

# 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): July 1, 2021

# HC2 HOLDINGS, INC.

**Delaware**

(State or other jurisdiction of incorporation)

**001-35210**

(Commission File Number)

**54-1708481**

(IRS Employer Identification No.)

**295 Madison Avenue, 12th Floor**

**New York, NY 10017**

(Address of principal executive offices)

**(212) 235-2690**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name or former address, if changed since last report.)

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:

- 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 Symbol	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	HCHC	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.

## Item 1.01. Entry into a Material Definitive Agreement.

### *Exchange Agreement*

On July 1, 2021, in connection with the previously announced closing of HC2 Holdings, Inc.'s (the "Company") sale of its subsidiary Continental Insurance Group, Ltd., a Delaware corporation ("Continental"), to Continental General Holdings LLC, a Michigan limited liability company ("Purchaser"), and the Stock Purchase Agreement, dated March 26, 2021, by and among the Company, Purchaser and Continental (the "Sale"), the Company entered into exchange agreements (collectively, the "Exchange Agreement") with certain holders of the Company's outstanding Series A Convertible Participating Preferred Stock (the "Series A Preferred Stock") and Series A-2 Convertible Participating Preferred Stock (the "Series A-2 Preferred Stock" and, together with the Series A Preferred Stock, the "Existing Preferred Stock") pursuant to which the Company exchanged such holders' existing Series A Preferred Stock and Series A-2 Preferred Stock for newly issued Series A-3 Convertible Participating Preferred Stock (the "Series A-3 Preferred Stock") and Series A-4 Convertible Participating Preferred Stock (the "Series A-4 Preferred Stock" and, together with the Series A-3 Preferred Stock, the "New Preferred Stock" and such exchange the "Preferred Stock Exchange"), respectively, with substantially the same terms, except that such New Preferred Stock will mature on July 1, 2026. A cash payment was made as part of the Preferred Stock Exchange for accrued and unpaid dividends on the Existing Preferred Stock being exchanged.

### *New Preferred Stock*

The following summary of the terms of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock is qualified in its entirety by reference to the Certificate of Designation of Series A-3 Convertible Participating Preferred Stock of the Company, adopted on July 1, 2021 (the "A-3 Certificate of Designation") and the Certificate of Designation of Series A-4 Convertible Participating Preferred Stock of the Company, adopted on July 1, 2021 (the "A-4 Certificate of Designation" and, together with the A-3 Certificate of Designation, the "Certificates of Designation"), respectively, copies of which are attached to this Current Report on Form 8-K as Exhibit 4.1 and Exhibit 4.2, respectively, and are incorporated herein by reference.

**Dividends.** The New Preferred Stock will accrue a cumulative quarterly cash dividend at an annualized rate of 7.50%. The accrued value of the New Preferred Stock will accrete quarterly at an annualized rate of 4.00% that will be reduced to 2.00% or 0.00% if the Company achieves specified rates of growth measured by increases in its net asset value; *provided*, that the accreting dividend rate will be 7.25% in the event that (A) the daily VWAP of the Common Stock is less than a certain threshold amount, (B) the Common Stock is not registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, (C) the Common Stock is not listed on certain national securities exchanges or the Company is delinquent in the payment of any cash dividends. The New Preferred Stock is also entitled to participate in cash and in-kind distributions to holders of shares of Common Stock on an as-converted basis.

**Optional Conversion.** Each share of New Preferred Stock may be converted by the holder into Common Stock at any time based on the then-applicable Conversion Price (as defined in each Certificate of Designation).

**Redemption by the Holders / Automatic Conversion.** On July 1, 2026, holders of the New Preferred Stock shall be entitled to cause the Company to redeem the New Preferred Stock at the accrued value per share plus accrued but unpaid dividends (to the extent not included in the accrued value of New Preferred Stock). Each share of New Preferred Stock that is not so redeemed will be automatically converted into shares of Common Stock at the Conversion Price then in effect.

Upon a change of control (as defined in each Certificate of Designation) holders of the New Preferred Stock shall be entitled to cause the Company to redeem their New Preferred Stock at a price per share of New Preferred Stock equal to the greater of (i) the accrued value of the New Preferred Stock, plus any accrued and unpaid dividends (to the extent not included in the accrued value of New Preferred Stock), and (ii) the value that would be received if the share of New Preferred Stock were converted into Common Stock immediately prior to the change of control.

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**Redemption by the Company.** The Company may redeem the New Preferred Stock, in whole but not in part, at a price per share generally equal to 150% of the accrued value per share, plus accrued but unpaid dividends (to the extent not included in the accrued value of the New Preferred Stock), subject to the holder's right to convert prior to such redemption.

**Forced Conversion.** The Company may force conversion of the New Preferred Stock into Common Stock if the Common Stock's thirty-day VWAP exceeds 150% of the then-applicable Conversion Price and the Common Stock's daily VWAP exceeds 150% of the then-applicable Conversion Price for at least twenty trading days out of the thirty trading day period used to calculate the thirty-day VWAP. In the event of a forced conversion, the holders of New Preferred Stock will have the ability to elect cash settlement in lieu of conversion if certain market liquidity thresholds for the Common Stock are not achieved.

**Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the Company (any such event, a "Liquidation Event"), the holders of New Preferred Stock will be entitled to receive per share the greater of (i) the accrued value of the New Preferred Stock, plus any accrued and unpaid dividends (to the extent not included in the accrued value of New Preferred Stock), and (ii) the value that would be received if the share of New Preferred Stock were converted into Common Stock immediately prior to such occurrence. The New Preferred Stock will rank junior to any existing or future indebtedness but senior to the Common Stock and any future equity securities other than any future senior or *pari passu* preferred stock issued in compliance with each Certificate of Designation. The Series A-3 Preferred Stock and the Series A-4 Preferred Stock rank at parity.

**Voting Rights.** Except as required by applicable law, the holders of the shares of the New Preferred Stock will be entitled to vote on an as-converted basis with the holders of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock (on an as-converted basis), as applicable, and the holders of the Company's Common Stock on all matters submitted to a vote of the holders of Common Stock with the holders of New Preferred Stock on certain matters, and separately as a class on certain limited matters.

**Consent Rights.** For so long as any of the New Preferred Stock is outstanding, consent of the holders of shares representing at least 75% of the New Preferred Stock then outstanding is required for certain material actions.

#### *Registration Rights*

The holders of the New Preferred Stock will have certain registration rights with respect to the Common Stock underlying the New Preferred Stock pursuant to the Exchange Agreement. Pursuant to the Exchange Agreement, the New Preferred Stock shall be deemed to be "Preferred Stock" under and as defined in the Second Amended and Restated Registration Rights Agreement, by and among the Company and the investors party thereto, dated January 5, 2015 (the "Registration Rights Agreement") and the holder of such New Preferred Stock shall be deemed to be a Holder of Registrable Securities under and as defined in the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the Company is obligated to, at any time upon request from a Holder of Registrable Securities after January 5, 2015, file a registration statement on Form S-1 under the Securities Act within thirty days after the date of such request for the benefit of the Holders of the Registrable Securities. Alternatively, the Company has also agreed to, within thirty days after receiving a request from a Holder of Registrable Securities (provided, that the Company is, at the time of receipt of such request, eligible to use a registration statement on Form S-3 under the Securities Act for secondary offerings of the Registrable Securities) use reasonable best efforts to cause such a registration statement to be filed and to maintain the effectiveness of such shelf registration statement for the benefit of the Holders of the Registrable Securities. In the event of a registered offering by the Company of its Common Stock, Holders of the Registrable Securities have the right to require the Company to include Registrable Securities held by them in such offering, subject to certain limitations, including as determined by any underwriters for the transaction. Subject to certain limitations, the Company will bear the expenses incurred in connection with registrations under the Registration Rights Agreement and will indemnify the Holders of Registrable Securities and any underwriters against certain liabilities, including liabilities under the Securities Act.

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This summary of the registration rights is qualified in its entirety by reference to the Exchange Agreement and the Registration Rights Agreement, copies of which are attached to this Current Report on Form 8-K as Exhibit 10.1 and Exhibit 10.2, respectively, and are incorporated herein by reference.

#### *DBM Global Intermediate Holdco Inc. Preferred Stock*

In connection with the Sale, DBM Global Intermediate Holdco Inc., a Delaware corporation and subsidiary of the Company (“DBM”) amended the Certificate of Designation of Series A Fixed-to-Floating Rate Perpetual Preferred Stock (“DBM Preferred Stock”), originally adopted on November 30, 2018 (the “Amended and Restated Certificate”). The Amended and Restated Certificate (i) redesignates the DBM Preferred Stock as “Series A Fixed-to-Floating Rate Redeemable Preferred Stock,” (ii) gives Continental and certain of its affiliates the right to require the Company to redeem their shares of DBM Preferred Stock on or prior to July 1, 2026, (iii) provides certain information rights to the holders of the DBM Preferred Stock and (iv) provides DBM the right to pay any dividends on the DBM Preferred Stock in payment-in-kind or cash, subject to certain restrictions.

This summary of the terms of the Amended and Restated Certificate is qualified in its entirety by reference to the Amended and Restated Certificate of Designation of Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Intermediate Holdco Inc., adopted on July 1, 2021, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.3 and is incorporated herein by reference.

