) any merger or consolidation of the Company or any Affiliate, (iii) any issuance of bonds, debentures, or preferred or prior preference stock ahead of or affecting the Shares, (iv) the dissolution or liquidation of the Company or any Affiliate, (v) any sale or transfer of all or part of the assets or business of the Company or any Affiliate, or (vi) any other corporate act or proceeding.

(b) Subject to the provisions of Section 11.1:

(i) If the Company at any time subdivides (by any split, recapitalization or otherwise) the outstanding Shares into a greater number of Shares, or combines (by reverse split, combination, or otherwise) its outstanding Shares into a lesser number of Shares, then the respective exercise prices for outstanding Awards that provide for a Participant-elected exercise and the number of Shares covered by outstanding Awards shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(ii) Excepting transactions covered by Section 4.3(b)(i), if the Company effects any merger, consolidation, statutory exchange, spin-off, reorganization, sale or transfer of all or substantially all the Company's assets or business, or other corporate transaction or event in such a manner that the Company's outstanding Shares are converted into the right to receive (or the holders of Common Stock are entitled to receive in exchange therefor), either immediately or upon liquidation of the Company, securities or other property of the Company or other entity, then, subject to the provisions of Section 11.1, (A) the aggregate number or kind of securities that thereafter may be issued under this Plan (including, for the sake of clarity, the Founder Share Pool), (B) the number or kind of securities or other property (including cash) to be issued pursuant to Awards granted under this Plan (including as a result of the assumption of this Plan and the obligations hereunder by a successor entity, as applicable), or (C) the exercise or purchase price thereof, shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(iii) If there shall occur any change in the capital structure of the Company other than those covered by Section 4.3(b)(i) or 4.3(b)(ii), any conversion, any adjustment, or any issuance of any class of securities convertible or exercisable into, or exercisable for, any class of equity securities of the Company, then the Committee shall adjust any Award and make such other adjustments to this Plan to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(iv) The Committee may adjust the Performance Goals applicable to any Awards to reflect any unusual or non-recurring events and other extraordinary items, impact of charges for restructurings, discontinued operations, and the cumulative effects of accounting or tax changes, each as defined by generally accepted accounting principles or as identified in the Company's financial statements, notes to the financial statements, management's discussion and analysis, or other Company public filing.

(v) Any such adjustment determined by the Committee pursuant to this Section 4.3(b) shall be final, binding, and conclusive on the Company and all Participants and their respective heirs, executors, administrators, successors, and permitted assigns. Any adjustment to, or assumption or substitution of, an Award under this Section 4.3(b) shall be intended to comply with the requirements of Section 409A of the Code and Treasury Regulation § 1.424-1 (and any amendments thereto), to the extent applicable. Except as expressly provided in this Section 4.3 or in the applicable Award Agreement, a Participant shall have no additional rights under this Plan by reason of any transaction or event described in this Section 4.3.

4.4 Minimum Vesting Period. Awards under this Plan shall generally be subject to a minimum vesting period (or Restriction Period) of one year from the date of grant (but with permissible pro rata vesting over such period). Notwithstanding the foregoing, such minimum vesting periods shall not apply (i) to awards granted to Non-Employee Directors, (ii) to vesting upon terminations of employment due to involuntary termination, death, disability or retirement, (iii) upon a Change in Control, (iv) to Cash Awards or Substitute Awards and (v) to Awards involving an aggregate number of Shares not in excess of 5% of the total shares authorized for issuance under this Plan.

ARTICLE V ELIGIBILITY

5.1 General Eligibility. All current and prospective Eligible Individuals are eligible to be granted Awards. Eligibility for the grant of Awards and actual participation in this Plan shall be determined by the Committee in its sole discretion.

5.2 Incentive Stock Options. Notwithstanding the foregoing, only Eligible Employees who are employees of the Company, its Subsidiaries, or its Parents (if any) are eligible to be granted Incentive Stock Options under this Plan. Eligibility for the grant of an Incentive Stock Option and actual participation in this Plan shall be determined by the Committee in its sole discretion.

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5.3 General Requirement. The vesting and exercise of Awards granted to a prospective Eligible Individual are conditioned upon such individual actually becoming an Eligible Employee, Consultant, or Non-Employee Director, as applicable.

ARTICLE VI STOCK OPTIONS

6.1 Options. Stock Options may be granted alone or in addition to other Awards granted under this Plan. Each Stock Option granted under this Plan shall be of one of two types: (a) an Incentive Stock Option or (b) a Non-Qualified Stock Option.

6.2 Grants. The Committee shall have the authority to grant to any Eligible Employee one or more Incentive Stock Options, Non-Qualified Stock Options, or both types of Stock Options; *provided, however*, that Incentive Stock Options may only be granted to an Eligible Employee who is an employee of the Company, its Subsidiaries, or its Parents (if any). The Committee shall have the authority to grant any Consultant or Non-Employee Director one or more Non-Qualified Stock Options. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Stock Option or the portion thereof which does not so qualify shall constitute a separate Non-Qualified Stock Option.

6.3 Terms of Options. Options granted under this Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of this Plan, as the Committee shall deem desirable:

(a) **Exercise Price.** The exercise price per Share subject to a Stock Option shall be determined by the Committee at the time of grant, *provided* that the per share exercise price of a Stock Option shall not be less than 100% (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, 110%) of the Fair Market Value at the time of grant.

(b) **Stock Option Term.** The term of each Stock Option shall be fixed by the Committee, *provided* that no Stock Option shall be exercisable more than ten (10) years (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, five (5) years) after the date the Option is granted.

(c) **Exercisability.** Unless otherwise provided by the Committee in accordance with the provisions of this Section 6.3, Stock Options granted under this Plan shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

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(d) **Method of Exercise.** Subject to whatever installment exercise and waiting period provisions apply under Section 6.3(c), to the extent vested, Stock Options may be exercised in whole or in part at any time during the Option term, by giving written notice of exercise (which may be electronic) to the Company specifying the number of Shares to be purchased. Such notice shall be accompanied by payment in full of the exercise price (which shall equal the product of such number of Shares to be purchased multiplied by the applicable exercise price). The exercise price for the Stock Options may be paid upon such terms and conditions as shall be established by the Committee and set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may establish payment terms for the exercise of Stock Options pursuant to which the Company may withhold a number of Shares that otherwise would be issued to the Participant in connection with the exercise of the Stock Option having a Fair Market Value on the date of exercise equal to the exercise price, or that permit the Participant to deliver cash or Shares with a Fair Market Value equal to the exercise price on the date of payment, or through a simultaneous sale through a broker of Shares acquired on exercise, all as permitted by Applicable Law. No Shares shall be issued until payment therefor, as provided herein, has been made or provided for.

(e) **Non-Transferability of Options.** No Stock Option shall be transferable by the Participant other than by will or by the laws of descent and distribution, and all Stock Options shall be exercisable, during the Participant's lifetime, only by the Participant. Notwithstanding the foregoing, the Committee may determine, in its sole discretion, at the time of grant or thereafter that a Non-Qualified Stock Option that is otherwise not transferable pursuant to this Section is transferable to a Family Member in whole or in part and in such circumstances, and under such conditions, as specified by the Committee. A Non-Qualified Stock Option that is transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently transferred other than by will or by the laws of descent and distribution and (ii) remains subject to the terms of this Plan and the applicable Award Agreement. Any Shares acquired upon the exercise of a Non-Qualified Stock Option by a permissible transferee of a Non-Qualified Stock Option or a permissible transferee pursuant to a transfer after the exercise of the Non-Qualified Stock Option shall be subject to the terms of this Plan and the applicable Award Agreement.

(f) Termination by Death or Disability. Unless otherwise provided in the applicable Award Agreement, or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by reason of death or Disability, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant (or in the case of the Participant's death, by the legal representative of the Participant's estate) at any time within a period of one (1) year from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options; *provided, however*, that, in the event of a Participant's Termination of Service by reason of Disability, if the Participant dies within such exercise period, all unexercised Stock Options held by such Participant shall thereafter be exercisable, to the extent to which they were exercisable at the time of death, for a period of one (1) year from the date of such death, but in no event beyond the expiration of the stated term of such Stock Options.

(g) Involuntary Termination Without Cause. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by involuntary termination by the Company without Cause, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of ninety (90) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

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(h) Voluntary Resignation. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is voluntary (other than a voluntary termination described in Section 6.3(i) hereof), all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of ninety (90) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

(i) Termination for Cause. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant, if a Participant's Termination of Service (x) is for Cause or (y) is a voluntary Termination of Service (as provided in Section 6.3(h)) after the occurrence of an event that would be grounds for a Termination of Service for Cause, all Stock Options, whether vested or not vested, that are held by such Participant shall thereupon immediately terminate and expire as of the date of such Termination of Service.

(j) Unvested Stock Options. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant, Stock Options that are not vested as of the date of a Participant's Termination of Service for any reason shall terminate and expire as of the date of such Termination of Service.

(k) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under this Plan and/or any other stock option plan of the Company, any Subsidiary, or any Parent exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options. In addition, if an Eligible Employee does not remain employed by the Company, any Subsidiary, or any Parent at all times from the time an Incentive Stock Option is granted until three (3) months prior to the date of exercise thereof (or such other period as required by Applicable Law), such Stock Option shall be treated as a Non-Qualified Stock Option. Should any provision of this Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may amend this Plan accordingly, without the necessity of obtaining the approval of the stockholders of the Company.

(l) Modification, Extension and Renewal of Stock Options. The Committee may (i) modify, extend, or renew outstanding Stock Options granted under this Plan (provided that the rights of a Participant are not reduced without such Participant's consent and *provided, further* that such action does not subject the Stock Options to Section 409A of the Code without the consent of the Participant), and (ii) accept the surrender of outstanding Stock Options (to the extent not theretofore exercised) and authorize the granting of new Stock Options in substitution therefor (to the extent not theretofore exercised). Notwithstanding the foregoing, an outstanding Option may not be modified to reduce the exercise price thereof nor may a new Option at a lower price be substituted for a surrendered Option (other than adjustments or substitutions in accordance with Article IV), unless such action is approved by the stockholders of the Company.

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(m) Other Terms and Conditions. The Committee may include a provision in an Award Agreement providing for the automatic exercise of a Non-Qualified Stock Option on a cashless basis on the last day of the term of such Option if the Participant has failed to exercise the Non-Qualified Stock Option as of such date, with respect to which the Fair Market Value of the Shares underlying the Non-Qualified Stock Option exceeds the exercise price of such Non-Qualified Stock Option on the date of expiration of such Option, subject to Section 14.4. Stock Options may contain such other provisions, which shall not be inconsistent with any of the terms of this Plan, as the Committee shall deem appropriate.

ARTICLE VII STOCK APPRECIATION RIGHTS

7.1 Stock Appreciation Rights. Stock Appreciation Rights shall be subject to the terms and conditions, not inconsistent with this Plan, determined by the Committee, and the following:

(a) Exercise Price. The exercise price per Share subject to a Stock Appreciation Right shall be determined by the Committee at the time of grant, *provided* that the per share exercise price of a Stock Appreciation Right shall not be less than 100% of the Fair Market Value at the time of grant.

(b) Term. The term of each Stock Appreciation Right shall be fixed by the Committee, but shall not be greater than ten (10) years after the date the right is granted.

(c) Exercisability. Unless otherwise provided by the Committee, Stock Appreciation Rights granted under this Plan shall be exercised at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. If the Committee provides that any such right is exercisable subject to certain terms and conditions, the Committee may waive those terms and conditions on the exercisability at any time at or after grant in whole or in part.

(d) Method of Exercise. Subject to whatever installment and waiting period provisions applied under Section 7.1(c), Stock Appreciation Rights may be exercised in whole or in part at any time in accordance with the applicable Award Agreement, by given written notice of exercise (which may be electronic) to the Company specifying the number of Stock Appreciation Rights being exercised.

(e) Payment. Upon the exercise of a Stock Appreciation Right a Participant shall be entitled to receive, for each right exercised, up to, but no more than, an amount in cash and/or Shares (as chosen by the Committee in its sole discretion) equal in value to the excess of the Fair Market Value of one (1) Share on the date that the right is exercised over the exercise price per Share of the Stock Appreciation Right.

(f) Termination. Unless otherwise determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, subject to the provisions of the applicable Award Agreement and this Plan, upon a Participant's Termination of Service for any reason, Stock Appreciation Rights may remain exercisable following a Participant's Termination of Service on the same basis as Stock Options would be exercisable following a Participant's Termination of Service in accordance with the provisions of Sections 6.3(f) through 6.3(j).

(g) Non-Transferability. No Stock Appreciation Rights shall be transferable by the Participant other than by will or by the laws of descent and distribution, and all such rights shall be exercisable, during the Participant's lifetime, only by the Participant.

7.2 Automatic Exercise. The Committee may include a term or condition in an Award Agreement providing for the automatic exercise of a Stock Appreciation Right on a cashless basis on the last day of the term of the Stock Appreciation Right if the Participant has failed to exercise the Stock Appreciation Right as of such date, with respect to which the Fair Market Value of the Shares underlying the Stock Appreciation Right exceeds the exercise price of such Stock Appreciation Right on the date of expiration of such Stock Appreciation Right, subject to Section 14.4.

ARTICLE VIII RESTRICTED STOCK; RESTRICTED STOCK UNITS

8.1 Awards of Restricted Stock and Restricted Stock Units. Shares of Restricted Stock and Restricted Stock Units may be granted alone or in addition to other Awards granted under this Plan. The Committee shall determine the Eligible Individuals to whom, and the time or times at which, grants of Restricted Stock and/or Restricted Stock Units shall be made, the number of shares of Restricted Stock or Restricted Stock Units to be awarded, the price (if any) to be paid by the Participant (subject to Section 8.2), the time or times within which such Awards may be subject to forfeiture, the vesting schedule and rights to acceleration thereof, and all other terms and conditions of the Awards. The Committee shall determine and set forth in the Award Agreement the terms and conditions for each Restricted Stock and Restricted Stock Unit Award, subject to the conditions and limitations contained in this Plan, including any vesting or forfeiture conditions during the applicable restriction period.

The Committee may condition the grant or vesting of Restricted Stock and Restricted Stock Units upon the attainment of specified performance targets (including, the Performance Goals) or such other factor as the Committee may determine in its sole discretion.

8.2 Awards and Certificates. Restricted Stock and Restricted Stock Units granted under this Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of this Plan, as the Committee shall deem desirable:

(a) Restricted Stock:

(i) Purchase Price. The purchase price of Restricted Stock shall be fixed by the Committee. The purchase price for shares of Restricted Stock may be zero to the extent permitted by Applicable Law, and, to the extent not so permitted, such purchase price may not be less than par value.

(ii) Legend. Each Participant receiving Restricted Stock shall be issued a stock certificate in respect of such shares of Restricted Stock, unless the Committee elects to use another system, such as book entries by the transfer agent, as evidencing ownership of shares of Restricted Stock. Such certificate shall be registered in the name of such Participant, and shall, in addition to such legends required by Applicable Law, bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(iii) Custody. If stock certificates are issued in respect of shares of Restricted Stock, the Committee may require that any stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed, and that, as a condition of any grant of Restricted Stock, the Participant shall have delivered a duly signed stock power or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if deemed necessary or appropriate by the Company, which would permit transfer to the Company of all or a portion of the shares subject to the Restricted Stock Award in the event that such Award is forfeited in whole or part.

(iv) Rights as a Stockholder. Except as provided in Section 8.3(a) and this Section 8.2(a) or as otherwise determined by the Committee in an Award Agreement, the Participant shall have, with respect to the shares of Restricted Stock, all of the rights of a holder of Shares, including, without limitation, the right to receive dividends, the right to vote such shares, and, subject to and conditioned upon the full vesting of shares of Restricted Stock, the right to tender such shares; *provided* that the Award Agreement shall specify on what terms and conditions the applicable Participant shall be entitled to dividends payable on the Shares.