#### **Item 3.02. Unregistered Sales of Equity Securities.**

##### *Preferred Stock Issuance*

The New Preferred Stock described in Item 1.01 of this Current Report on Form 8-K is being issued in connection with the Preferred Stock Exchange without registration under the Securities Act, in reliance upon an exemption from the registration requirements of the Securities Act under Section 4(a)(2) of the Securities Act promulgated under the Securities Act. The Company is basing such reliance upon representations made by each investor, including, but not limited to, representations as to the investor’s status as an “accredited investor” (as defined in Rule 501(a) under Regulation D) and the investor’s investment intent. The New Preferred Stock is not being offered or sold by any form of general solicitation or general advertising. The New Preferred Stock may not be re-offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

#### **Item 3.03. Material Modification to Rights of Securityholders.**

The filing of the Company’s Certificates of Designation and the issuance of the New Preferred Stock affect the holders of the Common Stock, the Series A-3 Preferred Stock and the Series A-4 Preferred Stock to the extent provided in the Certificates of Designation. The filing of DBM’s Amended and Restated Certificate affect the holders of the DBM Preferred Stock to the extent provided in the Amended and Restated Certificate of Designation. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

#### **Item 5.03. Amendment to Articles of Incorporation or Bylaws, Change in Fiscal Year.**

To create the New Preferred Stock issuable under the Exchange Agreement, the Company amended its amended and restated certificate of incorporation by filing the Certificates of Designation on July 1, 2021, which are attached as Exhibit 4.1 and Exhibit 4.2 hereto and incorporated herein by reference. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">4.1</a>	Certificate of Designation of Series A-3 Convertible Participating Preferred Stock of HC2 Holdings, Inc.
<a href="#">4.2</a>	Certificate of Designation of Series A-4 Convertible Participating Preferred Stock of HC2 Holdings, Inc.
<a href="#">4.3</a>	Amended and Restated Certificate of Designation of Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Intermediate Holdco Inc.
<a href="#">10.1</a>	Form of Exchange Agreement, dated July 1, 2021, by and among HC2 Holdings, Inc. and the investors party thereto.
<a href="#">10.2</a>	Second Amended and Restated Registration Rights Agreement, dated as of January 5, 2015, by and among HC2 Holdings, Inc., the initial purchasers of the Series A Preferred Stock, the initial purchasers of the Series A-1 Preferred Stock and the purchasers of the Series A-2 Preferred Stock (incorporated by reference to Exhibit 10.2 on the Company's Current Report on Form 8-K, filed on January 9, 2015) (File No. 001-35210).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

## SIGNATURES

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.

Date: July 7, 2021

**HC2 Holdings, Inc.**  
(Registrant)

By: /s/ Michael J. Sena  
Name: Michael J. Sena  
Title: Chief Financial Officer

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**CERTIFICATE OF DESIGNATION**  
**OF**  
**SERIES A-3 CONVERTIBLE PARTICIPATING PREFERRED STOCK**  
**OF**  
**HC2 HOLDINGS, INC.**

The undersigned, Michael Sena, the Chief Financial Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103 and 151 of the DGCL, that the following resolutions were duly adopted by its Board of Directors (the "Board") on July 1, 2021:

WHEREAS, the Company's Second Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series;

WHEREAS, the Certificate of Incorporation authorizes the Board to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, the Board desires, pursuant to its authority as aforesaid, to designate a new series of Preferred Stock, set the number of shares constituting such series, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates a new series of Preferred Stock, which shall be designated as the "Series A-3 Convertible Participating Preferred Stock" consisting of the number of shares set forth herein, with the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions relating to such series as follows:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A-3 Convertible Participating Preferred Stock" (the "Series A-3 Preferred Stock"). The number of shares constituting the Series A-3 Preferred Stock is 6,125 shares, par value \$0.001 per share.

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(b) The Series A-3 Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A-3 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the “Junior Securities”) and (y) the shares of Series A-4 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A-4 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A-3 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the “Parity Securities”); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A-3 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, “Senior Securities”).

## SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company’s stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share (“Cash Dividends”). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period (whether or not there are funds of the Company legally available for the payment of dividends to the Company’s stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the “Cash Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).



(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the "Basic Accreting Dividends" and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the "Accreting Dividends"; the Accreting Dividends, together with the Cash Dividend and the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

*provided, however,* that notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted after the Original Issue Date for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a "Common Dividend"), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the "Participating Cash Dividend"). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the "Participating Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an "In-Kind Common Dividend"), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the "In-Kind Participating Dividend" and, collectively with the Participating Cash Dividend, the "Participating Dividends") as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a "poison pill"), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the "In-Kind Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A-3 Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of Dividends (other than Participating Dividends) payable on the Series A-3 Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(f) Cash Dividends and Accreting Dividends that are payable on Series A-3 Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15th) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the Issue Date and shall end on and include September 30, 2021) (a “Dividend Period”).

### SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company’s stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the “Regular Liquidation Preference”) and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Liquidation Preference”).

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company’s stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this SECTION 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and any voting rights to which the Holders may be entitled to under law, for so long as any shares of Series A-3 Preferred Stock or shares of Series A-4 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities; (y) Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with Permitted Holders relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction), in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director;

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Third Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A-3 Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A-3 Preferred Stock;

(ii) authorize or issue any shares of Series A-3 Preferred Stock other than in exchange for shares of the Company's Series A Preferred Stock outstanding as of the Fourth Issue Date, or effect any stock split or combination, reclassification or similar event with respect to the Series A-3 Preferred Stock; or

(iii) agree to do, directly or indirectly, any of the foregoing actions set forth in clause (i) or (ii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A-3 Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to SECTION 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A-3 Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation 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 stock 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 Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A-3 Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A-3 Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. The Company shall have the right, at its option, to cause all shares of Series A-3 Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A-3 Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b) and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the "Conversion Date" for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c).

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided* that, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided* that, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);



(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this SECTION 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; *provided*, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A-3 Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A-3 Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A-3 Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time (and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A-3 Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$CP_1$  = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock.* If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>0</sub> = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP<sub>1</sub> = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

$CP_1$  = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$CP_0$  = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

$SP_1$  = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Fourth Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$CP_1$  = the Conversion Price in effect immediately following such issuance or sale;

$CP_0$  = the Conversion Price in effect immediately prior to such issuance or sale;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares and shares of Series A-4 Preferred Stock issued on the Fourth Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to  $CP_0$ ; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;



vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a “Trigger Event”), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2021, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A), and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a “Transaction”), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the “Reference Property”) that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A-3 Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(g)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(g)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company;
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on July 1, 2026 (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30<sup>th</sup>) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A-3 Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed.

(b) Optional Redemption by the Company. The Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the "Optional Redemption Date"), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder's right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein.

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with SECTION 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a "Change of Control Payment") in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Change of Control Payment Amount").

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a “Change of Control Offer”) to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the “Change of Control Payment Date”), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder’s compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control.

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A-3 Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder, the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Intentionally Omitted.

SECTION 8. Intentionally Omitted.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Fourth Issue Date, the Company shall not, and shall not permit any Subsidiary to, without the consent of the Requisite Holders, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company's Subsidiaries divided by (2) the Net Asset Value (the "Debt/NAV Ratio") would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to "150%" contained in such definition being changed to "100%") and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company, the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (i.e., added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to a refinancing of any Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).



(b) Intentionally Omitted.

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) “Accrued Value” means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) “Actively Traded Security” means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) “Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

(e) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(f) “Capital Stock” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(g) “Cash Equivalents” means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker’s acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(h) “Certificate of Designation” means this certificate of designation, as such shall be amended from time to time.

(i) “Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than a Permitted Holder; (2) the adoption of a plan relating to the liquidation or dissolution of the Company; or (3) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the ultimate Beneficial Owner, directly or indirectly, of 50% or more of the voting power of the Voting Stock of the Company other than a Permitted Holder; provided that such event shall not be deemed a Change of Control so long as one or more Permitted Holders shall Beneficially Own more of the voting power of the Voting Stock of the Company than such person or group. For purposes of this definition, (i) any direct or indirect holding company of the Company shall not itself be considered a Person for purposes of clauses (1) or (3) above or a “person” or “group” for purposes of clauses (1) or (3) above, provided that no “person” or “group” (other than the Permitted Holders or another such holding company) Beneficially Owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of such company, and a majority of the Voting Stock of such holding company immediately following it becoming the holding company of the Company is Beneficially Owned by Persons who Beneficially Owned the voting power of the Voting Stock of the Company immediately prior to it becoming such holding company and (ii) a Person shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement. Notwithstanding anything to the contrary, the sale, transfer or other disposition by the Company or its Subsidiaries of all or substantially all of the assets of the insurance business segment of the Company (including pursuant to a sale of all or substantially all of the equity interests of Continental Insurance Group, Ltd.) and all other transactions in connection therewith shall not constitute a Change of Control.

(j) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(k) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(l) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(m) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(n) “Conversion Price” means, as of the Original Issue Date, \$4.25, as adjusted from time to time thereafter as provided in SECTION 5.

(o) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(p) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day). The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(q) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(r) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(s) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(t) “Exchange” means the Nasdaq Global Market, the Nasdaq Global Select Market, The New York Stock Exchange, the NYSE American or any of their respective successors.

(u) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(v) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(g)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Third Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation and (v) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A-4 Preferred Stock issued on the Fourth Issue Date.

(w) “Ex-Date” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(x) “Fair Market Value” means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms’ length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith; *provided* that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company’s cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(y) “Fourth Issue Date” shall mean July 1, 2021.

(z) “Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(aa) “hereof”; “herein” and “hereunder” and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(bb) “Holdings” means the holders of outstanding Series A-3 Preferred Stock and, except where expressly otherwise indicated, shares of Series A-4 Preferred Stock as they appear in the records of the Company.

(cc) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder,

(dd) “Indebtedness” shall have the meaning set forth in the Loan Agreement (as in effect on the Second Issue Date); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Third Issue Date and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a);

(x) any obligations relating to the Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Intermediate Holdco Inc.;

(xi) any obligations relating to the Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Inc.; or

(xii) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (xi).

(ee) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in Nasdaq Listing Rule 5605(a)(2)), and in all cases, other than any director that is employed by or an officer, director or manager of a Permitted Holder.

(ff) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(gg) “Issue Date” means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(hh) “Liquidation Event” means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(ii) “Loan Agreement” means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(jj) “Market Disruption Event” means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(kk) “May 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the several Purchasers named therein, as amended, supplemented or modified in accordance with its terms.

(ll) “Net Asset Value” means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a “Testing Period”) beginning December 31, 2020, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company’s ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company’s Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company’s investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above;

*provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered Indebtedness of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company, the Company’s wholly-owned and, after taking into account the Company’s ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company’s investment) shall be taken into account for purposes of determining “Debt” (i.e., the numerator) but not taken into account (i.e., added back) for purposes of determining Net Asset Value (i.e., the denominator).

(mm) “Non-Wholly Owned Subsidiary” means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(nn) “Option Securities” means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(oo) “Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(pp) “Original Issue Date” means May 29, 2014.



(qq) “Original Issue Date NAV” means the final amount thereof as agreed between the Company and the Series A Requisite Holders (as defined in the Series A Certificate of Designation) pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(rr) “Permitted Holders” means:

(i) Avram Glazer, his immediate family (including any spouse, ex-spouse, children, step-children and their respective lineal descendants), the estate of the foregoing, or any trust (including the Avram Glazer Irrevocable Exempt Trust, a Nevada trust) or other legal entity the beneficiary, beneficial owner, or controlling party of which is any of the foregoing and (b) Lancer Capital LLC and any investment fund or vehicle managed or controlled by Lancer Capital LLC or Avram Glazer;

(ii) any Affiliate of any Person specified in clause (i), other than another portfolio company of any investment fund or vehicle (which means a company actively engaged in providing goods and services to unaffiliated customers) or a company controlled by a “portfolio company”;

(iii) any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Certificate of Designation will thereafter, together with its Affiliates, constitute an additional Permitted Holder; or

(iv) any Person both the Capital Stock and the Voting Stock of which (or in the case of a trust, the beneficial interests in which) are owned 50% or more by Persons specified in clauses (1), (2) or (3) or any group in which the Persons specified in clauses (1), (2) or (3) own more than a majority of the Voting Stock and Capital Stock held by such group.

(ss) “Permitted Payment” means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(tt) “Permitted Related Party Transactions” means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under SECTION 4(b);

(iii) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Third Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(iv) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(v) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the Permitted Holders, the Company and its Subsidiaries.

(uu) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(vv) “Preferred Elected Director” has the meaning ascribed thereto under the Series A Certificate of Designation.

(ww) “Preferred Shares” means the shares of Series A-3 Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A-4 Preferred Stock.

(xx) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(yy) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the Permitted Holders, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(zz) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(aaa) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(bbb) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any Permitted Holder or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* (i) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (ii) the agreement granting information and access rights to Permitted Holders by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(ccc) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Permitted Holder) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A-4 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A-4 Preferred Stock held by the Company, its employees, its Subsidiaries or any Permitted Holder shall be treated as not outstanding.

(ddd) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

- (eee) “Second Issue Date” means September 22, 2014.
- (fff) “Securities” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.
- (ggg) “September 2014 Purchasers” means the several “Purchasers” named in and party to the September 2014 Securities Purchase Agreement.
- (hhh) “September 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.
- (iii) “Series A Certificate of Designation” means the Certificate of Designation of the Series A Convertible Participating Preferred Stock of the Company, par value \$0.001 per share, as amended.
- (jjj) “Series A-3 Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Permitted Holders) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Permitted Holder shall be treated as not outstanding.
- (kkk) “Series A-4 Preferred Stock” means the Series A-4 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.
- (lll) “Specified Percentage” means 100%.
- (mmm) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.
- (nnn) “Third Issue Date” means January 5, 2015.
- (ooo) “Thirty Day VWAP” means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, “Thirty Day VWAP” means the Thirty Day VWAP of the Common Stock.
- (ppp) “Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(qqq) “U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof

(rrr) “Voting Power” means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(sss) “Voting Stock” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(ttt) “Wholly Owned Subsidiary” means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A-3 Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A-3 Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the Holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A-3 Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A-4 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be executed by a duly authorized officer of the Company as of July 1, 2021.

**HC2 HOLDINGS, INC.**

By: /s/ Michael J. Sena

Name: Michael J. Sena

Title: Chief Financial Officer

[Signature Page to Series A-3 Certificate of Designation]

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**CERTIFICATE OF DESIGNATION**  
**OF**  
**SERIES A-4 CONVERTIBLE PARTICIPATING PREFERRED STOCK**  
**OF**  
**HC2 HOLDINGS, INC.**

The undersigned, Michael Sena, the Chief Financial Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103 and 151 of the DGCL, that the following resolutions were duly adopted by its Board of Directors (the "Board") on July 1, 2021:

WHEREAS, the Company's Second Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series;

WHEREAS, the Certificate of Incorporation authorizes the Board to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, the Board desires, pursuant to its authority as aforesaid, to designate a new series of Preferred Stock, set the number of shares constituting such series, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates a new series of Preferred Stock, which shall be designated as the "Series A-4 Convertible Participating Preferred Stock" consisting of the number of shares set forth herein, with the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions relating to such series as follows:

SECTION 1.     Number; Designation; Rank.

(a)     This series of convertible participating preferred stock is designated as the "Series A-4 Convertible Participating Preferred Stock" (the "Series A-4 Preferred Stock"). The number of shares constituting the Series A-4 Preferred Stock is 10,000 shares, par value \$0.001 per share.

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(b) The Series A-4 Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A-4 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the “Junior Securities”) and (y) the shares of Series A-3 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A-3 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A-4 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the “Parity Securities”); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A-4 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, “Senior Securities”).

## SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company’s stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share (“Cash Dividends”). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period (whether or not there are funds of the Company legally available for the payment of dividends to the Company’s stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the “Cash Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the “Basic Accreting Dividends” and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the “Accreting Dividends”; the Accreting Dividends, together with the Cash Dividend and the Participating Dividends, the “Dividends”). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the “Accreting Dividend Rate”) determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

*provided, however,* that notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted after the Original Issue Date for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a “Common Dividend”), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the “Participating Cash Dividend”). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the “Participating Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an “In-Kind Common Dividend”), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the “In-Kind Participating Dividend” and, collectively with the Participating Cash Dividend, the “Participating Dividends”) as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a “poison pill”), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the “In-Kind Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A-4 Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of Dividends (other than Participating Dividends) payable on the Series A-4 Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(f) Cash Dividends and Accreting Dividends that are payable on Series A-4 Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15th) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the Issue Date and shall end on and include September 30, 2021) (a “Dividend Period”).

### SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company’s stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the “Regular Liquidation Preference”) and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Liquidation Preference”).

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company’s stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this SECTION 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and any voting rights to which the Holders may be entitled to under law, for so long as any shares of Series A-3 Preferred Stock or shares of Series A-4 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities; (y) Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with Permitted Holders relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction), in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director;

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Third Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A-4 Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A-4 Preferred Stock;

(ii) authorize or issue any shares of Series A-4 Preferred Stock other than in exchange for shares of the Company's Series A-2 Preferred Stock outstanding as of the Fourth Issue Date, or effect any stock split or combination, reclassification or similar event with respect to the Series A-4 Preferred Stock; or

(iii) agree to do, directly or indirectly, any of the foregoing actions set forth in clause (i) or (ii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A-4 Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to SECTION 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A-4 Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation 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 stock 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 Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A-4 Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A-4 Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. The Company shall have the right, at its option, to cause all shares of Series A-4 Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided that*, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A-4 Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b), and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b).



(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the "Conversion Date" for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c).

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided that*, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided that*, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this SECTION 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; *provided*, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A-4 Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A-4 Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A-4 Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time (and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A-4 Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$CP_1$  = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock*. If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$CP_0$  = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

$CP_1$  = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

$X$  = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

$Y$  = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

$CP_1$  = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$CP_0$  = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

$SP_1$  = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Fourth Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP<sub>1</sub> = the Conversion Price in effect immediately following such issuance or sale;

CP<sub>0</sub> = the Conversion Price in effect immediately prior to such issuance or sale;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares and shares of Series A-3 Preferred Stock issued on the Fourth Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to CP<sub>0</sub>; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof.



(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a “Trigger Event”), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2021, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A-4 Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(g)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(g)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company;
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

#### SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on July 1, 2026 (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30<sup>th</sup>) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A-4 Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed.

(b) Optional Redemption by the Company. The Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the “Optional Redemption Date”), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder’s right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein.

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with SECTION 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a “Change of Control Payment”) in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Change of Control Payment Amount”).

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a “Change of Control Offer”) to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the “Change of Control Payment Date”), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder’s compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control.

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A-4 Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder, the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.



(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Intentionally Omitted.

SECTION 8. Intentionally Omitted.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Fourth Issue Date, the Company shall not, and shall not permit any Subsidiary to, without the consent of the Requisite Holders, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company's Subsidiaries divided by (2) the Net Asset Value (the "Debt/NAV Ratio") would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to "150%" contained in such definition being changed to "100%") and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company, the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (i.e., added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to a refinancing of any Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurrent in connection with such refinancing).

(b) Intentionally Omitted.

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

**SECTION 10. Additional Definitions.** For purposes of these resolutions, the following terms shall have the following meanings:

(a) “Accrued Value” means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) “Actively Traded Security” means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) “Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

(e) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(f) “Capital Stock” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(g) “Cash Equivalents” means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker’s acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(h) “Certificate of Designation” means this certificate of designation, as such shall be amended from time to time.

(i) “Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than a Permitted Holder; (2) the adoption of a plan relating to the liquidation or dissolution of the Company; or (3) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the ultimate Beneficial Owner, directly or indirectly, of 50% or more of the voting power of the Voting Stock of the Company other than a Permitted Holder; provided that such event shall not be deemed a Change of Control so long as one or more Permitted Holders shall Beneficially Own more of the voting power of the Voting Stock of the Company than such person or group. For purposes of this definition, (i) any direct or indirect holding company of the Company shall not itself be considered a Person for purposes of clauses (1) or (3) above or a “person” or “group” for purposes of clauses (1) or (3) above, provided that no “person” or “group” (other than the Permitted Holders or another such holding company) Beneficially Owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of such company, and a majority of the Voting Stock of such holding company immediately following it becoming the holding company of the Company is Beneficially Owned by Persons who Beneficially Owned the voting power of the Voting Stock of the Company immediately prior to it becoming such holding company and (ii) a Person shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement. Notwithstanding anything to the contrary, the sale, transfer or other disposition by the Company or its Subsidiaries of all or substantially all of the assets of the insurance business segment of the Company (including pursuant to a sale of all or substantially all of the equity interests of Continental Insurance Group, Ltd.) and all other transactions in connection therewith shall not constitute a Change of Control.

(j) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(k) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(l) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(m) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(n) “Conversion Price” means, as of the Third Issue Date, \$8.25, as adjusted from time to time thereafter as provided in SECTION 5.

(o) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(p) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day). The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(q) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided that*, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(r) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(s) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(t) “Exchange” means the Nasdaq Global Market, the Nasdaq Global Select Market, The New York Stock Exchange, the NYSE American or any of their respective successors.

(u) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(v) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(g)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Third Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation and (v) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, shares of Series A-3 Preferred Stock issued on the Fourth Issue Date.

(w) “Ex-Date” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(x) “Fair Market Value” means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms’ length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith; *provided* that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company’s cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(y) “Fourth Issue Date” shall mean July 1, 2021.

(z) “Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(aa) “hereof”; “herein” and “hereunder” and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(bb) “Holders” means the holders of outstanding Series A-4 Preferred Stock and, except where expressly otherwise indicated, shares of Series A-3 Preferred Stock as they appear in the records of the Company.