(v) Lapse of Restrictions. If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock, the certificates for such Shares shall be delivered to the Participant. All legends shall be removed from said certificates at the time of delivery to the Participant, except as otherwise required by Applicable Law or other limitations imposed by the Committee.

(b) Restricted Stock Units:

(i) Settlement. The Committee may provide that settlement of Restricted Stock Units will occur upon or as soon as reasonably practical after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A of the Code.

(ii) Right as a Stockholder. A Participant will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until Shares are delivered in settlement of the Restricted Stock Units.

(iii) Dividend Equivalents. If the Committee so provides, a grant of Restricted Stock Units may provide a Participant with the right to receive Dividend Equivalents. Dividend Equivalents may be paid currently or credited to an account for the Participant, settled in cash or Shares, and subject to the same restrictions on transferability and forfeitability as the Restricted Stock Units with respect to which the Dividend Equivalents are granted and subject to other terms and conditions as set forth in the Award Agreement.

8.3 **Restrictions and Conditions.**

(a) **Restriction Period.** (i) The Participant shall not be permitted to transfer shares of Restricted Stock awarded under this Plan or vest in Restricted Stock Units during the period or periods set by the Committee (the "**Restriction Period**") commencing on the date of such Award, as set forth in the applicable Award Agreement and such agreement shall set forth a vesting schedule and any event that would accelerate vesting of the Restricted Stock and/or Restricted Stock Units. Restricted Stock Units shall not be transferable by the Participant other than by will or by the laws of descent and distribution and Shares subject to Restricted Stock Units may not be transferred prior to the date on which the Shares are issued or, if later, the date on which any applicable deferral period lapses. Within these limits, based on service, attainment of Performance Goals pursuant to Section 8.3(a)(ii), and/or such other factors or criteria as the Committee may determine in its sole discretion, the Committee may condition the grant or provide for the lapse of such restrictions in installments in whole or in part, or may accelerate the vesting of all or any part of any Restricted Stock Award or Restricted Stock Unit and/or waive the deferral limitations for all or any part of any Award.

(ii) If the grant of shares of Restricted Stock or Restricted Stock Units or the lapse of restrictions or vesting schedule is based on the attainment of Performance Goals, the Committee shall establish the objective Performance Goals and the applicable vesting percentage applicable to each Participant or class of Participants in the applicable Award Agreement prior to the beginning of the applicable fiscal year or at such later date as otherwise determined by the Committee and while the outcome of the Performance Goals are substantially uncertain. Such Performance Goals may incorporate provisions for disregarding (or adjusting for) changes in accounting methods, corporate transactions (including, without limitation, dispositions and acquisitions), and other similar types of events or circumstances.

(b) **Termination.** Unless otherwise provided in the applicable Award Agreement or determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, upon a Participant's Termination of Service for any reason during the relevant Restriction Period, all Restricted Stock or Restricted Stock Units still subject to restriction will be forfeited in accordance with the terms and conditions established by the Committee at grant or thereafter.

ARTICLE IX PERFORMANCE AWARDS

9.1 Performance Awards. The Committee may grant a Performance Award to a Participant payable upon the attainment of specific Performance Goals either alone or in addition to other Awards granted under this Plan. The Performance Goals to be achieved during the Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award. The conditions for grant or vesting and the other provisions of Performance Awards (including, without limitation, any applicable Performance Goals) need not be the same with respect to each Participant. Performance Awards may be paid in cash, Shares, other property, or any combination thereof, in the sole discretion of the Committee as set forth in the applicable Award Agreement. A Performance Award shall not be transferable by the Participant other than by will or by the laws of descent and distribution and Shares subject to Performance Awards may not be transferred prior to the date on which the Shares are issued or, if later, the date on which any applicable restriction, performance, or deferral period lapses.

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ARTICLE X OTHER STOCK-BASED AND CASH AWARDS

10.1 Other Stock-Based Awards. The Committee is authorized to grant to Eligible Individuals Other Stock-Based Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, including but not limited to, Shares awarded purely as a bonus and not subject to restrictions or conditions, Shares in payment of the amounts due under an incentive or performance plan sponsored or maintained by the Company, stock equivalent units, and Awards valued by reference to book value of Shares. Other Stock-Based Awards may be granted either alone or in addition to or in tandem with other Awards granted under this Plan.

Subject to the provisions of this Plan, the Committee shall have authority to determine the Eligible Individuals, to whom, and the time or times at which, such Awards shall be made, the number of Shares to be awarded pursuant to such Awards, and all other conditions of the Awards. The Committee may also provide for the grant of Shares under such Awards upon the completion of a specified Performance Period. The Committee may condition the grant or vesting of Other Stock-Based Awards upon the attainment of specified Performance Goals as the Committee may determine, in its sole discretion.

10.2 Terms and Conditions. Other Stock-Based Awards made pursuant to this Article X shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of this Plan, as the Committee shall deem desirable:

(a) **Non-Transferability.** Subject to the applicable provisions of the Award Agreement and this Plan, Shares subject to Awards made under this Article X may not be transferred prior to the date on which the Shares are issued or, if later, the date on which any applicable restriction, performance, or deferral period lapses.

(b) **Dividends.** Unless otherwise determined by the Committee at the time of the grant of an Award, subject to the provisions of the Award Agreement and this Plan, the recipient of an Award under this Article X shall not be entitled to receive, currently or on a deferred basis, dividends or Dividend Equivalents in respect of the number of Shares covered by the Award.

(c) **Vesting.** Any Award under this Article X and any Shares covered by any such Award shall vest or be forfeited to the extent so provided in the Award Agreement, as determined by the Committee, in its sole discretion.

(d) **Price.** Shares under this Article X may be issued for no cash consideration. Shares purchased pursuant to a purchase right awarded under this Article X shall be priced, as determined by the Committee in its sole discretion.

10.3 Cash Awards. The Committee may from time to time grant Cash Awards to Eligible Individuals in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by Applicable Law, as it shall determine in its sole discretion. Cash Awards may be granted subject to the satisfaction of vesting conditions or may be awarded purely as a bonus and not subject to restrictions or conditions, and if subject to vesting conditions, the Committee may accelerate the vesting of such Awards at any time in its sole discretion. The grant of a Cash Award shall not require a segregation of any of the Company's assets for satisfaction of the Company's payment obligation thereunder.

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ARTICLE XI CHANGE IN CONTROL PROVISIONS

11.1 Benefits. In the event of a Change in Control of the Company, and except as otherwise provided by the Committee in an Award Agreement, a Participant's

unvested Awards shall not vest automatically and a Participant's Awards shall be treated in accordance with one or more of the following methods as determined by the Committee:

(a) Awards, whether or not then vested, shall be continued, be assumed, or have new rights substituted therefor, as determined by the Committee in a manner consistent with the requirements of Section 409A of the Code, and restrictions to which shares of Restricted Stock or any other Award granted prior to the Change in Control are subject shall not lapse upon a Change in Control and the Restricted Stock or other Award shall, where appropriate in the sole discretion of the Committee, receive the same distribution as other Shares on such terms as determined by the Committee; *provided* that the Committee may decide to award additional Restricted Stock or other Awards in lieu of any cash distribution. Notwithstanding anything to the contrary herein, for purposes of Incentive Stock Options, any assumed or substituted Stock Option shall comply with the requirements of Treasury Regulation Section 1.424-1 (and any amendment thereto).

(b) The Committee, in its sole discretion, may provide for the purchase of any Awards by the Company for an amount of cash equal to the excess (if any) of the Change in Control Price of the Shares covered by such Awards, over the aggregate exercise price of such Awards; *provided, however*, that if the exercise price of an Option or Stock Appreciation Right exceeds the Change in Control Price, such Award may be cancelled for no consideration.

(c) The Committee may, in its sole discretion, terminate all outstanding and unexercised Stock Options, Stock Appreciation Rights, or any Other Stock-Based Award that provides for a Participant-elected exercise, effective as of the date of the Change in Control, by delivering notice of termination to each Participant at least twenty (20) days prior to the date of consummation of the Change in Control, in which case during the period from the date on which such notice of termination is delivered to the consummation of the Change in Control, each such Participant shall have the right to exercise in full all of such Participant's Awards that are then outstanding (without regard to any limitations on exercisability otherwise contained in the Award Agreements), but any such exercise shall be contingent on the occurrence of the Change in Control, and, *provided* that, if the Change in Control does not take place within a specified period after giving such notice for any reason whatsoever, the notice and exercise pursuant thereto shall be null and void.

(d) Notwithstanding any other provision herein to the contrary, the Committee may, in its sole discretion, provide for accelerated vesting or lapse of restrictions, of an Award at any time.

ARTICLE XII TERMINATION OR AMENDMENT OF PLAN

Notwithstanding any other provision of this Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of this Plan (including any amendment deemed necessary to ensure that the Company may comply with any Applicable Law), or suspend or terminate it entirely, retroactively or otherwise; *provided, however*, that, unless otherwise required by Applicable Law or specifically provided herein, the rights of a Participant with respect to Awards granted prior to such amendment, suspension, or termination may not be impaired without the consent of such Participant and, *provided, further*, that without the approval of the holders of the Shares entitled to vote in accordance with Applicable Law, no amendment may be made that would (i) increase the aggregate number of Shares that may be issued under this Plan (except by operation of Section 4.1); (ii) change the classification of individuals eligible to receive Awards under this Plan; (iii) reduce the exercise price of any Stock Option or Stock Appreciation Right; (iv) grant a new Stock Option, Stock Appreciation Right, or other Award in substitution for, or upon the cancellation of, any previously granted Stock Option or Stock Appreciation Right that has the effect of reducing the exercise price thereof; (v) exchange any Stock Option or Stock Appreciation Right for Common Stock, cash, or other consideration when the exercise price per Share under such Stock Option or Stock Appreciation Right exceeds the Fair Market Value of a Share; or (vi) take any other action that would be considered a "repricing" of a Stock Option or Stock Appreciation Right under the applicable listing standards of the national exchange on which the Common Stock is listed (if any). Notwithstanding anything herein to the contrary, the Board or the Committee may amend this Plan or any Award Agreement at any time without a Participant's consent to comply with Applicable Law, including Section 409A of the Code. The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Article IV or as otherwise specifically provided herein, no such amendment or other action by the Committee shall impair the rights of any holder without the holder's consent.

ARTICLE XIII UNFUNDED STATUS OF PLAN

This Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payment as to which a Participant has a fixed and vested interest but which is not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any right that is greater than those of a general unsecured creditor of the Company.

ARTICLE XIV GENERAL PROVISIONS

14.1 Legend. The Committee may require each person receiving Shares pursuant to a Stock Option or other Award under this Plan to represent to and agree with the Company in writing that the Participant is acquiring the Shares without a view to distribution thereof. In addition to any legend required by this Plan, the certificates for such Shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer. All certificates for Shares delivered under this Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed or any national securities exchange system upon whose system the Common Stock is then quoted, and any Applicable Law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If the Shares are held in book-entry form, then the book-entry will indicate any restrictions on such Shares.

14.2 Other Plans. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and such arrangements may be either generally applicable or applicable only in specific cases.

14.3 No Right to Employment/Directorship/Consultancy. Neither this Plan nor the grant of any Award hereunder shall give any Participant or other employee, Consultant or Non-Employee Director any right with respect to continuance of employment, consultancy or directorship by the Company or any Affiliate, nor shall there be a limitation in any way on the right of the Company or any Affiliate by which an employee is employed or a Consultant or Non-Employee Director is retained to terminate such employment, consultancy, or directorship at any time.

14.4 Withholding of Taxes. A Participant shall be required to pay to the Company or one of its Affiliates, as applicable, or make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of an Award. The Committee may (but is not obligated to), in its sole discretion, permit or require a Participant to satisfy all or any portion of the applicable taxes that are required to be withheld with respect to an Award by (a) the delivery of Shares (which are not subject to any pledge or other security interest) that have been both held by the Participant and vested for

at least six (6) months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment under applicable accounting standards) having an aggregate Fair Market Value equal to such withholding liability (or portion thereof); (b) having the Company withhold from the Shares otherwise issuable or deliverable to, or that would otherwise be retained by, the Participant upon the grant, exercise, vesting, or settlement of the Award, as applicable, a number of Shares with an aggregate Fair Market Value equal to the amount of such withholding liability; (c) withholding payment from any amounts otherwise payable to the Participant, or (d) by any other means specified in the applicable Award Agreement or otherwise determined by the Committee.

14.5 Fractional Shares. No fractional Shares shall be issued or delivered pursuant to this Plan. The Committee shall determine whether cash, additional Awards, or other securities or property shall be used or paid in lieu of fractional Shares or whether any fractional shares should be rounded, forfeited, or otherwise eliminated.

14.6 No Assignment of Benefits. No Award or other benefit payable under this Plan shall, except as otherwise specifically provided by law or permitted by the Committee, be transferable in any manner, and any attempt to transfer any such benefit shall be void, and any such benefit shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person who shall be entitled to such benefit, nor shall it be subject to attachment or legal process for or against such person.

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14.7 Clawback Provisions. All Awards (including any proceeds, gains, or other economic benefit the Participant actually or constructively receives upon receipt or exercise of any Award or the receipt or resale of any Shares underlying the Award) will be subject to any Company clawback policy, including any claw-back policy adopted to comply with Applicable Law (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder) as set forth in such clawback policy or the Award Agreement.

14.8 Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issuance of Shares pursuant to an Award shall be conditioned upon such Shares being listed on such exchange or system. The Company shall have no obligation to issue such Shares unless and until such Shares are so listed, and the right to exercise any Option or other Award with respect to such Shares shall be suspended until such listing has been effected.

(b) If at any time counsel to the Company shall be of the opinion that any sale or delivery of Shares pursuant to an Award is or may be in the circumstances be unlawful or result in the imposition of excise taxes on the Company under Applicable Law, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise, with respect to Shares or Awards, and the right to exercise any Option or other Award shall be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 14.8, any Award affected by such suspension which shall not then have expired or terminated shall be reinstated as to all Shares available before such suspension and as to Shares which would otherwise have become available during the period of such suspension, but no such suspension shall extend the term of any Award.

(d) A Participant shall be required to supply the Company with certificates, representations, and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent, or approval the Company deems necessary or appropriate.

14.9 Governing Law. This Plan and actions taken in connection herewith shall be governed and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

14.10 Construction. Wherever any words are used in this Plan in the masculine gender they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

14.11 Other Benefits. No Award granted or paid out under this Plan shall be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Affiliates or affect any benefit or compensation under any other plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

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14.12 Costs. The Company shall bear all expenses associated with administering this Plan, including expenses of issuing Shares pursuant to Awards hereunder.

14.13 No Right to Same Benefits. The provisions of Awards need not be the same with respect to each Participant, and such Awards to individual Participants need not be the same in subsequent years.

14.14 Death/Disability. The Committee may in its discretion require the transferee of a Participant to supply it with written notice of the Participant's death or Disability and to supply it with a copy of the will (in the case of the Participant's death) or such other evidence as the Committee deems necessary to establish the validity of the transfer of an Award. The Committee may also require the agreement of the transferee to be bound by all of the terms and conditions of this Plan.

14.15 Section 16(b) of the Exchange Act. It is the intent of the Company that this Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 as promulgated under Section 16 of the Exchange Act so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of this Plan would conflict with the intent expressed in this Section 14.15, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

14.16 Deferral of Awards. The Committee may establish one or more programs under this Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Participant to payment or receipt of Shares or other consideration under an Award. The Committee may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules, and procedures that the Committee deems advisable for the administration of any such deferral program.