(cc) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder,

(dd) “Indebtedness” shall have the meaning set forth in the Loan Agreement (as in effect on the Second Issue Date); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Third Issue Date and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a);

(x) any obligations relating to the Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Intermediate Holdco Inc.;

(xi) any obligations relating to the Series A Fixed-to-Floating Rate Perpetual Preferred Stock of DBM Global Inc.; or

(xii) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the Second Issue Date)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (xi).

(ee) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in Nasdaq Listing Rule 5605(a)(2)), and in all cases, other than any director that is employed by or an officer, director or manager of a Permitted Holder.

(ff) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(gg) “Issue Date” means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(hh) “Liquidation Event” means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(ii) “Loan Agreement” means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(jj) “Market Disruption Event” means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.



(kk) “May 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the several Purchasers named therein, as amended, supplemented or modified in accordance with its terms.

(ll) “Net Asset Value” means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a “Testing Period”) beginning December 31, 2020, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company’s ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company’s Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company’s investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above;

*provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered Indebtedness of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company, the Company’s wholly-owned and, after taking into account the Company’s ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company’s investment) shall be taken into account for purposes of determining “Debt” (i.e., the numerator) but not taken into account (i.e., added back) for purposes of determining Net Asset Value (i.e., the denominator).

(mm) “Non-Wholly Owned Subsidiary” means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(nn) “Option Securities” means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(oo) “Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(pp) “Original Issue Date” means May 29, 2014.

(qq) “Original Issue Date NAV” means the final amount thereof as agreed between the Company and the Series A Requisite Holders (as defined in the Series A Certificate of Designation) pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(rr) “Permitted Holders” means:

(i) Avram Glazer, his immediate family (including any spouse, ex-spouse, children, step-children and their respective lineal descendants), the estate of the foregoing, or any trust (including the Avram Glazer Irrevocable Exempt Trust, a Nevada trust) or other legal entity the beneficiary, beneficial owner, or controlling party of which is any of the foregoing and (b) Lancer Capital LLC and any investment fund or vehicle managed or controlled by Lancer Capital LLC or Avram Glazer;

(ii) any Affiliate of any Person specified in clause (i), other than another portfolio company of any investment fund or vehicle (which means a company actively engaged in providing goods and services to unaffiliated customers) or a company controlled by a “portfolio company”;

(iii) any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Certificate of Designation will thereafter, together with its Affiliates, constitute an additional Permitted Holder; or

(iv) any Person both the Capital Stock and the Voting Stock of which (or in the case of a trust, the beneficial interests in which) are owned 50% or more by Persons specified in clauses (1), (2) or (3) or any group in which the Persons specified in clauses (1), (2) or (3) own more than a majority of the Voting Stock and Capital Stock held by such group.

(ss) “Permitted Payment” means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(tt) “Permitted Related Party Transactions” means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under SECTION 4(b);

(iii) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Third Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(iv) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(v) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the Permitted Holders, the Company and its Subsidiaries.

(uu) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(vv) “Preferred Elected Director” has the meaning ascribed thereto under the Series A Certificate of Designation.

(ww) “Preferred Shares” means the shares of Series A-4 Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A-3 Preferred Stock.

(xx) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(yy) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the Permitted Holders, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(zz) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(aaa) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(bbb) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any Permitted Holder or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* (i) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (ii) the agreement granting information and access rights to Permitted Holders by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(ccc) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Permitted Holder) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A-3 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A-3 Preferred Stock held by the Company, its employees, its Subsidiaries or any Permitted Holder shall be treated as not outstanding.

(ddd) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(eee) “Second Issue Date” means September 22, 2014.

(fff) “Securities” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(ggg) “September 2014 Purchasers” means the several “Purchasers” named in and party to the September 2014 Securities Purchase Agreement.

(hhh) “September 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(iii) “Series A Certificate of Designation” means the Certificate of Designation of the Series A Convertible Participating Preferred Stock of the Company, par value \$0.001 per share, as amended.

(jjj) “Series A-3 Preferred Stock” means the Series A-3 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(kkk) “Series A-4 Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Permitted Holders) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided that*, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Permitted Holder shall be treated as not outstanding.

(lll) “Specified Percentage” means 100%.

(mmm) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

(nnn) “Third Issue Date” means January 5, 2015.

(ooo) “Thirty Day VWAP” means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, “Thirty Day VWAP” means the Thirty Day VWAP of the Common Stock.

(ppp) “Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(qqq) “U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof

(rrr) “Voting Power” means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(sss) “Voting Stock” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(ttt) “Wholly Owned Subsidiary” means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the commons stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A-4 Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A-4 Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the Holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A-4 Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A-3 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be executed by a duly authorized officer of the Company as of July 1, 2021.

**HC2 HOLDINGS, INC.**

By: /s/ Michael J. Sena

Name: Michael J. Sena

Title: Chief Financial Officer

[Signature Page to Series A-4 Certificate of Designation]

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**AMENDED AND RESTATED CERTIFICATE OF DESIGNATION  
OF  
SERIES A FIXED-TO-FLOATING RATE PERPETUAL PREFERRED STOCK  
OF  
DBM GLOBAL INTERMEDIATE HOLDCO INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware, the undersigned officer of DBM Global Intermediate Holdco Inc., a Delaware corporation (the “Company”), does hereby make this Amended and Restated Certificate of Designation (the “Certificate of Designation”) and does hereby certify that:

FIRST: The Certificate of Incorporation of the Company (the “Certificate of Incorporation”) confers upon the Board of Directors of the Company (the “Board of Directors”) the authority to provide for the issuance of shares of preferred stock in classes and to establish the number of shares to be included in each such class and to fix the powers, designations, preferences and rights of the shares of each such class.

SECOND: the Board of Directors previously designated shares as “Series A Fixed-to-Floating Rate Perpetual Preferred Shares,” par value \$0.001 per share, of the Company (the “Series A Preferred Stock”) and set forth that the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof would be as provided in the Certificate of Designation of the Company as filed with the Secretary of State of the State of Delaware on November 30, 2018 (the “Original Certificate of Designation”).

THIRD: 40,900 shares of Series A Preferred Stock have been issued and are outstanding as of the date hereof.

FOURTH: the Board of Directors determined, upon approval of the holders of the Series A Preferred Stock, to amend and restate the Original Certificate of Designation and provided that the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof, be amended and restated in their entirety as set forth below.

FIFTH: the holders of the Series A Preferred Stock determined to approve the amendment and restatement of the Certificate of Designation pursuant to Sections 228 and 242 of the General Corporation Law of the State of Delaware as approved by the Board of Directors and to allow for the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof to be amended and restated in their entirety as follows:

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# ARTICLE I

## DESIGNATION AND NUMBER; DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01 Designation and Number. The shares of such series shall be designated as “Series A Fixed-to-Floating Rate Redeemable Preferred Shares,” par value \$0.001 per share, of the Company (the “**Series A Preferred Stock**”), and the number constituting such series shall be Five Hundred Thousand (500,000).

Section 1.02 Definitions. As used in this Certificate of Designation (as defined below), the following capitalized terms will have the following meanings:

“**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 Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Board of Directors**” means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

“**Business Day**” means any day that is not a Saturday or Sunday or a legal holiday in New York, New York.

A “**Change of Control**” shall be deemed to have occurred if:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the ultimate beneficial owner, directly or indirectly, of 50% or more of the voting power of the Equity Interests of the Parent other than a Permitted Holder; provided that such event shall not be deemed a Change of Control so long as one or more Permitted Holders shall beneficially own more of the voting power of the Equity Interests of the Parent than such person or group; or

(b) Parent ceases to beneficially and of record own and control at least 51% on a fully diluted basis of the aggregate outstanding voting or economic power of the Equity Interests of the Company.

For purposes of clause (a) this definition, any direct or indirect holding company of the Parent shall not itself be considered a Person for purposes of clause (a) above or a “person” or “group” for purposes of clause (a) above, provided that no “person” or “group” (other than the Permitted Holders or another such holding company) beneficially owns, directly or indirectly, more than 50% of the voting power of the voting capital stock of such company, and a majority of the voting capital stock of such holding company immediately following it becoming the holding company of the Parent is beneficially owned by Persons who beneficially owned the voting power of the Equity Interests of the Parent immediately prior to it becoming such holding company.

“**Certificate of Designation**” means this Certificate of Designation of Series A Fixed-to-Floating Rate Redeemable Preferred Shares, as amended, restated supplemented or otherwise modified from time to time.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Common Stock**” means the Common Stock, par value \$0.001 per share, of the Company.

“**consolidated**” when used with respect to any Person refers to such Person consolidated with its restricted subsidiaries.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**DBM Preferred**” mean the series A preferred shares of DBM Global, Inc. issued to the Company on the Issue Date.

“**DBM Preferred Certificate of Designation**” mean the certificate of designation for the DBM Preferred.

“**DBM Preferred Securities Purchase Agreement**” mean the securities purchase agreement, dated the Issue Date, by and between the Company and DBM Global, Inc., relating to the DBM Preferred.

“**DGCL**” means the General Corporation Law of the State of Delaware.

“**Dividend**” means a dividend to be made by the Company in respect of the Series A Preferred Shares in accordance with Section 2.01(a).

“**Dividend Period**” means, subject to the definition of “LIBOR Successor Rate Conforming Changes”, the period from the Issue Date to the first Quarterly Date, and thereafter, the period from the first day of April, July and October, applicable to the immediately following Quarterly Date; provided, however, that if any Dividend Period would end on a day that is not a Business Day, such Dividend Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Dividend Period shall end on the next preceding Business Day.

**“Dividend Rate”** means, (a) for the first five years following the Issue Date, (i) 9.00% per annum if dividends are paid in additional Series A Preferred Shares or (ii) 8.25% per annum if dividends are paid in cash and (b) starting on the fifth anniversary of the Issue Date, (i) a rate per annum equal to the LIBOR Rate per annum, plus 0.75% if dividends are paid in additional Series A Preferred Shares or (b) the LIBOR Rate per annum in the case of dividends paid in cash; provided, however, that if a Trigger Event occurs and is continuing the Dividend Rate will increase by 2.00% until the cure or waiver of such Trigger Event. If accrued but unpaid dividends with respect to any Quarterly Date are not paid to the Holders entitled thereto either in cash or in additional Series A Preferred Shares (as determined in accordance with Section 2.01(b)), then the Dividend Rate on such accrued and unpaid dividends shall be the rate set forth in the foregoing clause (a)(i) or clause (b)(i), as applicable, in each case, subject to the foregoing proviso (where applicable).

**“Equity Interests”** means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

**“Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Financing Agreement”** means that certain Financing Agreement, dated as of the Closing Date, by and among the Company and the Subsidiary Borrowers (as defined in the Series A Securities Purchase Agreement), as borrowers, the Subsidiary Guarantors (as defined in the Series A Securities Purchase Agreement), as guarantors, the lenders from time to time party thereto, as lenders, and TCW Asset Management Company LLC, as collateral and administrative agent.

**“GAAP”** means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

**“Governmental Authority”** means any nation or government, any foreign, federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Holder”** means a holder of a Series A Preferred Share and **“Holders”** means more than one holder of Series A Preferred Shares.

**“Insurance Company”** means each of Continental Insurance Group, Ltd., Continental LTC, Inc. and Continental General Insurance Company.

**“Issue Date”** means the date the Series A Preferred Shares are issued on the Closing Date (as defined in the Series A Securities Purchase Agreement).

“**Investments**” means, with respect to any Person, to, directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any Equity Interests, bonds, notes, debentures, guarantees or other securities of, or make any capital contribution to, or acquire assets constituting all or substantially all of the assets of, or acquire assets constituting a line of business, business unit or division of, any other Person.

“**Law**” means any applicable U.S. or foreign, federal, state, provincial, municipal or local law (including common law), statute, ordinance, rule, regulation, code, policy, directive, standard, license, treaty, judgment, order, injunction, decree or agency requirement of or undertaking to or agreement with any Governmental Authority.

“**LIBOR**” means, the offered rate for deposits in U.S. dollars having an index maturity of three months, in amounts of at least \$1,000,000, as such rate appears on the Reuters screen “LIBOR01” at approximately 11:00 a.m., London time, on the date that is two business days preceding the first day of each Dividend Period. If on an interest determination date, such rate does not appear on the Reuters screen “LIBOR01” as of 11:00 a.m., London time, or if the Reuters screen “LIBOR01” is not available on such date, the calculation agent will obtain such rate from Bloomberg L.P.’s page “BBAM”, which determination shall be conclusive absent manifest error. Notwithstanding anything herein to the contrary, if “LIBOR” shall be less than zero, such rate shall be deemed to be zero for purposes of this Certificate of Designation.

Notwithstanding anything to the contrary in this Certificate of Designation, if the Company reasonably determines, that adequate and reasonable means do not exist for ascertaining LIBOR for any requested Dividend Period and such circumstances are unlikely to be temporary, or a Governmental Authority has made a public statement identifying a specific date after which LIBOR shall no longer be made available, or used for determining the interest rate of loans (such specific date, the “**Scheduled Unavailability Date**”) or syndicated loans currently being executed, or that include language similar to that contained herein, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, then “LIBOR” shall mean the alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) reasonably determined by the Company giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “**LIBOR Successor Rate**”) together with any proposed LIBOR Successor Rate Conforming Changes.

“**LIBOR Rate**” means LIBOR, plus a spread of 5.85%.

“**LIBOR Successor Rate Conforming Changes**” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of, Dividend Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Company, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Company in a manner substantially consistent with market practice.

“**Liquidation Preference**” means, with respect to each outstanding Series A Preferred Share at any time, the sum of (i) the Stated Value thereof, plus (ii) all accrued, accumulated and unpaid Dividends thereon.

“**Parent**” means HC2 Holdings, Inc., a Delaware corporation.

**“Permitted Holders”** means:

(a) Avram Glazer, his immediate family (including any spouse, ex-spouse, children, step-children and their respective lineal descendants), the estate of the foregoing, or any trust (including the Avram Glazer Irrevocable Exempt Trust, a Nevada trust) or other legal entity the beneficiary, beneficial owner, or controlling party of which is any of the foregoing and (b) Lancer Capital LLC and any investment fund or vehicle managed or controlled by Lancer Capital LLC or Avram Glazer;

(b) any Affiliate of any Person specified in clause (a), other than another portfolio company of any investment fund or vehicle (which means a company actively engaged in providing goods and services to unaffiliated customers) or a company controlled by a “portfolio company”;

(c) any Person or group whose acquisition of beneficial ownership constitutes a Change of Control will thereafter, together with its Affiliates, constitute an additional Permitted Holder; or

(d) any Person both the Equity Interests and voting capital stock of which (or in the case of a trust, the beneficial interests in which) are owned 50% or more by Persons specified in clauses (a), (b) or (c) or any group in which the Persons specified in clauses (a), (b) or (c) own more than a majority of the voting capital stock and Equity Interests held by such group.

**“Person”** means any individual, corporation, limited liability company, partnership, (including a limited partnership) joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

**“Quarterly Date”** means March 31, June 30, September 30 and December 31, of each year, commencing on and including December 31, 2018; provided that, if any Quarterly Date is not a Business Day, the Quarterly Date will be the immediately following Business Day.

**“Redemption Date”** means the date of redemption of any redemption of any Series A Preferred Share pursuant to Article IV, as fixed by the Company, or by an Insurance Company in its notice delivered pursuant to Section 4.02.

**“Redemption Price”** means, with respect to any Series A Preferred Share at any Redemption Date, an amount per share equal to the Liquidation Preference as of such Redemption Date.

**“SEC”** means the Securities and Exchange Commission or any similar or successor agency of the Federal government administering the Securities Act.

**“Securities Act”** means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Series A Preferred Share**” means one share of Series A Preferred Stock and “**Series A Preferred Shares**” means one or more shares of Series A Preferred Stock.

“**Series A Securities Purchase Agreement**” means that certain Series A Securities Purchase Agreement, dated as of November 30, 2018, by and among DBM Global Inc. and the Company, as amended, restated supplemented or otherwise modified from time to time.

“**Stated Value**” means, at any date of determination, and with respect to each outstanding Series A Preferred Share, \$1,000 (adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization or combination with respect to the Series A Preferred Shares).

“**Subsidiary**” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Company unless the context expressly provides otherwise.

“**U S**” means the United States of America.

Section 1.03 Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) the words “including,” “includes” and similar words shall be deemed to be followed by without limitation;
- (e) words in the singular include the plural, and in the plural include the singular;
- (f) “will” shall be interpreted to express a command;
- (g) provisions apply to successive events and transactions;

(h) references to sections of, or rules under, the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(i) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Certificate of Designation;

(j) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Certificate of Designation as a whole and not any particular Article, Section, clause or other subdivision;

(k) words used herein implying any gender shall apply to both genders; and

(l) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”.

## **ARTICLE II**

### **DIVIDENDS**

#### Section 2.01 Dividends.

(a) From and after the date of issuance of each Series A Preferred Share and for so long as any Series A Preferred Shares shall be outstanding, the Holders shall be entitled to receive in respect of each Series A Preferred Share, as, when and if declared by the Board of Directors of the Company, from time to time, and in preference and priority to the declaration and payment of dividends on shares of Common Stock or shares of any other class or series of capital stock of the Company ranking junior to shares of Series A Preferred Stock as to dividends and pari passu to the declaration and payment of dividends on shares of any class or series of capital stock of the Company ranking on parity with the Series A Preferred Shares as to dividends, dividends accruing on a daily basis at the Dividend Rate on the Liquidation Preference of such Series A Preferred Share, payable quarterly in arrears on each Quarterly Date, which dividends shall cumulate as of a Quarterly Date if not paid.

(b) The Dividends shall be paid in either (i) cash or (ii) additional Series A Preferred Shares, as determined solely and exclusively by the Company; provided that, if receipt of additional Series A Preferred Shares would, or would reasonably be expected to, result in Continental General Insurance Company being in breach or violation of Texas Insurance Code § 425 or any successor statute, such payment shall be made in cash.

Section 2.02 Rank. For the avoidance of doubt, so long as any Series A Preferred Shares shall remain outstanding, the Series A Preferred Shares shall rank senior to shares of Common Stock or shares of any other class or series of capital stock of the Company ranking junior to shares of Series A Preferred Stock as to dividends and pari passu to shares of any class or series of capital stock of the Company ranking on parity with the Series A Preferred Shares as to dividends.



## ARTICLE III

### **LIQUIDATION, DISSOLUTION AND WINDING UP**

Section 3.01 Liquidation, Dissolution and Winding Up. So long as any Series A Preferred Shares shall remain outstanding, in the event of any dissolution, liquidation or winding up of the Company, in preference and priority to shares of Common Stock or shares of any other class or series of capital stock of the Company ranking junior to shares of Series A Preferred Stock upon the dissolution, liquidation or winding up of the Company and *pari passu* to shares of any class or series of capital stock of the Company ranking on parity with the Series A Preferred Shares upon the dissolution, liquidation or winding up of the Company, each Holder shall be entitled to receive with respect to each Series A Preferred Share owned by such Holder out of the assets of the Company available for distribution to its stockholders, the then applicable Liquidation Preference. A merger or consolidation of the Company with or into another corporation or other entity, or a sale of all or any part of the assets of the Company (which shall not in fact result in the dissolution, liquidation or winding up of the Company and the distribution of its assets to its stockholders) shall not be deemed a liquidation, dissolution or winding up of the Company within the meaning of this Section 3.01.

## ARTICLE IV

### **REDEMPTION**

Section 4.01 Optional Redemption. At any time from and after the Issue Date, the then outstanding Series A Preferred Shares shall be redeemable, in whole or in part, at the option of the Company exercisable at any time or from time to time upon provision of the notice described in Section 4.04, at the Redemption Price, which Redemption Price shall be paid in cash. Such redemption may, at the option of the Company, be subject to satisfaction of one or more conditions precedent.

Section 4.02 Redemption at the Option of an Insurance Company. Each Insurance Company shall have the right to require the Company to redeem such Insurance Company's outstanding Series A Preferred Shares at the Redemption Price, which Redemption Price shall be paid in cash, during the period after the date hereof and on or prior to July 1, 2026 by providing to the Company at least 30 days' but not more than 60 days' prior written notice of such Insurance Company's election to have all or any portion of its Series A Preferred Stock redeemed. Such prior written notice shall state the number of Series A Preferred Shares to be redeemed, which amount shall be for a minimum of the lesser of (x) 10,000 Series A Preferred Shares (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) and (y) all remaining outstanding Series A Preferred Shares held by the Insurance Companies.

Section 4.03 Procedures.

(a) If fewer than all of the then outstanding Series A Preferred Shares are to be redeemed pursuant to this Article IV, the Company shall redeem a portion of Series A Preferred Shares held by each Holder on a pro rata basis based on the number of Series A Preferred Shares held by each Holder.