14.17 Section 409A of the Code. This Plan and Awards are intended to comply with or be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed, and interpreted in accordance with such intent. To the extent that any Award is subject to Section 409A of the Code, it shall be paid in a manner

that will comply with Section 409A of the Code, including proposed, temporary, or final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Notwithstanding anything herein to the contrary, any provision in this Plan that is inconsistent with Section 409A of the Code shall be deemed to be amended to comply with or be exempt from Section 409A of the Code and, to the extent such provision cannot be amended to comply therewith or be exempt therefrom, such provision shall be null and void. The Company shall have no liability to a Participant, or any other party, if an Award that is intended to be exempt from, or compliant with, Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee or the Company and, in the event that any amount or benefit under this Plan becomes subject to penalties under Section 409A of the Code, responsibility for payment of such penalties shall rest solely with the affected Participants and not with the Company. Notwithstanding any contrary provision in this Plan or Award Agreement, any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) that are otherwise required to be made under this Plan to a "specified employee" (as defined under Section 409A of the Code) as a result of such employee's separation from service (other than a payment that is not subject to Section 409A of the Code) shall be delayed for the first six (6) months following such separation from service (or, if earlier, until the date of death of the specified employee) and shall instead be paid (in a manner set forth in the Award Agreement) upon expiration of such delay period.

14.18 Successor and Assigns. This Plan shall be binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator, or trustee of such estate.

14.19 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

14.20 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Plan, and shall not be employed in the construction of this Plan.

ARTICLE XV EFFECTIVE DATE OF PLAN

This Plan shall become effective upon the Closing (as defined in the Business Combination Agreement), subject to the approval of this Plan by the stockholders of the Company in accordance with the requirements of the laws of the State of Delaware.

ARTICLE XVI TERM OF PLAN

No Award shall be granted pursuant to this Plan on or after the tenth (10th) anniversary of the earlier of the date that this Plan is adopted or the date of stockholder approval, but Awards granted prior to such tenth (10th) anniversary may extend beyond that date.

BRC INC.

2022 EMPLOYEE STOCK PURCHASE PLAN

ARTICLE I
PURPOSE

The BRC Inc. 2022 Employee Stock Purchase Plan (as it may be amended or restated from time to time, the **Plan**) is intended to assist Eligible Employees of BRC Inc., a Delaware public benefit corporation (the **Company**), and its Designated Subsidiaries in acquiring a stock ownership interest in the Company. Initially, the Plan is not intended to qualify as an “employee stock purchase plan” under Section 423 of the Code. From and after such date as the Committee, in its sole discretion, determines that the Plan is able to satisfy the requirements under Section 423 of the Code and that it will operate the Plan in accordance with such requirements (such date, the **Section 423 Effective Date**), the Plan is intended to qualify as an “employee stock purchase plan” under Section 423 of the Code and will be operated and construed accordingly. Except as specifically provided herein, and unless the Plan is amended pursuant to Article IX, the operative terms of the Plan as in effect on the Effective Date will remain the same on and after the Section 423 Effective Date.

ARTICLE II
DEFINITIONS AND CONSTRUCTION

For purposes of the Plan, the following terms shall have the following meanings:

2.1 **“Administrator”** means the entity that conducts the general administration of the Plan as provided in Article XI. The term “Administrator” shall refer to the Committee unless the Board has assumed the authority for administration of the Plan as provided in Article XI.

2.2 **“Applicable Law”** means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where rights under this Plan are granted.

2.3 **“Board”** means the Board of Directors of the Company.

2.4 **“Business Combination Agreement”** means that certain Business Combination Agreement, as amended from time to time, by and among SilverBox Engaged Merger Corp I, a Delaware corporation, BRC Inc., a Delaware corporation, SBEA Merger Sub LLC, a Delaware limited liability company, BRCC Blocker Merger Sub LLC, a Delaware limited liability company, Grand Opal Investment Holdings, Inc., a Delaware corporation, and Authentic Brands, LLC, a Delaware limited liability company.

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2.5 **“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

2.6 **“Common Stock”** means the Class A common stock, \$0.001 par value per share, of the Company and such other securities of the Company that may be substituted therefor pursuant to Article VIII.

2.7 **“Company”** means BRC Inc., a Delaware public benefit corporation.

2.8 **“Compensation”** means the gross base salary or wages received by an Eligible Employee as compensation for services to the Company or any Designated Subsidiary, including prior week adjustment and overtime payments but excluding vacation pay, holiday pay, jury duty pay, funeral leave pay, military leave pay, commissions, incentive compensation, one-time bonuses (e.g., retention or sign-on bonuses), education or tuition reimbursements, travel expenses, business and moving reimbursements, income received in connection with any stock options, stock appreciation rights, restricted stock, restricted stock units or other compensatory equity awards, fringe benefits, other special payments and all contributions made by the Company or any Designated Subsidiary for such Eligible Employee’s benefit under any employee benefit plan now or hereafter established. The Administrator may, on a uniform and nondiscriminatory basis, establish a different definition of Compensation for an Offering Period prior to the commencement of such Offering Period.

2.9 **“Designated Subsidiary”** means any Subsidiary designated by the Administrator in accordance with Section 11.3(b).

2.10 **“Effective Date”** means the date of the closing of the transactions contemplated by Business Combination Agreement.

2.11 **“Eligible Employee”** means an Employee who does not, immediately after any rights under this Plan are granted, own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Common Stock and other stock of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing sentence, the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock that an Employee may purchase under outstanding options shall be treated as stock owned by the Employee; provided, however, that the Administrator may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering Period if such Employee meets certain criteria and following the Section 423 Effective Date such criteria shall be limited to: (a) such Employee is a “highly compensated employee” of the Company or any Designated Subsidiary (within the meaning of Section 414(q) of the Code), or is such a “highly compensated employee” (i) with compensation above a specified level, (ii) who is an officer and/or (iii) is subject to the disclosure requirements of Section 16(a) of the Exchange Act; (b) such Employee has not met a service requirement designated by the Administrator pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two years), (c) such Employee is customarily scheduled to work less than twenty (20) hours per week, (d) such Employee’s customary employment is for less than five (5) months in any calendar year and/or (e) such Employee is a citizen or resident of a foreign jurisdiction (without regard to whether they are also a citizen of the United States or a resident alien (within the meaning of Section 7701(b)(1)(A) of the Code)) if either (i) the grant of the Option is prohibited under the laws of the jurisdiction governing such Employee, or (ii) compliance with the laws of the foreign jurisdiction would cause the Plan or the Option to violate the requirements of Section 423 of the Code; provided that any exclusion in clauses (a), (b), (c), (d) or (e) shall be applied in an identical manner under each Offering Period to all Employees of the Company and all Designated Subsidiaries, in accordance with Treasury Regulations § 1.423-2(e).

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2.12 **“Employee”** means any officer or other employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Designated Subsidiary. An Employee does not include any director of the Company or a Designated Subsidiary who does not render services to the Company or a Designated Subsidiary as an employee within the meaning of Section 3401(c) of the Code. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual

is on sick leave or other leave of absence approved by the Company or Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three months and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three-month period.

2.13 **"Enrollment Date"** means the first day of each Offering Period (or, with respect to the Initial Offering Period, such date set forth in the Offering Document approved by the Administrator with respect to the Initial Offering Period).

2.14 **"Exchange Act"** means the Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.15 **"Fair Market Value"** means, for purposes of the Plan, unless otherwise required by any applicable provision of the Code as of any date and except as provided below, the last sales price reported for the Common Stock on the applicable date: (a) as reported on the principal national securities exchange in the United States on which it is then traded or (b) if the Common Stock is not traded, listed, or otherwise reported or quoted, the Committee shall determine in good faith the Fair Market Value in whatever manner it considers appropriate taking into account the requirements of Section 409A of the Code.

2.16 **"Grant Date"** means the first Trading Day of an Offering Period (or, with respect to the Initial Offering Period, such date set forth in the Offering Document approved by the Administrator with respect to the Initial Offering Period).

2.17 **"Initial Offering Period"** shall mean the period commencing on the Effective Date and ending the date set forth in the Offering Document approved by the Administrator with respect to the Initial Offering Period.

2.18 **"Offering Document"** shall have the meaning given to such term in Section 4.1.

2.19 **"Offering Period"** shall have the meaning given to such term in Section 4.1.

2.20 **"Parent"** means any corporation, other than the Company, in an unbroken chain of corporations ending with the Company if, at the time of the determination, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.21 **"Participant"** means any Eligible Employee who has executed a subscription agreement and been granted rights to purchase Common Stock pursuant to the Plan.

2.22 **"Plan"** means this BRC, Inc. 2022 Employee Stock Purchase Plan, as it may be amended from time to time.

2.23 **"Purchase Date"** means the last Trading Day of each Purchase Period.

2.24 **"Purchase Period"** shall refer to one or more periods within an Offering Period, as designated in the applicable Offering Document; provided, however, that, in the event no Purchase Period is designated by the Administrator in the applicable Offering Document, the Purchase Period for each Offering Period covered by such Offering Document shall be the same as the applicable Offering Period.

2.25 **"Purchase Price"** means the purchase price designated by the Administrator in the applicable Offering Document (which purchase price shall not be less than 85% of the Fair Market Value of a Share on the Grant Date or on the Purchase Date, whichever is lower); provided, however, that, in the event no purchase price is designated by the Administrator in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document shall be 85% of the Fair Market Value of a Share on the Grant Date or on the Purchase Date, whichever is lower; provided, further, that the Purchase Price may be adjusted by the Administrator pursuant to Article VIII and shall not be less than the par value of a Share.

2.26 **"Section 423"** means Section 423 of the Code.

2.27 **"Securities Act"** means the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. Reference to a specific section of the Securities Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.28 **"Share"** means a share of Common Stock.

2.29 **"Subsidiary"** means (i) on and after the Section 423 Effective Date, any corporation, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain; provided, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent either (a) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of the Company or any other Subsidiary that is a corporation being the sole owner of such entity, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary or (ii) prior to the Section 423 Effective Date, in addition to the entities in clause (i), "Subsidiary" may also include a subsidiary of the Company that would be described in the first sentence of Treasury Regulation Section 1.409A-1(b)(5)(iii)(E)(1).

2.30 **"Trading Day"** means a day on which national stock exchanges in the United States are open for trading.

ARTICLE III SHARES SUBJECT TO THE PLAN

3.1 **Number of Shares.** Subject to Article VIII, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be 2% of the aggregate number of fully-diluted Shares and shares of Class B Common Stock that are outstanding as of the Effective Date. In addition to the foregoing, subject to Article VIII, the number of Shares that may be issued pursuant to rights granted under the Plan shall be subject to an annual increase on January 1 of each calendar year during the term of the Plan, equal to the lesser of (a) 1% of the aggregate number of Shares and shares of Class B common stock of the Company outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as is determined by the Board. If any right granted under the Plan shall for any reason terminate without having

been exercised, the Common Stock not purchased under such right shall again become available for issuance under the Plan. Notwithstanding anything in this Section 3.1 to the contrary, the number of Shares that may be issued or transferred pursuant to the rights granted under the Plan shall not exceed an aggregate of 22,986,156 Shares, subject to Article VIII.

3.2 Stock Distributed. Any Common Stock distributed pursuant to the Plan may consist, in whole or in part, of authorized and unissued Common Stock, treasury stock or Common Stock purchased on the open market.

ARTICLE IV OFFERING PERIODS; OFFERING DOCUMENTS; PURCHASE DATES

4.1 Offering Periods. The Administrator may from time to time grant or provide for the grant of rights to purchase Common Stock under the Plan to Eligible Employees during one or more periods (each, an “**Offering Period**”) selected by the Administrator. The terms and conditions applicable to each Offering Period shall be set forth in an “**Offering Document**” adopted by the Administrator, which Offering Document shall be in such form and shall contain such terms and conditions as the Administrator shall deem appropriate and shall be incorporated by reference into and made part of the Plan and shall be attached hereto as part of the Plan. The Administrator shall establish in each Offering Document one or more Purchase Periods during such Offering Period during which rights granted under the Plan shall be exercised and purchases of Shares carried out during such Offering Period in accordance with such Offering Document and the Plan. The provisions of separate Offering Periods under the Plan need not be identical.

4.2 Offering Documents. Each Offering Document with respect to an Offering Period shall specify (through incorporation of the provisions of this Plan by reference or otherwise):

- (a) the length of the Offering Period, which period shall not exceed twenty-seven months;

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- (b) the length of the Purchase Period(s) within the Offering Period;
- (c) the maximum number of Shares that may be purchased by any Eligible Employee during such Offering Period, which, in the absence of a contrary designation by the Administrator, shall be 5,000 Shares;
- (d) in connection with each Offering Period that contains more than one Purchase Period, the maximum aggregate number of shares which may be purchased by any Eligible Employee during each Purchase Period, which, in the absence of a contrary designation by the Administrator, shall be 10,000 Shares; and
- (e) such other provisions as the Administrator determines are appropriate, including, without limitation, a maximum number of shares that may be purchased by all Participants during an Offering Period, subject to the provisions of the Plan.

ARTICLE V ELIGIBILITY AND PARTICIPATION

5.1 Eligibility. Any Eligible Employee who shall be employed by the Company or a Designated Subsidiary on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of this Article V and, on or after the Section 423 Effective Date, the limitations imposed by Section 423(b) of the Code.

5.2 Enrollment in Plan.

(a) Except as otherwise set forth in an Offering Document or determined by the Administrator, an Eligible Employee may become a Participant in the Plan for an Offering Period by delivering a subscription agreement (including an electronic form) to the Company by such time prior to the Enrollment Date for such Offering Period (or such other date specified in the Offering Document) designated by the Administrator and in such form as the Company provides.

(b) Each subscription agreement shall designate a whole percentage of such Eligible Employee's Compensation to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each payday during the Offering Period as payroll deductions under the Plan or, if permitted by the Administrator, contributions to be made by such Eligible Employee. The designated percentage may not be less than 1% and may not be more than the maximum percentage specified by the Administrator in the applicable Offering Document (which percentage shall be 15% in the absence of any such designation). The payroll deductions or, if permitted by the Administrator, contributions made for each Participant shall be credited to an account for such Participant under the Plan and shall be deposited with the general funds of the Company.

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(c) A Participant may decrease (but not increase) the percentage of Compensation designated in his or her subscription agreement, subject to the limits of this Section 5.2, or may suspend his or her payroll deductions, or, if permitted by the Administrator, contributions, at any time during an Offering Period; provided, however, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections or, if permitted by the Administrator, contributions, during each Offering Period in the applicable Offering Document (and in the absence of any specific designation by the Administrator, a Participant shall be allowed one change to his or her payroll deduction elections or, if permitted by the Administrator, contributions, during each Offering Period). Any such change or suspension of payroll deductions, or, if permitted by the Administrator, contributions, shall be effective with the first full payroll period that is at least five business days after the Company's receipt of the new subscription agreement (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). In the event a Participant suspends his or her payroll deductions or contributions, such Participant's cumulative payroll deductions or contributions prior to the suspension shall remain in his or her account and shall be applied to the purchase of Shares on the next occurring Purchase Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Article VII.

(d) Except as set forth in Section 5.8, as otherwise set forth in an Offering Document or determined by the Administrator, a Participant may participate in the Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period.

5.3 Payroll Deductions. Except as otherwise provided in the applicable Offering Document or Section 5.8, payroll deductions for a Participant shall commence on the first payroll following the Enrollment Date and shall end on the last payroll in the Offering Period to which the Participant's authorization is applicable, unless sooner terminated by the Participant as provided in Article VII or suspended by the Participant or the Administrator as provided in Section 5.2 and Section 5.6, respectively.

5.4 Effect of Enrollment. A Participant's completion of a subscription agreement will enroll such Participant in the Plan for each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under the Plan as provided in Article VII or otherwise becomes ineligible to participate in the Plan.