(b) From and after the Redemption Date, so long as the applicable Redemption Price with respect to the Series A Preferred Shares being redeemed has been paid in full or a sum sufficient to redeem such Series A Preferred Shares has been irrevocably deposited or set aside to pay the Redemption Price with respect to each such Series A Preferred Share, dividends on each Series A Preferred Share called for redemption shall cease to accrue, such Series A Preferred Share shall no longer be deemed to be outstanding, and all rights in respect of such Series A Preferred Share shall cease, except the right to receive the Redemption Price.

(c) Nothing in this Article IV shall prevent the Company from, at any time and from time to time, purchasing Series A Preferred Shares from an individual Holder with the consent or approval of such Holder.

Section 4.04 Notice of Redemption. Notice of a redemption pursuant to Section 4.01 shall be furnished to each Holder at the address shown in the books and records of the Company for such Holder by registered mail via national courier service, not more than 60 days before the Redemption Date and shall set forth:

(a) The aggregate number of Series A Preferred Shares to be redeemed;

(b) The Redemption Date;

(c) The Redemption Price;

(d) A statement that the certificate representing the Series A Preferred Shares called for redemption must be surrendered to the Company to collect the Redemption Price; and

(e) Any conditions precedent to such redemption.

Section 4.05 Effect of Notice of Redemption. The notice, if delivered in the manner provided in Section 4.04, shall be conclusively presumed to have been given, whether or not the Holder receives such notice.

Section 4.06 Certificates Evidencing Series A Preferred Shares Redeemed in Part. Upon surrender of a certificate representing Series A Preferred Shares that are redeemed in part, pursuant to this Article IV, the Company shall issue a new certificate representing the unredeemed Series A Preferred Shares formerly represented thereby.

## **ARTICLE V**

### **CONVERSION**

Section 5.01 No Conversion. The Series A Preferred Shares shall not be convertible into any other securities of the Company.

## ARTICLE VI

### VOTING

Section 6.01 Generally. Except as provided by this Certificate of Designation or applicable law, each Holder, as such, shall not be entitled to vote and shall not be entitled to any voting powers in respect thereof.

## ARTICLE VII

### COVENANTS

Section 7.01 Company Covenants.

(a) For so long as any Series A Preferred Shares shall be outstanding, the Company shall not, at any time or from time to time after the Issue Date, without the prior vote or written consent of the Holders of at least a majority of the Series A Preferred Shares then outstanding, voting separately as a single class:

(i) pay any dividends on account of, or redeem or repurchase, shares of Common Stock (other than dividends payable in additional shares of Common Stock) or other series of Preferred Shares of the Company ranking junior to the Series A Preferred Shares at any time there are outstanding Series A Preferred Shares other than with amounts received in respect of the common Equity Interests of DBM;

(ii) create and issue any series of Preferred Shares of the Company ranking senior to or part passu with the Series A Preferred Shares as to dividends and upon a dissolution, winding up or liquidation of the Company;

(iii) enter into a Change of Control, merger, consolidation and sale of all or substantially all of the assets of the Company; or

(iv) amend the Company's certificate of incorporation to increase the authorized number of Series A Preferred Shares or alter or change the powers, preferences or special rights of the Series A Preferred Shares so as to affect them adversely (including by way of merger or consolidation or otherwise).

(b) Any information delivered to the Company pursuant to Section 4.7 of the DBM Preferred Securities Purchase Agreement (and/or any successor, related or analogous provision) shall be provided to the Holders.

(c) The Company shall not grant any waiver, make any amendment or take any other action with respect to the DBM Preferred without the consent of the Holders of at least a majority of the Series A Preferred Shares. The Company shall take all actions under the DBM Preferred (to the extent permitted under the terms of the DBM Preferred) as directed by the Holders of at least a majority of the Series A Preferred Shares.

(d) The Company shall not make any Investments, engage in any operating or business activities, incur any third party Indebtedness, Liens or issue any preferred stock, par value \$0.001 per share, of the Company; provided that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests as permitted and required in Section 7.01(e) and activities incidental thereto, including payment of amounts in respect of its Equity Interests permitted hereunder, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) any public offering of its common stock or any other issuance or sale of its Equity Interests and the use of proceeds thereof, (iv) the issuance of the Series A Preferred Shares issued on the Issue Date, entering into the Series A Securities Purchase Agreement and under this Certificate of Designation, (v) participating in tax, accounting and other administrative matters as a member of a consolidated group, (vi) holding any cash or Cash Equivalents (as defined in the Financing Agreement), (viii) providing indemnification to officers and directors, (ix) guaranteeing any debt of the Parent, performing any obligations under the documentation related thereto and pledging assets to secure any guarantee of debt of the Parent (or the underlying debt of the Parent), (ix) any activities incidental to the foregoing and (x) any other action approved by the Holders of at least a majority of the Series A Preferred Shares.

(e) The Company shall not own any operating assets or Equity Interests or other Investments other than:

(i) Equity Interests of its immediate Subsidiary as of the Closing Date and the DBM Preferred.

(f) The Company shall not sell, transfer, assign, pledge, hypothecate or otherwise dispose of the DBM Preferred except pursuant to or otherwise as required by subclause (ix) of the preceding clause (d) of this Section 7.01.

(g) The foregoing provisions in this Section 7.01 shall not apply if, and to the extent, they would violate the terms of the Parent Senior Secured Notes (as defined in the Financing Agreement), any other indebtedness or any indebtedness that refinances the Parent Senior Secured Notes or any other indebtedness.

(h) The Company shall provide to each Insurance Company (i) a customary consolidated annual audited and quarterly balance sheet and income statement of (x) the Company and its Subsidiaries and (y) DBM Global Inc. and its Subsidiaries, which quarterly financial information is not required to be reviewed or audited by any accounting firm, not later than, with respect to quarterly financial information, forty-five (45) days following the quarter then ended, and, with respect to annual financial information, one hundred and fifty (150) days following the year then ended; provided that the annual financial information for the year ended December 31, 2020 shall be provided not later than September 15, 2021, and (ii) such other information as may be reasonably requested by such Insurance Company for regulatory reporting purposes, including, without limitation, pursuant to Texas Insurance Code § 425.

## ARTICLE VIII

### **TRIGGER EVENTS AND WAIVER**

Section 8.01 **Trigger Events.** A “**Trigger Event**” wherever used herein, means a Trigger Event as defined in the DBM Preferred Certificate of Designation.

Section 8.02 **Waiver of Certificate of Designation Provisions.** The powers (including voting powers), if any, of such series and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any, of the Series A Preferred Stock may be waived as to all Series A Preferred Stock Shares in any instance (without the necessity of calling, noticing or holding a meeting of stockholders) by the written consent or agreement of the Holders of at least a majority of the Series A Preferred Shares then outstanding, consenting or agreeing separately as a single class.

Section 8.03 **Waiver of Trigger Event.** Any Trigger Event and its consequences hereunder may be waived as to all Series A Preferred Shares in any instance (without the necessity of calling, noticing or holding a meeting of stockholders) by the written consent or agreement of the Holders of at least a majority of the Series A Preferred Shares then outstanding, consenting or agreeing separately as a single class. Upon any such waiver, such Trigger Event shall be deemed to have been cured for every purpose herein; but no such waiver shall extend to any subsequent or other Trigger Event or impair any right consequent thereon.

## ARTICLE IX

### **STATUS OF REDEEMED OR REPURCHASED SERIES A PREFERRED SHARES**

Section 9.01 **Retirement and Cancellation.** If any Series A Preferred Share is redeemed, repurchased or otherwise acquired by the Company in any manner whatsoever, the Series A Preferred Share so acquired shall, to the fullest extent permitted by Law, be retired and cancelled upon such acquisition.

Section 9.02 **No Reissuance of the Series A Preferred Shares.** If any Series A Preferred Share is redeemed, repurchased or otherwise acquired by the Company in any manner whatsoever, the Series A Preferred Share so acquired shall not be reissued as a share of Series A Preferred Stock.

Section 9.03 **Undesignated Shares of Preferred Stock.** Any Series A Preferred Share that is redeemed, repurchased or otherwise acquired by the Company in any manner whatsoever shall, upon its retirement and cancellation, and upon the taking of any action required by applicable Law, become authorized but unissued shares of preferred stock, par value \$0.001 per share, of the Company, subject to the conditions and restrictions in the Certificate of Incorporation or imposed by the DGCL.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be signed by a duly authorized officer this 1st day of July, 2021.

**THE COMPANY:**

DBM GLOBAL INTERMEDIATE HOLDCO INC.

By: /s/ Michael J. Sena

Name: Michael J. Sena

Title: Chief Financial Officer

## Form of Exchange Agreement

July 1, 2021

HC2 Holdings, Inc.  
450 Park Avenue, 29<sup>th</sup> Floor  
New York, NY 10022

Re: HC2 Holdings, Inc.'s Exchange of Series [A][A-2] Convertible Participating Preferred Stock

Ladies and Gentlemen:

The undersigned investor listed on Exhibit B hereto (the “**Investor**” or the “**Exchanging Investor**”) hereby agrees to exchange, with HC2 Holdings, Inc., a Delaware corporation (the “**Company**”), the number of the Company’s Series [A][A-2] Convertible Participating Preferred Stock (the “**Old Shares**”) set forth in Exhibit B hereto that it beneficially owns for the Company’s Series [A-3][A-4] Convertible Participating Preferred Stock (the “**New Shares**”). The Old Shares are governed by the Certificate of Designation of the Company dated [May 29, 2014][January 5, 2015] (the “**Existing Certificate of Designation**”). The New Shares will be designated pursuant to a Certificate of Designation dated July 1, 2021 (the “**Certificate of Designation**”), substantially in the form set forth as Exhibit A hereto. If only one Exchanging Investor is identified in Exhibit B hereto, then each reference in this Exchange Agreement to “Exchanging Investors” will be deemed to be a reference to such Exchanging Investor identified in Exhibit B hereto, *mutatis mutandis*.

The Investor understands that the exchange (the “**Exchange**”) of the Old Shares for the New Shares is being made without registration under the Securities Act of 1933, as amended (the “**Securities Act**”), or any securities laws of any state of the United States or of any other jurisdiction, and the New Shares are only being offered to “qualified institutional buyers” (as defined in Rule 144A under the Securities Act) in reliance on a private placement exemption from registration under the Securities Act.