5.5 Limitation on Purchase of Common Stock. An Eligible Employee may be granted rights under the Plan only if such rights, together with any other rights granted to such Eligible Employee under "employee stock purchase plans" of the Company, any Parent or any Subsidiary, as specified by Section 423(b)(8) of the Code, do not permit such employee's rights to purchase stock of the Company or any Parent or Subsidiary to accrue at a rate that exceeds \$25,000 of the fair market value of such stock (determined as of the time which such rights are granted) for each calendar year in which such rights are outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code. For the avoidance of doubt, this limitation shall apply to rights granted both before and after the Section 423 Effective Date.

5.6 Decrease or Suspension of Payroll Deductions or Contributions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 5.5 or the other limitations set forth in this Plan, a Participant's payroll deductions or contributions may be suspended or discontinued by the Administrator at any time during an Offering Period. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares by reason of Section 423(b)(8) of the Code, Section 5.5 or the other limitations set forth in this Plan shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

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5.7 Foreign Employees. In order to facilitate participation in the Plan, the Administrator may provide for such special terms applicable to Participants who are citizens or residents of a foreign jurisdiction, or who are employed by a Designated Subsidiary outside of the United States, as the Administrator may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Such special terms may not be more favorable than the terms of rights granted under the Plan to Eligible Employees who are residents of the United States. Moreover, the Administrator may approve such supplements to, or amendments, restatements or alternative versions of, this Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of this Plan as in effect for any other purpose. No such special terms, supplements, amendments or restatements shall include any provisions that are inconsistent with the terms of this Plan as then in effect unless this Plan could have been amended to eliminate such inconsistency without further approval by the stockholders of the Company.

5.8 Leave of Absence. During leaves of absence approved by the Company meeting the requirements of Treasury Regulation Section 1.421-1(h)(2) under the Code, a Participant may continue participation in the Plan by making cash payments to the Company on his or her normal payday equal to his or her authorized payroll deduction.

ARTICLE VI GRANT AND EXERCISE OF RIGHTS

6.1 Grant of Rights. On the Grant Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted a right to purchase the maximum number of Shares specified under Section 4.2, subject to the limits in Section 5.5, and shall have the right to buy, on each Purchase Date during such Offering Period (at the applicable Purchase Price), such number of whole Shares as is determined by dividing (a) such Participant's payroll deductions or permitted contributions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date, by (b) the applicable Purchase Price (rounded down to the nearest Share). The right shall expire on the earlier of: (x) the last Purchase Date of the Offering Period, (y) last day of the Offering Period and (z) the date on which the Participant withdraws in accordance with Section 7.1 or Section 7.3.

6.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions or permitted contributions and any other additional payments specifically provided for in the applicable Offering Document will be applied to the purchase of whole Shares, up to the maximum number of Shares permitted pursuant to the terms of the Plan and the applicable Offering Document, at the Purchase Price. No fractional Shares shall be issued upon the exercise of rights granted under the Plan, unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional Shares remaining after the purchase of whole Shares upon exercise of a purchase right will be credited to a Participant's account and returned to the Participant in one lump sum payment in a subsequent payroll check as soon as practicable after the Exercise Date. Shares issued pursuant to the Plan may be evidenced in such manner as the Administrator may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

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6.3 Pro Rata Allocation of Shares. If the Administrator determines that, on a given Purchase Date, the number of Shares with respect to which rights are to be exercised may exceed (a) the number of Shares that were available for issuance under the Plan on the Enrollment Date of the applicable Offering Period, or (b) the number of Shares available for issuance under the Plan on such Purchase Date, the Administrator may in its sole discretion provide that the Company shall make a pro rata allocation of the Shares available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants for whom rights to purchase Common Stock are to be exercised pursuant to this Article VI on such Purchase Date, and shall either (i) continue all Offering Periods then in effect, or (ii) terminate any or all Offering Periods then in effect pursuant to Article IX. The Company may make pro rata allocation of the Shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

6.4 Withholding. At the time a Participant's rights under the Plan are exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of, the Participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the right or the disposition of the Common Stock. At any time, the Company may, but shall not be obligated to, withhold from the Participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Participant.

6.5 Conditions to Issuance of Common Stock. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, Shares purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions:

- (a) The admission of such Shares to listing on all stock exchanges, if any, on which the Common Stock is then listed;
- (b) The completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, that the Administrator shall, in its absolute discretion, deem necessary or advisable;
- (c) The obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable;

- (d) The payment to the Company of all amounts that it is required to withhold under federal, state or local law upon exercise of the rights, if any; and
- (e) The lapse of such reasonable period of time following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

6.6 Holding Period. The Administrator may provide in an Offering Document that Shares acquired pursuant to this Plan will be subject to a minimum holding period following the applicable Purchase Date, during which the Participant shall not be permitted to sell or otherwise transfer the Shares.

ARTICLE VII WITHDRAWAL; CESSATION OF ELIGIBILITY

7.1 Withdrawal. A Participant may withdraw all but not less than all of the payroll deductions or contributions credited to his or her account and not yet used to exercise his or her rights under the Plan at any time by giving written notice to the Company in a form acceptable to the Company no later than one week prior to the end of the Offering Period (or such shorter or longer period specified by the Administrator in the Offering Document). All of the Participant's payroll deductions credited to his or her account or contributions made by the Participant during an Offering Period shall be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal and such Participant's rights for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of Shares shall be made or contributions accepted for such Offering Period. If a Participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the next Offering Period unless the Participant timely delivers to the Company a new subscription agreement.

7.2 Future Participation. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or a Designated Subsidiary or in subsequent Offering Periods that commence after the termination of the Offering Period from which the Participant withdraws.

7.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, he or she shall be deemed to have elected to withdraw from the Plan pursuant to this Article VII and the payroll deductions credited to such Participant's account or contributions made by such Participant during the Offering Period shall be paid to such Participant or, in the case of his or her death, to the person or persons entitled thereto under Section 12.4, as soon as reasonably practicable, and such Participant's rights for the Offering Period shall be automatically terminated.

ARTICLE VIII ADJUSTMENTS UPON CHANGES IN STOCK

8.1 Changes in Capitalization. Subject to Section 8.3, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), change in control, reorganization, merger, amalgamation, consolidation, combination, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event, as determined by the Administrator, affects the Common Stock such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any outstanding purchase rights under the Plan, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (a) the aggregate number and type of Shares (or other securities or property) that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 and the limitations established in each Offering Document pursuant to Section 4.2 on the maximum number of Shares that may be purchased); (b) the class(es) and number of Shares and price per Share subject to outstanding rights; and (c) the Purchase Price with respect to any outstanding rights.

8.2 Other Adjustments. Subject to Section 8.3, in the event of any transaction or event described in Section 8.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate (including without limitation any change in control), or of changes in Applicable Law or accounting principles, the Administrator, in its discretion, and on such terms and conditions as it deems appropriate, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any right under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

- (a) To provide for either (i) termination of any outstanding right in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property selected by the Administrator in its sole discretion;
- (b) To provide that the outstanding rights under the Plan shall be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar rights covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;
- (c) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding rights under the Plan and/or in the terms and conditions of outstanding rights and rights that may be granted in the future;
- (d) To provide that Participants' accumulated payroll deductions or contributions may be used to purchase Common Stock prior to the next occurring Purchase Date on such date as the Administrator determines in its sole discretion and the Participants' rights under the ongoing Offering Period(s) shall be terminated; and

- (e) To provide that all outstanding rights shall terminate without being exercised.

8.3 No Adjustment Under Certain Circumstances. No adjustment or action described in this ArticleVIII or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan to fail to satisfy the requirements of Section 423 of the Code.

8.4 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares subject to outstanding rights under the Plan or the Purchase Price with respect to any outstanding rights.

ARTICLE IX AMENDMENT, MODIFICATION AND TERMINATION

9.1 Amendment, Modification and Termination. The Administrator may amend, suspend or terminate the Plan at any time and from time to time; ~~provided, however,~~ that approval of the Company's stockholders shall be required to amend the Plan to: (a) increase the aggregate number, or change the type, of shares that may be sold pursuant to rights under the Plan under Section3.1 (other than an adjustment as provided by ArticleVIII); (b) change the corporations or classes of corporations whose employees may be granted rights under the Plan; or (c) following the Section423 Effective Date, change the Plan in any manner that would cause the Plan to no longer be an "employee stock purchase plan" within the meaning of Section 423(b) of the Code.

9.2 Certain Changes to Plan. Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected, to the extent permitted by Section 423 of the Code, the Administrator shall be entitled to change or terminate the Offering Periods, limit the frequency and/or number of changes in the amount withheld from Compensation during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of payroll withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion to be advisable that are consistent with the Plan.

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9.3 Actions In the Event of Unfavorable Financial Accounting Consequences. In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

- (a) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;
- (b) shortening any Offering Period so that the Offering Period ends on a new Purchase Date, including an Offering Period underway at the time of the Administrator action; and
- (c) allocating Shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Participant.

9.4 Payments Upon Termination of Plan. Upon termination of the Plan, the balance in each Participant's Plan account shall be refunded as soon as practicable after such termination, without any interest thereon.

ARTICLE X TERM OF PLAN

The Plan shall be effective on the Effective Date. The effectiveness of the Plan shall be subject to approval of the Plan by the stockholders of the Company within twelve months following the date the Plan is first approved by the Board. No right may be granted under the Plan prior to such stockholder approval. No right may be granted under the Plan after the tenth anniversary of the date of the initial adoption of the Plan by the Board, unless sooner terminated under Section9.1 hereof. No rights may be granted under the Plan during any period of suspension of the Plan or after termination of the Plan.

ARTICLE XI ADMINISTRATION

11.1 Administrator. Unless otherwise determined by the Board, the Administrator of the Plan shall be the Compensation Committee of the Board (or another committee or a subcommittee of the Board to which the Board delegates administration of the Plan) (such committee, the "Committee"). The Board may at any time vest in the Board any authority or duties for administration of the Plan.

11.2 Action by the Administrator. Unless otherwise established by the Board or in any charter of the Administrator, a majority of the Administrator shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present and, subject to Applicable Law and the Bylaws of the Company, acts approved in writing by a majority of the Administrator in lieu of a meeting, shall be deemed the acts of the Administrator. Each member of the Administrator is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Designated Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

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11.3 Authority of Administrator. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

- (a) To determine when and how rights to purchase Common Stock shall be granted and the provisions of each offering of such rights (which need not be identical).
- (b) To designate from time to time which Subsidiaries of the Company shall be Designated Subsidiaries, which designation may be made without the approval of the stockholders of the Company.

- (c) To construe and interpret the Plan and rights granted under it, and to establish, amend and revoke rules and regulations for its administration. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
- (d) To amend, suspend or terminate the Plan as provided in Article IX.
- (e) Generally, to exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and its Subsidiaries.

11.4 Decisions Binding. The Administrator's interpretation of the Plan, any rights granted pursuant to the Plan, any subscription agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

ARTICLE XII MISCELLANEOUS

12.1 Restriction upon Assignment. A right granted under the Plan shall not be transferable other than by will or the applicable laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. Except as provided in Section 12.4 hereof, a right under the Plan may not be exercised to any extent except by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or alienation of the Participant's interest in the Plan, the Participant's rights under the Plan or any rights thereunder.

12.2 Rights as a Stockholder. With respect to Shares subject to a right granted under the Plan, a Participant shall not be deemed to be a stockholder of the Company, and the Participant shall not have any of the rights or privileges of a stockholder, until such Shares have been issued to the Participant or his or her nominee following exercise of the Participant's rights under the Plan. No adjustments shall be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distribution or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein or as determined by the Administrator.

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12.3 Interest. No interest shall accrue on the payroll deductions or contributions of a Participant under the Plan.

12.4 Section 409A. Prior to the Section 423 Effective Date, the Plan and all rights hereunder are intended to be exempt from Section 409A of the Code as "short-term deferrals" within the meaning of Treasury Regulation Section 1.409A-1(b)(4), and following the Section 423 Effective Date, as "statutory stock options" within the meaning of Treasury Regulation Section 1.409A-1(b)(5)(ii), and the Plan will be interpreted and administered accordingly. Notwithstanding anything to the contrary in the Plan, none of the Company, any of its affiliates, the Administrator, or any Person acting on behalf of the Company, any of its affiliates or the Administrator, will be liable to any Participant or other Person by reason of any acceleration of income, any additional tax, or any other tax or liability asserted by reason of the failure of the Plan to be exempt from or satisfy the requirements of Section 409A of the Code.

12.5 Designation of Beneficiary.

(a) A Participant may, in the manner determined by the Administrator, file a written designation of a beneficiary who is to receive any Shares and/or cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to a Purchase Date on which the Participant's rights are exercised but prior to delivery to such Participant of such Shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to exercise of the Participant's rights under the Plan. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary shall not be effective without the prior written consent of the Participant's spouse.

(b) Such designation of beneficiary may be changed by the Participant at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such Shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

12.6 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

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12.7 Equal Rights and Privileges. Following the Section 423 Effective Date and subject to Section 5.7, (i) all Eligible Employees will have equal rights and privileges under this Plan so that this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code and (ii) any provision of this Plan that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board or the Administrator, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code.

12.8 Use of Funds. All payroll deductions or contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions or contributions.

12.9 Reports. Statements of account shall be given to Participants at least annually, which statements shall set forth the amounts of payroll deductions or contributions, the Purchase Price, the number of Shares purchased and the remaining cash balance, if any.

12.10 No Employment Rights. Nothing in the Plan shall be construed to give any person (including any Eligible Employee or Participant) the right to remain in the employ of the Company or any Parent or Subsidiary or affect the right of the Company or any Parent or Subsidiary to terminate the employment of any person (including any Eligible Employee or Participant) at any time, with or without cause.

12.11 Notice of Disposition of Shares. With respect to shares acquired pursuant to rights granted under the Plan following the Section 423 Effective Date, each Participant shall give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of such right if such disposition or transfer is made: (a) within two years from the Grant Date of the Offering Period in which the Shares were purchased or (b) within one year after the Purchase Date on which such Shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

12.12 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof or of any other jurisdiction.

12.13 Electronic Forms. To the extent permitted by Applicable Law and in the discretion of the Administrator, an Eligible Employee may submit any form or notice as set forth herein by means of an electronic form approved by the Administrator. Before the commencement of an Offering Period, the Administrator shall prescribe the time limits within which any such electronic form shall be submitted to the Administrator with respect to such Offering Period in order to be a valid election.

BRC INC.
2022 OMNIBUS INCENTIVE PLAN

[FORM OF] STOCK OPTION GRANT NOTICE

Pursuant to the terms and conditions of the BRC Inc. 2022 Omnibus Incentive Plan, as amended from time to time (the "**Plan**"), BRC Inc., a Delaware public benefit corporation (the "**Company**"), hereby grants to the individual listed below ("**you**" or the "**Participant**") options to purchase the number of Shares (the "**Options**") set forth below. This award of Options (this "**Award**") is subject to the terms and conditions set forth herein, in the Stock Option Agreement attached hereto as Exhibit A (the "**Agreement**") and in the Plan, each of which is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan. In addition, by acceptance of the Options, you agree to comply and be bound by the Restrictive Covenants attached hereto as Exhibit B.

Participant: _____

Grant Date: _____

Exercise Price per Share: \$ _____ per Class A Share

Shares Subject to the Option: _____ Class A Shares

Type of Option: Non-Qualified Stock Option

Vesting Schedule: Subject to Sections 3, 4 and 7 of the Agreement, the Plan and the other terms and conditions set forth herein, the Options shall vest and become exercisable according to the following schedule, so long as you remain continuously employed by the Company or an Affiliate from the Date of Grant through each such vesting date (each, a "**Vesting Date**");

	Portion of Shares Subject to the Option That Become Vested
Vesting Date	

Vesting Commencement Date: _____

Expiration Date: _____

By the Participant's signature below, Participant agrees to be bound by the terms of this Grant Notice, the Plan and the Agreement. Participant has reviewed the Plan, this Grant Notice and the Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Agreement. This Grant Notice may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Notwithstanding any provision of this Grant Notice or the Agreement, if Participant has not executed this Grant Notice within 90 days following the Grant Date set forth above, the award may be forfeited.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Grant Notice to be executed by an officer thereunto duly authorized, and Participant has executed this Grant Notice, effective for all purposes as provided above.

BRC INC.

By: _____
 Name: _____
 Title: _____

PARTICIPANT

 Name:

Signature page
to
stock option grant notice

STOCK OPTION AGREEMENT

This Stock Option Agreement (together with the Grant Notice to which this Agreement is attached, this “**Agreement**”) is made as of the Date of Grant set forth in the Grant Notice to which this Agreement is attached by and between BRC Inc., a Delaware public benefit corporation (the “**Company**”), and [●] (“**Participant**”). Capitalized terms used but not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice.

1. **Grant of Option.** In consideration of the Participant’s past and/or continued employment with, or service to, the Company or an Affiliate and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, effective as of the Date of Grant set forth in the Grant Notice (the “**Date of Grant**”), the Company hereby grants to Participant the number of Options set forth in the Grant Notice on the terms and conditions set forth in the Grant Notice, this Agreement and the Plan, which is incorporated herein by reference as a part of this Agreement. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control. To the extent vested, each Option represents the right to purchase one Share at the Exercise Price, subject to the terms and conditions set forth in the Grant Notice, this Agreement and the Plan.

2. **Vesting.** Except as otherwise set forth in Sections 3, 4 or 7, the Options shall vest and become exercisable in accordance with the schedule set forth in the Grant Notice.

3. **Termination and Forfeiture of Options.**

(a) Upon the Participant’s Termination of Service, all of the Options which are not vested will terminate automatically without any further action by the Company and will be forfeited without further notice and at no cost to the Company.

(b) Notwithstanding the foregoing,

(i) upon the Participant’s Termination of Service by the Company or an Affiliate due to the Participant’s death or Disability, the portion of the Options which would have vested on the first Vesting Date following such Termination of Service shall immediately vest, and any and all then-unvested Options will terminate automatically without any further action by the Company and will be forfeited without further notice and at no cost to the Company; or

(ii) upon the occurrence of a Change in Control,

(A) to the extent the Options are not assumed by the surviving entity in connection with such Change in Control, one-hundred percent (100%) of the Options shall vest as of the date of such Change in Control and be settled pursuant to Section 5 hereof; or

(B) to the extent the Options are assumed by the surviving entity in connection with such Change in Control, upon the Participant’s Termination of Service by the Company or an Affiliate without Cause or the Participant’s resignation for Good Reason within the period that is three (3) months prior to or twelve (12) month’s following period following such Change in Control, one-hundred percent (100%) of the Options shall vest as of the date of such Termination of Service (or, if later, the date of the Change in Control).

Exhibit A-1

(c) For purposes of this Section 3:

(i) “**Good Reason**” shall mean the occurrence, without the Participant’s written consent, of: (A) a materially adverse change in the Participant’s reporting obligations; (B) a materially adverse diminution in the Participant’s employment duties, responsibilities or authority, or the assignment to Participant of duties that are materially and adversely inconsistent with his or her position; or (C) any reduction in base salary other than any reduction of up to 20% that effects all similarly-situated employees of the Company; provided, that Participant may terminate his or her employment for Good Reason only if (x) within ninety (90) days of the date Participant has actual knowledge of the occurrence of an event of Good Reason, Participant provides written notice to the Company specifying such event, (y) the Company does not cure such event within sixty (60) days of such notice for other events and (z) Participant actually terminates his or her employment within thirty (30) business days of the end of such cure period.

4. **Expiration.** Participant may not exercise any vested and exercisable Options to any extent after the first to occur of the following events, and, upon the first to occur of the following events, such vested Options shall immediately terminate and expire (without payment of any consideration therefor):

(a) the Expiration Date set forth in the Grant Notice;

(b) the first (1st) anniversary of the date of the Participant’s Termination of Service due to death or Disability;

(c) ninety (90) days after the date of either (i) the Participant’s Termination of Service without Cause or (i) the Participant’s resignation; or

(d) immediately upon either (i) the date of the Participant’s Termination of Service for Cause or (ii) the date of a Restrictive Covenant Violation.

5. **Methods of Exercise of the Options**

(a) **Person Eligible to Exercise.** During the Participant’s lifetime, only Participant may exercise the Option. After the Participant’s death, any exercisable portion of the Option may, prior to the time the Option expires, be exercised by the legal representative of the Participant’s estate as provided in the Plan.

(b) **Payment of Exercise Price.** Subject to the terms and conditions of the Plan, the Grant Notice and this Agreement, to the extent vested, the Option may be exercised in whole or in part at any time prior to the Expiration Date by giving written notice of exercise to the Company in the form prescribed by the Committee from time to time specifying the number of Shares to be purchased, which notice shall be delivered to the Company in the form, and in the manner designated by the Committee from time to time. Such notice must be accompanied by payment in full of the Exercise Price as follows: (i) in cash (including check, bank draft or money order payable to the order of the Company or wire transfer of immediately available funds), (ii) if permitted by the Committee in its sole discretion, by delivering or constructively tendering Shares to the Company having a Fair Market Value equal to the Exercise Price (provided such Shares used for this purpose must have been held by Participant for such minimum period of time as may be established from time to time by the Committee to avoid adverse accounting consequences), (iii) through a “cashless exercise” in accordance with a Company established policy or program for the same or (iv) any combination of the foregoing. No fraction of a Share shall be issued by the Company upon exercise of the Option or accepted by the Company in payment of the Exercise Price; rather, Participant shall provide a cash payment for such amount as is necessary to effect the issuance and acceptance of only whole Shares. No Shares will be issued under this Agreement until payment for those Shares has been made or provided for in accordance with this Agreement or the Plan. The holder of the Option shall not be, and shall not have any of the rights or privileges of, a stockholder of the Company in respect of any Shares purchasable upon the exercise of any part of the Option unless and until such Shares have been issued by the Company to such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company).

(c) **Tax Withholding.** To the extent that the receipt, vesting or exercise of the Option results in compensation income or wages to Participant for federal, state, local or other tax purposes, Participant shall make arrangements satisfactory to the Company or its Affiliate for the satisfaction of obligations for the payment of withholding taxes and other tax obligations relating to the Option, which arrangements include the delivery of cash or cash equivalents, Shares (including previously owned Shares, net settlement, a broker-assisted sale, or other cashless withholding or reduction of the amount of Shares otherwise issuable or delivered pursuant to the Option), other property, or any other legal consideration the Committee deems appropriate. If such tax obligations are satisfied through net settlement or the surrender of previously owned Shares, the maximum number of Shares that may be so withheld (or surrendered) shall be the number of Shares that have an aggregate Fair Market Value on the date of withholding or surrender equal to the aggregate amount of such tax liabilities determined based on the greatest withholding rates for federal, state, local and/or foreign tax purposes, including payroll taxes, that may be utilized without creating adverse accounting treatment for the Company with respect to the Option, as determined by the Committee. Any fraction of a Share required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash to the Participant. Participant acknowledges that there may be adverse tax consequences upon the receipt, vesting or exercise of the Option or disposition of the underlying Shares and that Participant has been advised, and hereby is advised, to consult a tax advisor. Participant represents that Participant is in no manner relying on the Board, the Committee, the Company or any Affiliate or any of their respective managers, directors, officers, employees or authorized representatives (including attorneys, accountants, consultants, bankers, lenders, prospective lenders and financial representatives) for tax advice or an assessment of such tax consequences.

6. **Employment Relationship.** For purposes of this Agreement, Participant shall be considered to be employed by the Company or an Affiliate as long as Participant remains an employee of any of the Company, an Affiliate or a corporation or other entity (or a parent or subsidiary of such corporation or other entity) assuming or substituting a new award for this Award.

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7. **Restrictive Covenants.** Notwithstanding any provision in this Agreement or the Plan to the contrary, in the event the Committee determines that Participant has failed to abide by the provisions of any confidentiality, non-competition or non-solicitation covenant in any agreement by and between the Company or any Affiliate and Participant (including, without limitation, those set forth in Exhibit B) (a "**Restrictive Covenant Violation**"), then all Options that have not been exercised as of the date of such determination (whether vested or unvested) will terminate automatically without any further action by the Company and will be forfeited without further notice and at no cost to the Company.

8. **Non-Transferability.** During the lifetime of the Participant, the Options may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the Options have been issued, and all restrictions applicable to such shares have lapsed. Neither the Options nor any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means, whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

9. **Compliance with Applicable Law.** Notwithstanding any provision of this Agreement to the contrary, the issuance of Shares hereunder will be subject to compliance with all applicable requirements of applicable law with respect to such securities and with the requirements of any stock exchange or market system upon which the Shares may then be listed. No Shares will be issued hereunder if such issuance would constitute a violation of any applicable law or regulation or the requirements of any stock exchange or market system upon which the Shares may then be listed. In addition, Shares will not be issued hereunder unless (a) a registration statement under the Securities Act is in effect at the time of such issuance with respect to the shares to be issued or (b) in the opinion of legal counsel to the Company, the shares to be issued are permitted to be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary for the lawful issuance and sale of any Shares hereunder will relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority has not been obtained. As a condition to any issuance of Shares hereunder, the Company may require Participant to satisfy any requirements that may be necessary or appropriate to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect to such compliance as may be requested by the Company.

10. **Rights as a Stockholder.** Participant shall have no rights as a stockholder of the Company with respect to any Shares that may become deliverable hereunder unless and until Participant has become the holder of record of such Shares, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such Shares, except as otherwise specifically provided for in the Plan or this Agreement.

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11. **Execution of Receipts and Releases.** Any issuance or transfer of Share or other property to Participant or the Participant's legal representative, heir, legatee or distributee, in accordance with this Agreement shall be in full satisfaction of all claims of such Person hereunder. As a condition precedent to such payment or issuance, the Company may require Participant or the Participant's legal representative, heir, legatee or distributee to execute (and not revoke within any time provided to do so) a release and receipt therefor in such form as it shall determine appropriate.

12. **No Right to Continued Employment, Service or Awards.** Nothing in the adoption of the Plan, nor the award of the Options thereunder pursuant to the Grant Notice and this Agreement, shall confer upon Participant the right to continued employment by, or a continued service relationship with, the Company or any Affiliate, or any other entity, or affect in any way the right of the Company or any such Affiliate, or any other entity to terminate such employment or other service relationship at any time. Unless otherwise provided in a written employment agreement or by applicable law, the Participant's employment by the Company, or any such Affiliate, or any other entity shall be on an at-will basis, and the employment relationship may be terminated at any time by either Participant or the Company, or any such Affiliate, or other entity for any reason whatsoever, with or without cause or notice. Any question as to whether and when there has been a termination of such employment, and the cause of such termination, shall be determined by the Committee or its delegate, and such determination shall be final, conclusive and binding for all purposes. The grant of the Options is a one-time benefit that was made at the sole discretion of the Company and does not create any contractual or other right to receive a grant of restricted stock units or other Awards or any payment or benefits in the future, including any adjustment to wages, overtime, benefits or other compensation. Any future Awards will be granted at the sole discretion of the Company.

13. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be delivered to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, unless otherwise designated by the Company in a written notice to Participant (or other holder):

BRC Inc.
attn.: General Counsel
1144 500 W.

If to the Participant, at the Participant's last known address on file with the Company.

Any notice that is delivered personally or by overnight courier or telecopier in the manner provided herein shall be deemed to have been duly given to Participant when it is mailed by the Company or, if such notice is not mailed to the Participant, upon receipt by the Participant. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fourth day after the day it is so placed in the mail.

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14. Consent to Electronic Delivery; Electronic Signature In lieu of receiving documents in paper format, Participant agrees, to the fullest extent permitted by law, to accept electronic delivery of any documents that the Company may be required to deliver (including, but not limited to, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports and all other forms of communications) in connection with this and any other Award made or offered by the Company. Electronic delivery may be via a Company electronic mail system or by reference to a location on a Company intranet to which Participant has access. Participant hereby consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may be required to deliver, and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature.

15. Agreement to Furnish Information Participant agrees to furnish to the Company all information requested by the Company to enable it to comply with any reporting or other requirement imposed upon the Company by or under any applicable statute or regulation.

16. Entire Agreement; Amendment This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and contains all the covenants, promises, representations, warranties and agreements between the parties with respect to the Options granted hereby; provided, however, that the terms of this Agreement shall not modify and shall be subject to the terms and conditions of any employment, consulting and/or severance agreement between the Company (or an Affiliate or other entity) and Participant in effect as of the date a determination is to be made under this Agreement. Without limiting the scope of the preceding sentence, except as provided therein, all prior understandings and agreements, if any, among the parties hereto relating to the subject matter hereof are hereby null and void and of no further force and effect. The Committee may, in its sole discretion, amend this Agreement from time to time in any manner that is not inconsistent with the Plan; provided, however, that except as otherwise provided in the Plan or this Agreement, any such amendment that materially and adversely reduces the rights of Participant shall be effective only if it is in writing and signed by both Participant and an authorized officer of the Company.

17. Severability and Waiver If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the invalidity or unenforceability of such provision shall not affect the validity or enforceability of any other provision of this Agreement, and all other provisions shall remain in full force and effect. Waiver by any party of any breach of this Agreement or failure to exercise any right hereunder shall not be deemed to be a waiver of any other breach or right. The failure of any party to take action by reason of such breach or to exercise any such right shall not deprive the party of the right to take action at any time while or after such breach or condition giving rise to such rights continues.

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18. Company Recoupment of Awards The Participant's rights with respect to this Award shall in all events be subject to (a) all rights that the Company may have under any Company recoupment policy or any other agreement or arrangement with the Participant, and (b) all rights and obligations that the Company may have regarding the clawback of "incentive-based compensation" under Section 10D of the Exchange Act and any applicable rules and regulations promulgated thereunder from time to time by the U.S. Securities and Exchange Commission.

19. Governing Law THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN, EXCLUSIVE OF THE CONFLICT OF LAWS PROVISIONS OF DELAWARE LAW.

20. Successors and Assigns The Company may assign any of its rights under this Agreement without the Participant's consent. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein and in the Plan, this Agreement will be binding upon Participant and the Participant's beneficiaries, executors, administrators and the Person(s) to whom the Options may be transferred by will or the laws of descent or distribution.

21. Headings; References; Interpretation Headings are for convenience only and are not deemed to be part of this Agreement. The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All references herein to Sections shall, unless the context requires a different construction, be deemed to be references to the Sections of this Agreement. The word "or" as used herein is not exclusive and is deemed to have the meaning "and/or." All references to "including" shall be construed as meaning "including without limitation." Unless the context requires otherwise, all references herein to a law, agreement, instrument or other document shall be deemed to refer to such law, agreement, instrument or other document as amended, supplemented, modified and restated from time to time to the extent permitted by the provisions thereof. All references to "dollars" or "\$" in this Agreement refer to United States dollars. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by each of the parties hereto and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto.

22. Counterparts The Grant Notice may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Delivery of an executed counterpart of the Grant Notice by facsimile or portable document format (.pdf) attachment to electronic mail shall be effective as delivery of a manually executed counterpart of the Grant Notice.

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23. Section 409A Notwithstanding anything herein or in the Plan to the contrary, the Options granted pursuant to this Agreement are intended to be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. Notwithstanding the foregoing, the Company and its Affiliates make no representations that the Options provided under this Agreement are exempt from or compliant with Section 409A of the Code

and in no event shall the Company or any Affiliate be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Participant on account of non-compliance with Section 409A of the Code.

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EXHIBIT B

Exhibit B-1

CODE OF ETHICS

BRC Inc.