1. Exchange Consideration. Subject to the terms and conditions of this Exchange Agreement, the Investor hereby agrees to exchange, and to cause each other Exchanging Investor, if any, to exchange the Old Shares set forth on Exhibit B hereto for an equal number of New Shares and for a cash payment equal to any accrued and unpaid dividends through, but excluding, July 1, 2021 on the Old Shares being exchanged (together, such New Shares and cash, the “**Consideration**”). The Exchange will occur in accordance with the procedures set forth in Section 3 hereof.

2. The Closing. The closing of the Exchange (the “**Closing**”) will take place at the New York offices of Skadden, Arps, Slate, Meagher & Flom LLP (or such other place as shall be reasonably acceptable to the Investor) at 10:00 a.m., New York City time, on the later of (A) July 1, 2021 or (B) such other time as the Company and the Investor may mutually agree in writing (such later date, the “**Closing Date**”).

3. Exchange. Subject to satisfaction of the conditions precedent specified in this Exchange Agreement and effective upon the occurrence of the Closing on the Closing Date, the Investor hereby, for itself and on behalf of each Exchanging Investor, sells, assigns and transfers to, or upon the order of, the Company, all right, title and interest in such portion of the Old Shares as indicated on Exhibit B hereto, and waives any and all other rights with respect to such Old Shares and releases and discharges the Company from any and all claims the Investor may now have, or may have in the future, arising out of, or related to, such Old Shares, including, without limitation, any claims arising from any existing or past breaches or defaults under the Old Shares, or any claims that the Investor or any Exchanging Investor is entitled to receive dividends with respect to the Old Shares (other than dividends included in the Consideration).

On the Closing Date, subject to satisfaction of the conditions precedent specified in this Exchange Agreement, the Company shall (i) cancel, or caused to be cancelled, the Old Shares set forth on Exhibit B hereto on the books and records of the Company's transfer agent, (ii) issue, or caused to be issued, an equal number of New Shares on the books and records of the Company's transfer agent and (iii) pay the cash portion of the Consideration to an account specified in writing by the Holder. Upon request of the Company or the Company's transfer agent, the Investor shall surrender, or caused to be surrendered, the certificate or certificates (if any) evidencing the Old Shares set forth on Exhibit B hereto and deliver, or cause to be delivered, any instruments of transfer, direction letters, certificates or other documents in connection with the transactions contemplated hereby as are reasonably requested or required by the Company or the Company's transfer agent.

All questions as to the form of all documents and the validity and acceptance of the Old Shares and the New Shares will be determined by the Company, in its reasonable discretion, which determination will be final and binding. All authority herein conferred or agreed to be conferred in this Exchange Agreement will survive the dissolution of the Investor, and any representation, warranty, undertaking and obligation of the Investor hereunder will be binding upon the trustees in bankruptcy, legal representatives, successors and assigns of the Investor.

4. Representations and Warranties of the Company. The Company represents and warrants to the Exchanging Investors that:

(a) The Company and each of its subsidiaries that is a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (each such subsidiary of the Company, a "**Significant Subsidiary**") (A) has been duly formed, is validly existing and is in good standing under the laws of its jurisdiction of organization, (B) has all requisite power and authority to carry on its business as it is currently being conducted and to own, lease and operate its properties and assets and (C) duly qualified or licensed to do business and is in good standing as a foreign corporation, partnership or other entity as the case may be, authorized to do business in each jurisdiction in which the nature of such business or the ownership or leasing of such properties requires such qualification, except where the failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on (i) the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Company and the Significant Subsidiaries, taken as a whole, (ii) the ability of the Company or any Significant Subsidiary to perform its obligations in all material respects under this Exchange Agreement and the New Shares, (iii) the validity or enforceability of this Exchange Agreement, and the New Shares or (iv) the consummation of the Exchange (each, a "**Material Adverse Effect**").

(b) The Company has full power and authority to consummate the Exchange and to enter into this Exchange Agreement and perform all of its obligations hereunder, including the issuance and delivery of the New Shares. Upon the Company's delivery of the New Shares to any Exchanging Investor pursuant to the Exchange, such New Shares will be free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, title retention agreements, options, preemptive rights, equity or other adverse claims thereto (collectively, "**Liens**") created by the Company. The Certificate of Designation and the New Shares have been duly authorized by the Company and, upon issuance in accordance with the terms of this Exchange Agreement, the New Shares will be validly issued, fully paid and non-assessable.



(c) The Exchange and the other transactions contemplated thereby will not (A) contravene any U.S. or non-U.S. federal, state or local statute, law (including, without limitation, common law), rule or regulation binding on the Company or any Significant Subsidiary thereof or any judgment or order of any court or arbitrator or governmental or regulatory authority applicable to the Company or any Significant Subsidiary, (B) constitute a breach or violation or result in a default under any bond, debenture, note, loan or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other agreement or instrument to which the Company or any Significant Subsidiary is a party or by which any of them or their respective property is bound or (C) constitute a breach or violation or result in a default under the organizational documents of the Company or Significant Subsidiary thereof, except, in the case of clauses (A), (B) and, solely with respect to a Significant Subsidiary, (C) above, for such contraventions, conflicts, violations or defaults that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) No consent, approval, authorization, order, license, filing or registration or qualification of or with any court or governmental or regulatory authority is required for the execution, delivery or performance by the Company of its obligations under this Exchange Agreement and the New Shares and the consummation of the transactions contemplated by this Exchange Agreement and the New Shares, except such (A) those that have been official or made, as the case may be, that are in full force and effect, (B) as may be required under the securities or “Blue Sky” laws of U.S. state or non-U.S. jurisdictions or other non-U.S. laws applicable to the purchase of the New Shares outside the U.S. in connection with the Exchange and (C) those the failure of which to obtain or make such consent, approval, authorization, order, filing or registration would not, individually, or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) This Exchange Agreement has been duly authorized, executed and delivered by the Company.

(f) Subject to the terms of the Certificate of Designation, the New Shares will be convertible into shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”). The Company has duly authorized and reserved a number of shares of Common Stock for issuance upon conversion of the New Shares equal to the maximum number of such shares issuable upon conversion (the “**Conversion Shares**”), and, when such Conversion Shares are issued upon conversion of the New Shares in accordance with the terms of the New Shares and the Certificate of Designation, such Conversion Shares will be validly issued, fully paid and non-assessable, and the issuance of any such Conversion Shares will not be subject to any preemptive or similar rights.

(g) The Company is not and, after giving effect to the transactions contemplated by this Exchange Agreement, will not be required to register as an “investment company” within the meaning of the Investment Company Act of 1940 (the “**Investment Company Act**”), as amended, and the rules and regulations of the Securities and Exchange Commission (“**SEC**”) thereunder, and following the Closing, the Company will conduct its business in a manner so as not to be required to register under the Investment Company Act.

(h) There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Exchange Agreement or the issuance of the New Shares.

(i) As of the date hereof, the Covered SEC Filings (as defined below), taken as a whole, do not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As used herein, “**Covered SEC Filings**” means each of the following documents, in the form they have been filed with the SEC and including any amendments thereto filed with the SEC: (w) the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020; (x) the Company’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2021; (y) those portions of the Company’s 2021 Proxy Statement on Schedule 14A, and any amendments thereto, that are incorporated by reference into the Annual Report referred to in clause (w) above; and (z) the Company’s Current Reports on Form 8-K (excluding any Current Reports or portions thereof that are furnished, and not filed, pursuant to Item 2.02 or Item 7.01 of Form 8-K, and any related exhibits) filed with the SEC after December 31, 2020 and prior to the Closing.

5. Representations and Warranties of the Investor. The Investor hereby, for itself and on behalf of each Exchanging Investor, represents and warrants to and covenants with the Company that:

(a) The Investor, for itself and on behalf of each Exchanging Investor, has full power and authority to exchange, sell, assign and transfer the Old Shares to be exchanged hereby and to enter into this Exchange Agreement and perform all obligations required to be performed by the Investor or such Exchanging Investor hereunder.

(b) Each of the Exchanging Investors is and, immediately before the Closing, will be the beneficial owner of the Old Shares set forth on Exhibit B hereto.

(c) When the Old Shares are exchanged pursuant to this Exchange Agreement, the Company will acquire good, marketable and unencumbered title to the Old Shares, free and clear of all Liens.

(d) The Exchange will not (A) contravene any law, rule or regulation binding on the Investor or any of the Exchanging Investors or any investment guideline or restriction applicable to the Investor or any of the Exchanging Investors, or (B) constitute a breach or violation or result in a default under the organizational documents of the Investor or any Exchanging Investor or any material loan agreement, mortgage, lease or other agreement or instrument to which the Investor or any Exchanging Investor is a party or by which it is bound.

(e) The Investor and each Exchanging Investor is a resident of the jurisdiction set forth on Exhibit B hereto.

(f) The Investor and each Exchanging Investor will comply with all applicable laws and regulations in effect in any jurisdiction in which the Investor or any of the Exchanging Investors acquires New Shares pursuant to the Exchange and will obtain any consent, approval or permission required for such purchases, acquisitions or sales under the laws and regulations of any jurisdiction to which the Investor or any of the Exchanging Investors is subject or in which the Investor or any Exchanging Investor acquires New Shares pursuant to the Exchange.

(g) The Investor and each Exchanging Investor acknowledges that no person has been authorized to give any information or to make any representation concerning the Company or the Exchange other than as contained in this Exchange Agreement, the Covered SEC Filings, the full text of the Existing Certificate of Designation and the full text of the Certificate of Designation, a form of which is attached as Exhibit A hereto. The Company takes no responsibility for, and provides no assurance as to the reliability of, any other information that others may provide to the Investor or any Exchanging Investor.

(h) The Investor and each Exchanging Investor understands and accepts that the New Shares to be acquired in the Exchange involve risks. Each of the Investor and the Exchanging Investors has such knowledge, skill and experience in business, financial and investment matters that such person is capable of evaluating the merits and risks of the Exchange and an investment in the New Shares. With the assistance of each Exchanging Investor's own professional advisors, to the extent that the Exchanging Investor has deemed appropriate, each Exchanging Investor has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the New Shares and the consequences of the Exchange and this Exchange Agreement. Each Exchanging Investor has considered the suitability of the New Shares as an investment in light of its own circumstances and financial condition, and each of the Investor and the Exchanging Investor is able to bear the risks associated with an investment in the New Shares.