The Board of Directors (the "Board") of BRC Inc. (together with its subsidiaries, the "Company") has adopted this Code of Ethics (the "Code") in order to deter wrongdoing and promote:

1. honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
2. full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (the "SEC") and in other public communications made by the Company;
3. compliance with applicable governmental laws, rules and regulations;
4. the prompt internal reporting of violations of the Code to an appropriate person or persons identified in the Code; and
5. accountability for adherence to the Code.

All directors, officers and employees are required to be familiar with the Code, comply with its provisions and report any suspected violations as described below.

HONEST AND ETHICAL CONDUCT

The Company's policy is to promote high standards of integrity by conducting its affairs honestly and ethically.

Each director, officer and employee must act with integrity and observe the highest ethical standards of business conduct in his or her dealings with the Company's customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job.

CONFLICTS OF INTEREST

A conflict of interest occurs when an individual's private interest interferes, or even appears to interfere, with the interests of the Company as a whole. A conflict of interest can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. Conflicts of interest also arise when an employee, officer or director (or a member of his or her family) receives improper personal benefits as a result of his or her position in the Company.

Loans by the Company to, or guarantees by the Company of, obligations of directors, officers, employees or their family members are of special concern. Loans by the Company to, or guarantees by the Company of, obligations of any director or executive officer are expressly prohibited.

Whether or not a conflict of interest exists or will exist can be unclear. Conflicts of interest should be avoided unless specifically authorized as described in the paragraph below.

Persons other than directors and executive officers who have questions about a potential conflict of interest or who become aware of an actual or potential conflict should discuss the matter with, and seek a determination and prior authorization or approval from, their supervisor or the General Counsel. A supervisor may not authorize or approve conflict of interest matters or make determinations as to whether a problematic conflict of interest exists without first providing the General Counsel with a written description of the activity and seeking the General Counsel's written approval. If the supervisor is himself involved in the potential or actual conflict, the matter should instead be discussed directly with the General Counsel.

Directors and executive officers must seek determinations and prior authorizations or approvals of potential conflicts of interest exclusively from the Audit Committee.

CORPORATE OPPORTUNITIES

All directors, officers and employees owe a duty to the Company to advance its interests when the opportunity to do so arises. Directors, officers and employees are prohibited from taking for themselves personally opportunities that are discovered through the use of Company property, information or position. Directors, officers and employees may not use Company property, information or position for personal gain. In addition, no director, officer or employee may compete with the Company. Exceptions to the foregoing duties relating to corporate opportunities and competition are applicable with respect to the Company's non-employee Directors and their respective affiliates and affiliated entities, as provided in the Company's Amended and Restated Certificate of Incorporation. Such exceptions include 1) engaging or proposing to engage in the same or similar business activities or lines of business in which the Company or any of its affiliates, has historically engaged, or (2) otherwise competing with the Company or any of its affiliates.

CONFIDENTIALITY

Directors, officers and employees should maintain the confidentiality of information entrusted to them by the Company or by its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to the Company's competitors, or harmful to the Company or its customers if disclosed.

FAIR DEALING

Each director, officer and employee should endeavor to deal fairly with the Company's customers, suppliers, competitors and employees. No director, officer or employee should take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of facts or any other unfair dealing practice.

PROTECTION AND PROPER USE OF COMPANY ASSETS

All directors, officers and employees should protect the Company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the Company's

profitability and are prohibited.

All Company assets should be used only for legitimate business purposes. Any suspected incident of fraud or theft should be reported for investigation immediately.

The obligation to protect Company assets includes the Company's proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks, and copyrights, as well as business and marketing plans, engineering and manufacturing ideas, designs, databases, records and any non-public financial data or reports. Unauthorized use or distribution of this information is prohibited and could also be illegal and result in civil or criminal penalties.

COMPLIANCE

Directors, officers and employees should comply, both in letter and spirit, with all applicable laws, rules and regulations in the cities, states and countries in which the Company operates.

Although not all directors, officers and employees are expected to know the details of all applicable laws, rules and regulations, it is important to know enough to determine when to seek advice from appropriate personnel. Questions about compliance should be addressed to the Legal Department.

Insider trading is unethical, illegal and a violation of the Company's Insider Trading Policy.

DISCLOSURE

The Company's periodic reports and other documents filed with the SEC, including all financial statements and other financial information, must comply with applicable federal securities laws and SEC rules.

Each director, officer and employee who contributes in any way to the preparation or verification of the Company's financial statements and other financial information must ensure that the Company's books, records and accounts are accurately maintained. Each director, officer and employee must cooperate fully with the Company's accounting and internal audit departments, as well as the Company's independent public accountants and counsel.

Each director, officer and employee who is involved in the Company's disclosure process must:

1. be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting; and
2. take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

REPORTING AND INVESTIGATION OF VIOLATIONS

Actions prohibited by this Code involving directors or executive officers must be reported to the Audit Committee.

Actions prohibited by this Code involving anyone other than a director or executive officer must be reported to the reporting person's supervisor or the General Counsel.

After receiving a report of an alleged prohibited action, the Audit Committee, the General Counsel or the relevant supervisor must promptly take all appropriate actions necessary to investigate.

All directors, officers and employees are expected to cooperate in any internal investigation of misconduct.

PROHIBITION ON RETALIATION

The Company does not tolerate acts of retaliation against any director, officer or employee who makes a good faith report of known or suspected acts of misconduct or other violations of this Code, and any such retaliation may be a violation of the Company's Whistleblower Policy.

ENFORCEMENT

The Company must ensure prompt and consistent action against violations of this Code.

If, after investigating a report of an alleged prohibited action by a director or executive officer, the Audit Committee determines that a violation of this Code has occurred, the Audit Committee will report such determination to the Board.

If, after investigating a report of an alleged prohibited action by any other person, the relevant supervisor determines that a violation of this Code has occurred, the supervisor will report such determination to the General Counsel.

Upon receipt of a determination that there has been a violation of this Code, the Board or the General Counsel will take such preventative or disciplinary action as it deems appropriate, including, but not limited to, reassignment, demotion, dismissal and, in the event of criminal conduct or other serious violations of the law, notification of appropriate governmental authorities.

WAIVERS

The Board or the Audit Committee (in the case of a violation by a director or executive officer) or the General Counsel (in the case of a violation by any other person) may, in its discretion, waive any violation of this Code.

Any waiver for a director or an executive officer shall be disclosed as required by SEC and NYSE rules.

LIST OF SUBSIDIARIES OF REGISTRANT
BRC INC.
A DELAWARE PUBLIC BENEFIT CORPORATION

Subsidiaries	Jurisdiction
Authentic Brands LLC	Delaware
SBEA Merger Sub LLC	Delaware
Good Beans LLC	Delaware
Black Rifle Coffee Company LLC	Delaware
BRCC Operating Company LLC	Delaware
1144 SLC LLC	Delaware
Spencer 355 LLC	Delaware
621 Manchester LLC	Delaware
BRCC Copperfield LLC	Delaware
BRCC GC LLC	Utah
Free Range American Media Company LLC	Delaware
Signal Mountain Media Works LLC (d/b/a Coffee or Die)	Texas
Grounds and Hounds Coffee Company LLC	Delaware
Independent Coffee Solutions LLC	Delaware

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Introduction

The following unaudited pro forma condensed combined financial information is provided in compliance with Item 9.01 (b) of Form 8-K to aid you in your analysis of the financial aspects of the Business Combination, and related transactions. The following unaudited pro forma condensed combined financial statements are prepared in accordance with Article 11 of Regulation S-X, as amended by the final rule, release 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses”. Certain capitalized terms below are defined elsewhere in this Form 8-K from the proxy statement/prospectus.

The following unaudited pro forma condensed combined balance sheet as of September 30, 2021 combines the historical balance sheets of Authentic Brands and SilverBox on a pro forma basis as if the Business Combination and related transactions, summarized below, had been consummated on September 30, 2021. The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2021, and for the year ended December 31, 2020, combine the historical statement of operations of Authentic Brands’ and SilverBox for such periods on a pro forma basis as if the Business Combinations and related transactions, summarized below, had been consummated on January 1, 2020, the beginning of the earliest period presented.

The unaudited pro forma condensed combined financial information has been derived from and should be read in conjunction with:

- the accompanying notes to the unaudited pro forma condensed combined financial statements;
- the unaudited historical financial statements of SilverBox and Authentic Brands as of and for the nine months ended September 30, 2021, and the related notes thereto, included in the proxy statement/prospectus as filed with the Commission on January 13, 2022;
- the audited historical financial statements of SilverBox for the period ended December 31, 2020 and for the period December 3, 2020 (inception) through December 31, 2020, and Authentic Brands as of and for the year ended December 31, 2020, and the related notes thereto, included in the proxy statement/prospectus as filed with the Commission on January 13, 2022;
- the sections entitled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of SilverBox*,” “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of Authentic Brands*,” and other financial information relating to SilverBox and Authentic Brands included in the proxy statement/prospectus as filed with the Commission January 13, 2022.

The unaudited pro forma condensed combined financial statements are presented for illustrative purposes only and do not necessarily reflect what the financial condition or results of operations would have been had the Business Combination and related transactions occurred on the dates indicated. Further, the unaudited pro forma condensed combined financial information also may not be useful in predicting the future financial condition and results of operations of the Combined Company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors. The unaudited pro forma adjustments represent management’s estimates based on information available as of the date of these unaudited pro forma condensed combined financial statements and are subject to change as additional information becomes available and analyses are performed.

The combined financial information presents the pro forma effects of the following transactions:

- the combination of SilverBox and Authentic Brands;
- the redemption of 26,870,683 Silverbox public shares;
- the PIPE Investment;
- the Forward Purchase Investment; and
- the Earn out.

The Business Combination between Authentic Brands and SilverBox will be accounted for as a reverse recapitalization. Accordingly, the Business Combination is expected to be reflected as the equivalent of Authentic Brands issuing stock for the net assets of SilverBox, accompanied by a recapitalization. Under this method of accounting, SilverBox is treated as the “acquired” company for financial reporting purposes. The net assets of SilverBox are stated at fair value (which is expected to approximate historical cost), with no goodwill or other intangible assets recorded. This accounting treatment was determined as the individual controlling Authentic Brands prior to the Business Combination will also control the combined company post business combination.

SilverBox has determined Authentic Brands to be the predecessor entity to the Business Combination based on a number of considerations, including i) Authentic Brands former management making up the majority of the management team of PubCo, ii) Authentic Brands former management nominating or representing the majority of the PubCo board of directors, iii) Authentic Brands representing the majority of the continuing operations of the PubCo and iv) the CEO of Authentic Brands will have voting control of the combined company.

The unaudited pro forma condensed combined financial information also reflects the redemption into cash of SilverBox’s common stock by public stockholders of SilverBox who elected to exercise their redemption rights for a total of 26,870,683 shares and an aggregate payment of \$268.7 million. Based upon the redemptions at closing, pursuant to the Sponsor Side Letter, the number of Class A Common Shares forfeited by the Sponsor and the corresponding decrease in the number of Company Common Units issued by the Company to Pubco at the Closing.

The following summarizes the pro forma combined company Class A & Class B Common Stock issued and outstanding immediately after redemptions of the public shareholders excluding the potential dilutive effect of outstanding stock options, the earn-outs, restricted stock units, and common stock warrants:

	Outstanding Shares	%
Rollover Equity – Company Shareholders (a) (b)	140,926,990	76.63%
BRCC Fund Shares	532,750	0.29%
SilverBox Public (Common) Shares	7,629,317	4.15%
Forward Purchase Shares	10,000,000	5.44%
Third Party Private Placement (PIPE)	10,000,000	5.44%
Sponsor Shares (c)	4,812,243	2.61%

Backstop Shares	10,000,000	5.44%
Closing Merger Shares	183,901,300	100.00%

- (a) Pursuant to the Business Combination Agreement, the reduction in proceeds from cash in trust are utilized for proceeds for existing Authentic Brands equityholders,
- (b) Rollover equity Authentic Brands equityholders will receive shares of PubCo Class B Common Stock.
- (c) Total Sponsor Shares held upon closing in the are 4,779,387, which will be retained by the Sponsor with no vesting criteria, or other adjustments.

AUTHENTIC BRANDS, LLC

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET

AT SEPTEMBER 30, 2021 (in thousands, except per share amounts)

	Historical			As of September 30, 2021	
	Authentic Brands (As of September 30, 2021)	SilverBox (As of September 30, 2021)	Pro Forma Adjustments		Pro Forma Combined
ASSETS					
Current Assets					
Cash and cash equivalents	13,992	992	345,060	A	155,440
			(12,075)	B	
			200,000	C	
			(152,826)	D	
			(13,900)	E	
			(24,599)	F	
			(23,996)	H	
			(8,502)	J	
			100,000	L	
			(268,706)	G	
Accounts receivable, net	12,281	-	-		12,281
Inventories, net	23,762	-	-		23,762
Due from sponsor	-	1	-		1
Prepaid expenses	4,439	478	-		4,917
Total current assets	54,474	1,471	140,456		196,401
Property, plant and equipment, net	24,529	-	-		24,529
Intangible assets	173	-	-		173
Cash and marketable securities held in Trust Account	-	345,060	(345,060)	A	-
Other assets	1,129	-	-		1,129
Total assets	80,305	346,531	(204,604)		222,232
Liabilities, convertible preferred stock, and stockholders' equity (deficit)					
Current Liabilities					
Accounts payable	15,971	754	-		16,725
Accrued liabilities/expenses	21,055	-	-		21,055
Accrued sales taxes	1,229	-	-		1,229
Deferred revenue	6,145	-	-		6,145
Current maturities of long-term debt, net	1,154	-	-		1,154
Current maturities of capital lease obligations	55	-	-		55
Taxes payable	-	150	-		150
Due to related party	-	1	-		1
Total current liabilities	45,609	905	-		46,514
Long-term debt, net	23,163	-	(8,502)	J	14,661
	164	-	-		164
Capital lease obligations, net of current maturities	-	-	-		-
Other non-current liabilities	255	-	-		255
Earn-Out Liability	-	-	181,772	O	181,772
Deferred Sponsor Share Liability	-	-	10,272	P	10,272
Warrant Liability	-	12,842	-		12,842
Deferred underwriters' discount	-	12,075	(12,075)	B	-
Total liabilities	69,191	25,822	171,467		266,480

Commitments and contingencies

Series A preferred equity, less issuance costs	142,790	-	(142,790)	D	-
Class A Common Stock subject to possible redemption, 34,500,000 and 0 shares at redemption value, respectively	-	345,000	(268,707)	G	-
			(76,293)	G	-

Stockholders' Equity

Members' deficit	(131,676)	-	131,676	M	-
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BRC Inc. Class A Common Stock, \$0.0001 par value	-	-	8	G	
			20	N	43
			10	L	
			5	Q	
SilverBox Class B common stock, \$0.0001 par value;	-	1	(1)	Q	-
BRC Inc. Class B common stock, voting and non-economic, \$0.0001 par value	-	-	14	R	14
SilverBox - Class C common stock, \$0.0001 par value; 30,000,000 shares authorized;	-	-	20	C	
			(20)	N	-
Additional paid-in capital	-	-	199,980	C	131,680
			(13,900)	E	
			(24,209)	F	
			76,286	G	
			(23,996)	H	
			(24,316)	I	
			33,907	K	
			99,990	L	
			(181,772)	O	
			(10,272)	P	
			(4)	Q	
			(14)	R	
Accumulated deficit	-	(24,292)	(10,036)	D	(142,078)
			(390)	F	
			24,316	I	
			(131,676)	M	
Non-Controlling Interest	-	-	(33,907)	K	(33,907)
Total stockholders' equity (deficit)	(131,676)	(24,291)	111,719		(44,248)
Total liabilities, convertible preferred stock, warrants and stockholders' equity	80,305	346,531	(204,604)		222,232

AUTHENTIC BRANDS, LLC

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS

FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2021 (IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	Historical			As of September 30, 2021
	Authentic Brands (As of September 30, 2021)	SilverBox (As of September 30, 2021)	Pro Forma Adjustments	Pro Forma Combined
Revenue				
Revenue, net	\$ 161,253	\$ -	\$ -	\$ 161,253
Cost of goods sold	96,245	-	-	96,245
Gross Profit	65,008	-	-	65,008
Operating costs and expenses				
Marketing and advertising	25,290	-	-	25,290
Salaries, wages and benefits	29,755	-	-	29,755
General and administrative	17,473	-	-	17,473
Formation and other expenses	-	1,457	-	1,457
Total operating cost and expenses	72,518	1,457	-	73,975
Operating loss	(7,510)	(1,457)	-	(8,967)
Non-operating income (expense):				
Interest expense	(1,590)	-	85	CC (1,505)
Unrealized gain on change in fair value of warrants	-	9,341	-	9,341
Transaction costs allocated to warrant liabilities	-	(821)	-	(821)
Other expense	(5)	-	-	(5)
Interest income	-	60	(60)	AA -
Income/(loss) before taxes	(9,105)	7,123	25	(1,957)
Income tax (expense) benefit	(133)	-	-	(133)
Net income / (loss)	(9,238)	7,123	25	(2,090)
Net income (loss) attributable to non-controlling interests	-	-	(1,601)	DD (1,601)
Net income (loss) to common stockholders	\$ (9,238)	\$ 7,123	\$ 1,626	\$ (489)
Weighted averages shares outstanding - basic and diluted				41,815,810
Net income per share - basic and diluted				\$ (0.01)

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2020 (IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	Historical			As of December 31, 2020
	Authentic Brands (As of December 31, 2020)	SilverBox (As of December 31, 2020)	Pro Forma Adjustments	Pro Forma Combined
Revenue, net	163,909	-	-	163,909
Cost of goods sold	94,500	-	-	94,500
Gross Profit	69,409	-	-	69,409
Operating costs and expenses				
Marketing and advertising	25,513	-	-	25,513
Salaries, wages and benefits	24,194	-	-	24,194
General and administrative	13,922	-	2,543	BB
			390	EE
Formation and operating costs	-	4	-	4
Total operating cost and expenses	63,629	4	2,933	66,566
Operating Income (loss)	5,780	(4)	(2,933)	2,843
Non-operating income (expense):				
Interest and finance charges (expense)/income, net	(1,047)	-	-	(1,047)
Unrealized gain on change in fair value of warrants	-	-	-	-
Transaction costs allocated to warrant liabilities	-	-	-	-
Other	(227)	-	-	(227)
Income/(loss) before taxes	4,506	(4)	(2,933)	1,569
Income tax (expense) benefit	(185)	-	-	(185)
Net income / (loss)	4,321	(4)	(2,933)	1,384
Net income (loss) attributable to non-controlling interests	-	-	1,061	DD
Net income (loss) to common shareholders	\$ 4,321	\$ (4)	\$ (3,994)	\$ 323
Weighted averages shares outstanding- basic and diluted				41,815,810
Net income per share - basic and diluted				\$ 0.01

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Basis of Presentation

SilverBox is a blank check company incorporated in Delaware on December 3, 2020, with the purpose of acquiring one or more businesses through a merger, capital stock exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business combination with one or more businesses. SilverBox's registration statement was declared effective on February 25, 2021 (the "Effective Date") and on March 2, 2021, SilverBox consummated the IPO of 34,500,000 units, which includes the full exercise by the underwriters of the over-allotment option to purchase an additional 4,500,000 Units, at \$10.00 per Unit, generating gross proceeds of \$345.0 million which is held in a Trust Account ("Trust Account"), located in the United States with Continental acting as trustee.

SilverBox also entered into a Forward Purchase Agreement (the "Initial Forward Purchase Agreement") with Engaged Capital, pursuant to which Engaged Capital has agreed to purchase from SilverBox, in a private placement for an aggregate amount of \$100.0 million to occur simultaneously with the consummation of the Business Combination, 10,000,000 shares of SilverBox Class A Common Stock at \$10.00 per share.

Simultaneously with the closing of the IPO, SilverBox consummated the sale of 6,266,667 warrants at a price of \$1.50 per warrant, generating gross proceeds of \$9.4 million. Each Private Placement Warrant entitles the holder to purchase one share of SilverBox Class A Common Stock at a price of \$11.50 per share.

Authentic Brands was incorporated in July 2018 in the State of Delaware and commenced operations in March 2019.

The unaudited pro forma condensed combined financial information has been prepared assuming the following methods of accounting in accordance with U.S. GAAP and SEC rules and regulations.

The historical financial information of SilverBox and Authentic Brands has been adjusted in the unaudited pro forma condensed combined financial information to reflect transaction accounting adjustments related to the Business Combination and related transactions in accordance with U.S. GAAP.

Transaction costs that are determined to be directly attributable and incremental to the transaction will be deferred and recorded as other assets in the balance sheet leading up until closing of the Business Combination.

Notwithstanding the legal form of the Business Combination pursuant to the Business Combination Agreement the Business Combination will be accounted for under ASC 805, Business Combinations as a reverse acquisition and a recapitalization of Authentic Brands. The determination of accounting acquirer is primarily based on the evaluation of the following facts and circumstances:

- The individual controlling Authentic Brands prior to the Business Combination will also control the combined company post business combination as a result of a voting agreement providing the Founder with the majority of the votes related to the appointment and removal of the majority of the board of directors.
- Authentic Brands' operations prior to the Business Combination comprise the only ongoing operations of the combined company,
- Existing Authentic Brands stockholders comprise a majority of the voting power of the Combined Company
- The majority of the Combined Company's senior management are those of Authentic Brands' senior management,
- The Combined Company's will assume Authentic Brands' name and headquarters.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Description of the Business Combination

SilverBox has entered into the Business Combination Agreement with Authentic Brands, Blocker, PubCo, Merger Sub 1 and Merger Sub 2, in which agreed to combine with Authentic Brands in the Business Combination that will result in PubCo becoming a publicly-traded company on and controlling Authentic Brands in an “Up-C” structure. Pursuant to the Business Combination Agreement, and subject to the terms and conditions contained therein, the Business Combination will be effected in two steps: (a) SilverBox will merge with and into Merger Sub 1, with Merger Sub 1 surviving the SilverBox Merger as a wholly owned subsidiary of PubCo; and (b) immediately following the SilverBox Merger, Merger Sub 2 will merge with and into Blocker, with Blocker surviving as a wholly owned subsidiary of Merger Sub 1.

Description of Related Transaction

Other related events that are contemplated to take place in connection with the Business Combination are summarized below:

- **PIPE Financing:** Concurrently with the execution of the Business Combination Agreement, SilverBox entered into subscription and backstop agreements with various accredited investors (collectively, the “PIPE Investors”), including certain members of the Sponsor and certain limited partners of Engaged Capital and related investors, pursuant to which such investors agreed to purchase (i) an aggregate of 10,000,000 shares of SilverBox Class C Common Stock (which will be issued and purchased prior to the effective time of the SilverBox Merger and will then be converted into the right to receive shares of PubCo Class A Common Stock pursuant to the SilverBox Merger) (each such subscription agreement, a “PIPE Subscription Agreement”) for an aggregate purchase price of \$100,000,000 (the “PIPE Investment”), and (ii) up to additional 10,000,000 shares of SilverBox Class C Common Stock in the aggregate to the extent redemptions of SilverBox Class A Common Stock exceed \$100,000,000 (the “Backstop Commitment”).
- **Forward Purchase Agreement:** Concurrently with the execution of the Business Combination Agreement, the Initial Forward Purchase Agreement was amended and restated (the “Forward Purchase Agreement”) to provide for the purchase by investment funds and accounts managed by Engaged Capital (collectively, the “Forward Purchased Investors”) of an aggregate of 10,000,000 shares of Class C Common Stock (the “Forward Purchase Investment”) for an aggregate purchase price of \$100,000,000.
- **Deferred Sponsor Shares:** Upon the Business Combination, 1,241,250 Sponsor Shares will be subject to deferral and forfeiture with two separate vesting periods (the “Deferred Sponsor Shares”). A total of 620,625 Deferred Sponsor Shares will vest, in the aggregate, if the weighted average trade price of the PubCo Class A Common Stock is at or above \$15.00 for any 20 trading days within a period of 30 trading days prior to the fifth anniversary of the Closing. The remaining 620,625 Deferred Sponsor Shares will vest, in the aggregate, if the weighted average trade price of the PubCo Class A Common Stock is at or above \$20.00 for any 20 trading days within a period of 30 trading days prior to the seventh anniversary of the Closing.
- **Earn Out:** A total of 20.0 million shares will be utilized for a share earn-out for the benefit of certain existing Authentic Brands equityholders (the “Earnout Shares”). A total of 50% of the Earnout Shares will be issued, in the aggregate, if the volume weighted average trading price is \$15.00 or greater for any 20 trading days within a period of 30 trading days prior to the fifth anniversary of the Closing. The remaining 50% of Earnout Shares will be issued, in the aggregate, if the volume weighted average trading price of the PubCo Class A Common Stock is \$20.00 or greater for any 20 trading days within a period of 30 trading days prior to the seventh anniversary of Closing. The grant date fair value (i.e. transaction date) of the awards will be estimated using the Monte Carlo simulation.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

- **Tax Receivable Agreement:** Concurrently with the completion of the Business Combination, PubCo will enter into the Tax Receivable Agreement. Pursuant to the Tax Receivable Agreement, PubCo will be required to pay to the Continuing Unitholders 85% of the tax savings that PubCo realizes as a result of increases in tax basis in Authentic Brands’ assets resulting from the redemption of existing preferred units of Authentic Brands (other than those held by Blocker) and a portion of the Company Common Units for the consideration paid pursuant to the Business Combination Agreement, the future exchange of Company Common Units for shares of PubCo Class A Common Stock (or cash) pursuant to the LLC Agreement and certain pre-existing tax attributes of the Blocker, as well as certain other tax benefits related to entering into the Tax Receivable Agreement, including tax benefits attributable to payments under the Tax Receivable Agreement. The term of the Tax Receivable Agreement will continue until all such tax benefits have been utilized or expired unless PubCo exercises its right (with the consent of a majority of its disinterested directors and of the Agent under the Tax Receivable Agreement) to terminate the Tax Receivable Agreement for an amount representing the present value of all forecasted future payments that would have otherwise been made under the Tax Receivable Agreement or certain other acceleration events occur

Sources and Uses

The following tables summarize the sources and uses for funding the Business Combination based on redemptions of the public shareholders.

Sources & Uses – Post Redemptions of Public Shareholders

Sources		Uses	
Cash in Trust	\$ 76.3	Cash to Balance Sheet	\$ 150.0
Forward Purchase Investment	100.0	Repay debt and preferred equity redemption	161.3
PIPE Investment	100.0	Cash to Authentic Brands equityholders	24.0
Backstop	100.0	Rollover equity	1,409.3
Rollover Equity	1,409.3	Deferred underwriting commissions and transactions expenses	51.0
Sponsor Shares	48.1	Sponsor Shares	48.1
BRCC Fund Shares	5.3	BRCC Fund Shares	5.3
Cash available from balance sheet	10.0		
Total Sources	\$ 1,849.0	Total Uses	\$ 1,849.0

2. Accounting Policies and Reclassification Adjustments

As part of the preparation of these unaudited pro forma condensed combined financial statements, certain reclassifications were made to align Authentic Brands’ and SilverBox’s financial statement presentation. Upon completion of the Business Combinations, management will perform a comprehensive review of Authentic Brands’ and SilverBox’s accounting policies. As a result of the review, management may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the post-combination company. Based on its initial analysis, management did not identify differences that would

have a material impact on the unaudited pro forma condensed combined financial information.

3. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

The unaudited pro forma condensed combined financial information has been adjusted to illustrate the effect of the Business Combinations and related transactions and has been prepared for informational purposes only.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following unaudited pre forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by final rule, Release No. 33-10786 "Amendments to Financial Disclosures about Acquired and Disposed Businesses". Release No. 33-10786 replaces existing pro forma adjustment criteria with simplified requirements to depict the accounting for the transaction ("Transaction Accounting Adjustments") and the option to present the reasonably estimable synergies and other transaction effects that have occurred or are reasonably expected to occur ("Management Adjustments"). Authentic Brands has elected not to present Management Adjustments and has only presented Transaction Accounting Adjustments in the following unaudited pro forma condensed combined financial information.

The pro forma combined provision for income taxes does not necessarily reflect the amounts that would have resulted had the post-combination company filed consolidated income tax returns during the periods presented. As a full valuation allowance is anticipated, there are no pro forma tax adjustments reflected to income tax expense or deferred taxes.

The pro forma basic and diluted earnings per share amounts presented in the unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2021 and for the year ended December 31, 2020 are based on the number of Authentic Brands' units outstanding, assuming the Business Combinations and related transactions occurred on January 1, 2020.

Transaction Accounting Adjustments to the unaudited Pro Forma Condensed Combined Balance Sheet

The pro forma adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2021 are as follows:

- (A) Reflects the reclassification of \$345.1 million of cash and marketable securities held in the trust account that becomes available to fund the business combination and share redemptions.
- (B) Reflects a cash disbursement of \$12.1 million to settle deferred underwriter fees incurred during the SilverBox's IPO due upon completion of the business combination.
- (C) Reflects gross proceeds of \$200.0 million cash from the issuance of 20,000,000 common shares at \$10.00 per share in the PIPE Investment.

Shares issued in PIPE Investment and Forward Purchase Investment	20,000,000
Price per share at issuance	\$ 10.00
Total value of PIPE Shares and Forward Purchase Shares issued	200,000,000
Common Stock Par Value	0.0001
Common Stock Par Value	20,000
APIC	199,980,000
Total	200,000,000

- (D) Reflects a cash disbursement of \$152.8 million to settle an allocation of Authentic Brands' preferred equity upon completion of the Business Combination. \$142.8 million can be attributed to the preferred equity balance as of September 30, 2021 with the remaining \$10.0 million mostly attributed of the discount on the Series A Preferred Equity.
- (E) Reflects SilverBox transaction-related expenses including legal, capital markets advisory, director's and officer's insurance, due diligence and filing fees.
- (F) Reflects Authentic Brands' transaction-related expenses including legal fees, financial advisory and accounting fees. As these are direct and incremental to the Business Combination, they are reflected as a reduction to additional paid in capital, except for \$0.4 million which were adjusted to accumulated deficit.
- (G) Reflects the cash payment of \$268.7 million to settle redeemed common shares and to reclass \$76.0 million to permanent equity for unredeemed shares.

Total shares redeemed	26,870,683
Redemption value of \$10.00/share	\$ 10.00
Total value of shares redeemed	268,706,830
Total shares value available for redemption	345,000,000
Total value of shares unredeemed	76,293,170
Common Stock Par Value	0.0001
Common Stock	7,629
APIC	76,285,541
Total	76,293,170

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

- (H) Reflects the payment of \$24.0 million to redeem existing Authentic Brands' common equity units in accordance with the Business Combination Agreement.

(in millions)

Aggregate cash raised	\$ 386.3
SilverBox and Authentic Brands transaction expenses	(51.0)
Repay debt and preferred equity redemption	(161.3)
Minimum Authentic Brands retained cash amount	(150.0)
Cash available to redeem existing equity units	\$ 24.0

(I) Reflects the elimination of SilverBox's accumulated deficit to additional paid in capital.

(J) Reflects the paydown of a portion of Authentic Brands' open debt as of September 30, 2021. Debt paydown includes payoff of term debt of \$8.5 million.