(i) The Investor confirms that it and each Exchanging Investor is not relying on any statement (written or oral), representation or warranty made by the Company or any of its affiliates as investment, tax or other advice or as a recommendation to participate in the Exchange and receive the Consideration in exchange for Old Shares. The Investor confirms that it and each Exchanging Investor has read the Certificate of Designation relating to the New Shares and has not relied on any statement (written or oral) of the Company or any of its affiliates as to the terms of the New Shares. It is understood that neither the Company nor any of its affiliates is acting or has acted as an advisor to the Investor or any Exchanging Investor in deciding whether to participate in the Exchange and to exchange Old Shares for the Consideration.

(j) The Investor confirms that none of the Company or any of its affiliates have (A) given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of an investment in the New Shares or (B) made any representation to the Investor or any Exchanging Investor regarding the legality of an investment in the New Shares under applicable investment guidelines, laws or regulations. In deciding to participate in the Exchange, each of the Investor and the Exchanging Investors is not relying on the advice or recommendations of the Company or its affiliates, and has made its own independent decision that the terms of the Exchange and the investment in the New Shares is suitable and appropriate for it.

(k) Each of the Investor and the Exchanging Investors is familiar with the business and financial condition and operations of the Company and has had the opportunity to conduct its own investigation of the Company and the New Shares. Each of the Investor and the Exchanging Investors has had access to and reviewed the Covered SEC Filings and such other information concerning the Company and the New Shares it deems necessary to enable it to make an informed investment decision concerning the Exchange. Each of the Investor and the Exchanging Investors has been offered the opportunity to ask questions of the Company and received answers thereto, as it deems necessary to enable it to make an informed investment decision concerning the Exchange.

(l) Each of the Investor and the Exchanging Investors understands that no federal or state agency has passed upon the merits or risks of an investment in the New Shares or made any recommendation or endorsement, or made any finding or determination concerning the fairness or advisability, of such investment or the consequences of the Exchange and this Exchange Agreement.

(m) Each Exchanging Investor and any account for which it is acting is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act. Each of the Investor and the Exchanging Investors agrees to furnish any additional information requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the Exchange.

(n) Each Exchanging Investor is acquiring the New Shares solely for such Exchanging Investor's own beneficial account, for investment purposes, and not with a view to, or for resale in connection with, any distribution of the New Shares in violation of the Securities Act. Each of the Investor and the Exchanging Investors understands that the offer and sale of the New Shares have not been registered under the Securities Act or any state securities laws by reason of specific exemptions under the provisions thereof that depend in part upon the investment intent of the Investor and the Exchanging Investors and the accuracy of the other representations made by the Investor, for itself and on behalf of each Exchanging Investor, in this Exchange Agreement. Each of the Investor and the Exchanging Investors understands that the Company and its affiliates are relying upon the representations and agreements contained in this Exchange Agreement (and any supplemental information) for the purpose of determining whether the Exchange meets the requirements for such exemptions.

(o) The Investor acknowledges that the terms of the Exchange have been mutually negotiated between the Investor and the Company.

(p) The Investor will, upon request, execute and deliver, for itself and on behalf of any Exchanging Investor, any additional documents deemed by the Company or the Company's transfer agent to be reasonably necessary or desirable to complete the exchange, assignment and transfer of the Old Shares to be exchanged pursuant to this Exchange Agreement.

(q) The Investor understands that, unless the Investor notifies the Company in writing to the contrary at or before the Closing, each of the Investor's representations and warranties, on behalf of itself and each Exchanging Investor, contained in this Exchange Agreement will be deemed to have been reaffirmed and confirmed as of the Closing, taking into account all information received by the Investor and each Exchanging Investor.

(r) The Investor was given a meaningful opportunity to negotiate the terms of the Exchange.

(s) The Investor's and each Exchanging Investor's participation in the Exchange was not conditioned by the Company on the Investor or any Exchanging Investor's exchange of a minimum number of Old Shares for the Consideration.

(t) Neither the Investor nor any Exchanging Investor has an ownership interest equal to or greater than either 5% of the number of shares of Common Stock of the Company or 5% of the voting power outstanding of the Company, in each case, before the initial issuance of the securities issued in the Exchange.

(u) The Investor had a sufficient amount of time to consider whether to participate in the Exchange, and none of the Company or any of its affiliates or agents has placed any pressure on the Investor to respond to the opportunity to participate in the Exchange.

(v) No later than one (1) business day after the date hereof, the Investor agrees to deliver to the Company settlement instructions substantially in the form of Exhibit B hereto for each of the Exchanging Investors.

(w) If the Investor is exchanging any Old Shares and acquiring New Shares as a fiduciary or agent for one or more accounts, it represents that it has (A) the requisite investment discretion with respect to each such account necessary to effect the Exchange, (B) full power to make the foregoing representations, warranties and covenants on behalf of such account; and (C) contractual authority with respect to each such account.

6. Conditions to Obligations of the Investor and the Company. The obligations of the Investor to deliver (or cause to be delivered) the Old Shares and of the Company to pay and deliver the Consideration are subject to the satisfaction at or prior to the Closing of the following conditions precedent: the representations and warranties of the Company contained in Section 4 hereof and of the Investor, for itself and on behalf of the Exchanging Investors, contained in Section 5 hereof are true and correct as of the Closing in all respects with the same effect as though such representations and warranties had been made as of the Closing.

7. **Registration Rights; Survival of the SPA.** The Company and the Investor hereby agree that, notwithstanding anything to the contrary contained in the Second Amended and Restated Registration Rights Agreement, by and among the Company and the investors party thereto, including the Investor, dated January 5, 2015 (the “**Registration Rights Agreement**”), the New Shares shall be deemed to be Preferred Stock under and as defined in the Registration Rights Agreement. The Company and the Investor further hereby agree that Sections [5.4, 5.5, 5.9, 7.2, 7.4, 7.4, 8 and 9][5.4, 5.8, 7.1, 7.2, 7.3, 8 and 9] of the Securities Purchase Agreement, by and among the Company and the purchasers party thereto, dated [May 29, 2014][January 5, 2015], shall, to the extent they applied to the Investor and the Old Shares as of the date hereof, be incorporated into this Exchange Agreement and apply, *mutatis mutandis*, to the New Shares. The Company and the Investor hereby acknowledge that the Exchange satisfies Section 5.12 of the Stock Purchase Agreement, by and among the Company, Continental Insurance Group, Ltd. And Continental General Holdings LLC, dated as of March 26, 2021.

8. **Waiver, Amendment.** Neither this Exchange Agreement nor any provisions hereof may be modified, changed, discharged or terminated except by an instrument in writing, signed by each party hereto.

9. **Assignability.** Neither this Exchange Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof will be assignable by either the Company, on the one hand, or the Investor or any Exchanging Investor, on the other hand, without the prior written consent of the other party.

10. **Taxation.** The Investor shall provide the Company with all information reasonably requested by the Company to comply with applicable tax laws. Without limiting the foregoing, the Investor acknowledges that, if an Exchanging Investor is a United States person for U.S. federal income tax purposes, either (i) the Company must be provided with a correct taxpayer identification number (“**TIN**”) (generally a person’s social security or federal employer identification number) and certain other information on a properly completed and executed Internal Revenue Service (“**IRS**”) Form W-9, or (ii) another basis for exemption from U.S. federal backup withholding must be established. The Investor further acknowledges that, if an Exchanging Investor is not a United States person for U.S. federal income tax purposes, the Company must be provided the appropriate properly completed and executed IRS Form W-8, attesting to that non-U.S. Exchanging Investor’s foreign status, and certain other information, including information establishing an exemption from withholding under Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (the “**Code**”). The Investor further acknowledges that any Exchanging Investor may be subject to 30% U.S. federal withholding or 24% U.S. federal backup withholding on certain payments made to such Exchanging Investor unless such Exchanging Investor properly establishes an exemption from, or a reduced rate of, such withholding or backup withholding. Any amounts so withheld shall be treated for all purposes of this Exchange Agreement as paid to the person in respect of which such withholding was made.

11. **Waiver of Jury Trial.** **EACH OF THE COMPANY, THE INVESTOR AND THE EXCHANGING INVESTORS IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS EXCHANGE AGREEMENT.**

12. **Governing Law.** This Exchange Agreement will be governed by and construed in accordance with the laws of the State of New York.

13. Section and Other Headings. The section and other headings contained in this Exchange Agreement are for reference purposes only and will not affect the meaning or interpretation of this Exchange Agreement.

14. Counterparts. This Exchange Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which together will be deemed to be one and the same agreement. Delivery of an executed signature page to this Exchange Agreement by facsimile or other electronic transmission (including .pdf format) will be effective as delivery of a manually executed counterpart hereof.

15. Notices. All notices and other communications to the Company provided for herein will be in writing and will be deemed to have been duly given if delivered personally or sent by nationally recognized overnight courier service or by registered or certified mail, return receipt requested, postage prepaid to the following addresses, or in the case of the Investor, the address provided on the signature page below (or such other address as either party may have hereafter specified by notice in writing to the other):

If to the Company:

HC2 Holdings, Inc.  
295 Madison Avenue, 12th Floor  
New York, NY 10017  
Attention: Joseph Ferraro, c/o HC2 Holdings, Inc.

16. Binding Effect. The provisions of this Exchange Agreement will be binding upon and accrue to the benefit of the parties hereto and the Exchanging Investors and their respective heirs, legal representatives, successors and permitted assigns.

17. Notification of Changes. The Investor hereby covenants and agrees to notify the Company upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant of the Investor, made on behalf of itself and each Exchanging Investor, contained in this Exchange Agreement to be false or incorrect.

18. Severability. If any term or provision of this Exchange Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Exchange Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned has executed this Exchange Agreement as of the date first written above.

Investor:

\_\_\_\_\_  
Legal name

By: \_\_\_\_\_

Name:

Title:

Investor Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:

\_\_\_\_\_

Country (and, if applicable, State) of Residence:

\_\_\_\_\_

Taxpayer Identification Number:

\_\_\_\_\_

[Signature Page to Exchange Agreement]

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Exchange Agreement as of the date first written above.

HC2 HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Exchange Agreement]*

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**Exhibit A**

**Form of Certificate of Designation**  
(See Attached)

**Exhibit B**

**Exchanging Investor Information**

(Complete the Following Form for Each Exchanging Investor)

Legal Name of Exchanging Holder:

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Number of Old Shares to be Exchanged:

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Exchanging Holder's Address:

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Telephone:

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Country (and, if applicable, State) of Residence:

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Taxpayer Identification Number:

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