(K) Reflects the reclassification to noncontrolling interests determined based on the common units held in Authentic Brands. The non-controlling interest is classified within permanent equity given PubCo shall have the option to elect to have the non-controlling interests be redeemed in consideration for either a share settlement or a cash settlement (with respect to a cash settlement, solely in connection with PubCo's completion of a substantially concurrent public offering or private sale of PubCo Class A Common Stock within ten business days of the delivery of a redemption notice). The non-controlling interest is calculated as follows:

	Shareholder Redemptions	
	Outstanding Shares	Outstanding Shares (%)
Common units held by BRC Inc. (Controlling Interest)	42,974,310	23.37%
Common units held by existing equityholders (Non-Controlling Interests)	140,926,990	76.63%
Total	183,901,300	100.00%

Redemption Scenario September 30, 2021 – NCI Calculation

Total Equity	\$ (44,249)
Total Non-Controlling Interest – (76.63%)	(33,907)
Total Controlling Interest – Equity	(10,342)

(L) Reflects additional cash proceeds through the Backstop Shares for Class C common stock.

Issuance of Backstop Shares	10,000,000
Price per share at issuance	\$ 10.00
Total value of shares issued	100,000,000
Common Stock Par Value	0.0001
Common Stock	10,000
APIC	99,990,000
Total	100,000,000

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

(M) Reflects the movement of Authentic Brands' members' deficit into the accumulated deficit of the new operating company.

(N) Represents the pro forma adjustments to reclassify SilverBox Class C common stock, which will be converted to PubCo Class A common stock following the Business Combination as described within the Existing Charter.

(O) To record the Earn-Out Liability of \$181.7 million for the estimated fair value of the Earn-out shares to be issued to certain Authentic Brands' selling equityholders upon the achievement of the applicable vesting events and the share price of SilverBox Class A Common Stock at \$9.79 per share. Refer to note 5 for further discussion.

(P) To record the Deferred Sponsor Share liability of \$10.2 million for the estimated fair value of the deferred shares to be issued upon the achievement of the triggering events. Refer to Note 5 for further discussion.

(Q) To reclassify Sponsor Shares from Class B Common Stock to Class A Common Stock following the Business Combination as described within the Existing Charter.

(R) Represents the pro forma adjustment to reflect the outstanding par value for rollover equity stockholders

Rollover Equity Stockholders Shares	140,926,990
Par Value	\$ 0.0001
Total value of Rollover Equity Shares	14,092.70
Common Stock	14,092.70
APIC	(14,092.70)

Transaction Accounting Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021 and year ended December 31, 2020

(AA) Reflects adjustment to remove interest income earned on SilverBox trust account.

(BB) Reflects the adjustment to record \$2.5 million of expense associated with the acceleration of incentive unit awards for the year ended December 31, 2020. These costs will not affect the income statement beyond twelve months after the Merger date and therefore no adjustment has been made for the nine months ended September 30, 2021.

(CC) Reflects elimination of interest expense on the historical debt that is settled.

(DD) Reflects the reclassification to noncontrolling interests determined based on the common units held in Authentic Brands as follows:

	Outstanding Shares	Outstanding Shares (%)
Common units held by BRC Inc. (Controlling Interest)	42,974,310	23.37%
Common units held by existing equityholders (noncontrolling interests)	140,926,990	76.63%
Total	183,901,300	100.00%

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Redemption Scenario September 30, 2021 – NCI Calculation

Pro Forma Net Loss	(2,090)
Total Non-Controlling Interest (76.63%)	(1,601)
Total Controlling Interest	(489)

Redemption Scenario December 31, 2020 – NCI Calculation

Pro Forma Net Loss	1,384
Total Non-Controlling Interest (76.63%)	1,061
Total Controlling Interest	323

(EE) Reflects the portion of transaction-related costs incurred by Authentic Brands that were allocated to liability-classified instruments issued to SilverBox stockholders and therefore expensed. This amount is a non-recurring charge.

4. Net Income / (Loss) Per Share

Represents the net income per share calculated using the historical weighted average shares outstanding and the issuance of additional shares in connection with the Business Combination, assuming the shares were outstanding at January 1, 2020. Additionally, this calculation has been retroactively adjusted to eliminate the number of redeemed shares for the entire period. The weighted average shares outstanding for the year ended December 31, 2020 and the nine months ended September 30, 2021 are:

	Nine Months Ended September 30, 2021		Year ended December 31, 2020	
<i>(dollars in thousands, except per share amounts)</i>				
Pro forma net income (loss) from continuing operations attributable to common stockholders– Basic & Diluted (1)	\$	(489)	\$	323
Basic & diluted weighted average shares outstanding - Class A stockholders(2) (3)		41,815,810		41,815,810
Net loss from continuing operations per share – Class A – Basic & Diluted	\$	(0.01)	\$	0.01

- (1) PubCo Class B Common Stock is newly-created, voting, and non-economic. Each share of PubCo Class B Common Stock entitles its holder to one vote per share but no right to dividends or distributions. Therefore, net loss per continuing operations per share is only calculated for PubCo Class A Common Stock.
- (2) The public warrants and private placement warrants are antidilutive on a pro forma basis and have therefore been excluded from the diluted number of shares outstanding at Closing. Warrants issued and outstanding consist of 11,500,000 public warrants and 6,266,667 private placement warrants.
- (3) Total Deferred Sponsor Shares (1,241,250) are deducted from total shares outstanding for the EPS calculation as such shares are contingently issuable and the stock price thresholds have not been met. Similarly, the Earnout shares of 20.0 million are excluded from the EPS calculation.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

5. Earnout Shares and Deferred Sponsor Shares

The Earnout Shares granted to the Company Holders and the 1,241,250 Sponsor Shares are subject to forfeiture are expected to be accounted for as derivative liabilities. These shares will be contingently issuable if the price of the PubCo Class A Common Stock exceeds certain thresholds or upon certain strategic events, which include events that are not indexed to SilverBox Class A Common Stock. The preliminary estimated fair value of these Earnout Shares and Deferred Sponsor Shares are \$171.1 million and \$10.6 million, respectively. The estimated fair value of these Earnout Shares was determined by using a Monte Carlo simulation valuation model using a distribution of potential stock price outcomes on a daily basis over the applicable contingently issuable period. Assumptions used in the preliminary valuation, which are subject to change at the Closing, were as follows:

Current Stock Price: The current stock price was set at the pro forma value of \$9.79 per share for SilverBox Ordinary Shares.

Expected volatility: The expected volatility of 70% was calculated based on the third-quartile leverage adjusted asset volatility calculated using a set of 18 Guideline Public Companies (“GPCs”). The GPCs’ interquartile range of asset volatility was 43% to 70%. Since smaller companies are typically more volatile than their larger, more diversified peers and given BRCC’s size relative to the GPCs, the Company selected the third quartile volatility. Volatility for the GPCs was calculated over a lookback period of 7 years (or longest available data for GPCs whose trading history was shorter than 7 years), commensurate with the longest contractual term of the Earnout Shares.

Risk-free interest rate: The risk-free interest rate of 1.5% was determined based on the 7-year U.S. Constant Maturity.

Contractual contingently issuable period: The contractual contingently issuable periods for the four tranches are 5-year, 7-years, 5-years, and 7-years, respectively.

Expected dividend yield: The expected dividend yield is zero as we have never declared or paid cash dividends and have no current plans to do so during the expected term.

The actual fair values of these shares are subject to change as additional information becomes available and additional analyses are performed and such changes could be material once the final valuation is determined at the Closing.

**SilverBox Engaged Merger Corp I Pleased to
Announce Closing of Business Combination with
Black Rifle Coffee Company**

***Combination Expected to Deliver \$150 Million of Cash Proceeds to Accelerate the Growth
of Black Rifle Coffee Company, Deepen Customer Engagement and Drive Greater Impact***

BRC Inc. Class A Common Stock To List on NYSE Under Symbol “BRCC” on Thursday, February 10, 2022

SALT LAKE CITY, UTAH & AUSTIN, TEXAS – February 9, 2022 – SilverBox Engaged Merger Corp I (Nasdaq: SBEA) (“SilverBox-Engaged” or “we”), a special purpose acquisition company sponsored by SilverBox Capital LLC (“SilverBox Capital”) and Engaged Capital LLC (“Engaged Capital”), today announced the closing of its business combination with Authentic Brands LLC, the parent company of Black Rifle Coffee Company (“Black Rifle Coffee” or “BRCC”), a rapidly growing and mission-driven premium coffee company founded to support veterans, active-duty military, first responders and serve an expanding customer base by connecting consumers with great coffee and a unique brand experience.

As of the closing of the transaction, which was approved by SBEA stockholders on February 3, 2022, the new combined company is named “BRC Inc.” (the “Company”). On February 10, 2022, the Company’s Class A Common Stock and warrants are expected to begin trading under the new ticker symbols, “BRCC” and “BRCC WS,” respectively, on the New York Stock Exchange (“NYSE”).

To celebrate the listing, BRCC’s Founder Evan Hafer, Co-Chief Executive Officer Tom Davin, as well as multiple U.S. military veterans, including Purple Heart recipients, will ring the opening bell at the NYSE at market open tomorrow, Thursday, February 10, 2022.

Evan Hafer, Chief Executive Officer and Founder of BRCC, commented:

“Black Rifle Coffee began with a simple premise: provide a high-quality product while giving back to the veteran, military and first responder communities. Our entry into the public market is a significant milestone on our path to further growing the business and continuing to serve premium coffee and media to those who love America. This is an incredibly exciting moment for BRCC’s leadership team, employees, partners and, of course, our customers. BRCC is well positioned to continue investing in our mission-driven, omnichannel strategy and accelerate progress toward our goal of hiring 10,000 veterans as we expand our coffee shop footprint across the United States.”

The business combination is expected to provide BRCC with approximately \$150 million in cash to support the implementation of its digital-first, omnichannel strategy and continued rapid growth.

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Joe Reece, Executive Chairman of SBEA, commented:

“The entire SilverBox-Engaged team is proud to be part of the Black Rifle Coffee mission and growth story. We are pleased that our investors overwhelmingly supported the merger with this fast-growing, premium coffee company and lifestyle brand with significant upside potential. We carefully selected BRCC after identifying and evaluating roughly 200 quality merger candidates because of its strong foundation for sustainable growth, its loyal customer base and its management team’s relentless focus on execution. We look forward to continuing our partnership as long-term owners and supporters of the Company’s mission.”

Together BRCC and SilverBox-Engaged are donating more than 530,000 shares to the BRCC Fund – the Company’s Foundation that supports its mission of bettering the lives of veterans, active-duty military and first responders.

Advisors

William Blair served as Lead Financial Advisor, and BDT & Company, LLC served as Financial Advisor to Black Rifle Coffee.

Citigroup and Deutsche Bank Securities Inc. served as Lead Capital Markets Advisors, and Guggenheim Securities, LLC, Raymond James & Associates, Inc., Truist Securities, Inc., D.A. Davidson & Co. and Telsey Advisory Group served as Capital Markets Advisors to SilverBox-Engaged.

Kirkland & Ellis LLP served as legal counsel to Black Rifle Coffee. Paul Hastings served as legal counsel to SilverBox-Engaged.

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About Black Rifle Coffee Company

Black Rifle Coffee Company (BRCC) is a veteran-founded coffee company serving premium coffee to people who love America. Founded in 2014 by Green Beret Evan Hafer, Black Rifle develops their explosive roast profiles with the same mission focus they learned while serving in the military. BRCC is committed to supporting veterans, active-duty military, first responders and the American way of life.

To learn more about BRCC, visit www.blackriflecoffee.com, follow BRCC on social media, or subscribe to Coffee or Die Magazine's daily newsletter at <https://coffecordie.com/presscheck-signup>.

About SilverBox Engaged Merger Corp I and SilverBox Capital

SilverBox Engaged Merger Corp I (“SBEA” or “SilverBox-Engaged”) is a special purpose acquisition company (“SPAC”) formed as a part of a long-term vision shared by SilverBox Capital LLC and Engaged Capital LLC to create an institutional platform intended to sponsor a series of SPACs. SBEA completed its \$345 million initial public offering in March 2021 and its stock currently trades on Nasdaq under the ticker “SBEA.” The SilverBox-Engaged team, together with a robust advisory group of well-known seasoned operating executives from varied industries, provides collective multi-faceted expertise, investing and operating experience, and a broad network of relationships to source, evaluate, and execute potential transactions. Learn more at www.sbcap.com.

About Engaged Capital

Engaged Capital, LLC (“Engaged Capital”) is an investment advisor with a private equity-like investing style in the U.S. public equity markets. Engaged Capital seeks to help build sustainable businesses that create long-term shareholder value by engaging with and bringing an owner’s perspective to the managements and boards of undervalued public companies and working with them to unlock the embedded value within their businesses. Engaged Capital manages approximately \$1.5 billion of institutional capital with a focus on delivering superior, long-term, risk-adjusted returns for our limited partners. Engaged Capital was established in 2012 and is based in Newport Beach, California. Learn more at www.engagedcapital.com.

Contact Information

For inquiries regarding Black Rifle Coffee Company, please contact:

Media

For Black Rifle Coffee Company, please contact TrailRunner International: Pat Shortridge, (651) 491-6764; pats@trailrunnerint.com

For SilverBox Engaged Merger Corp I, SilverBox Capital LLC and Engaged Capital LLC please contact Longacre Square Partners; Greg Marose / Charlotte Kiaie, (646) 386-0091; gmarose@longacresquare.com / ckiaie@longacresquare.com

Investors

For investor inquiries regarding Black Rifle Coffee Company please contact: ICR for BRCC: BlackrifleIR@icrinc.com

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Forward-Looking Statements

Certain statements in this press release are forward-looking statements. Forward-looking statements generally relate to future events including future financial or operating performance of the Company. For example, projections of future revenue and other metrics are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may”, “should”, “expect”, “intend”, “will”, “estimate”, “anticipate”, “believe”, “predict”, “potential” or “continue”, or the negatives of these terms or variations of them or similar terminology. Such forward-looking statements are subject to risks, uncertainties, and other factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements.

These forward-looking statements are based upon estimates and assumptions that, while considered reasonable by the Company and its management, as the case may be, are inherently uncertain and are inherently subject to risks, variability and contingencies, many of which are beyond the Company’s control. Factors that may cause actual results to differ materially from current expectations include, but are not limited to: (1) the outcome of any legal proceedings that may be instituted against SBEA, the Company or others following the announcement of the business combination and any definitive agreements with respect thereto; (2) the ability to meet stock exchange listing standards following the consummation of the business combination or maintain those standards after the initial listing; (3) the risk that the business combination disrupts current plans and operations of the Company as a result of the consummation of the business combination; (4) the ability to recognize the anticipated benefits of the business combination, which may be affected by, among other things, competition, the ability of the Company to grow and manage growth profitably, maintain key relationships and retain its management and key employees; (5) costs related to the business combination; (6) changes in applicable laws or regulations; (7) the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; (8) the Company’s estimates of expenses and profitability; (9) the failure to realize anticipated pro forma results or projections and underlying assumptions, including with respect to estimated stockholder redemptions, purchase price and other adjustments; and (10) other risks and uncertainties set forth in the sections entitled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in BRC Inc.’s final prospectus relating to the business combination dated January 13, 2022 filed with the Securities and Exchange Commission (the “SEC”), and in subsequent filings with the SEC. There may be additional risks that the Company presently does not know or that the Company currently believes are immaterial that could also cause actual results to differ from those contained in the forward-looking statements.

Nothing in this press release should be regarded as a representation by any person that the forward-looking statements set forth herein will be achieved or that any of the contemplated results of such forward-looking statements will be achieved. You should not place undue reliance on forward-looking statements, which speak only as of the date they are made. Neither SBEA nor the Company undertakes any duty to update these forward-looking statements or to inform the recipient of any matters of which any of them becomes aware of which may affect any matter referred to in this press release.

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