

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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

WARBY PARKER INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

80-0423634
(I.R.S. Employer
Identification No.)

Warby Parker Inc.
233 Spring Street, 6th Floor East
New York, New York 10013
(646) 847-7215
(Address of principal executive offices, including zip code)
Warby Parker Inc. Amended and Restated 2011 Stock Plan
Warby Parker Inc. 2019 Founder Stock Plan
(Full title of the plans)

Neil Blumenthal, Co-Founder and Co-Chief Executive Officer
Dave Gilboa, Co-Founder and Co-Chief Executive Officer
Warby Parker Inc.
233 Spring Street, 6th Floor East
New York, New York 10013
(646) 847-7215
(Name, address and telephone number, including area code, of agent for service)

Copies to:
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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Non-accelerated filer ☒

Accelerated filer ☐

Smaller reporting company ☐

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 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Class A common stock, par value \$0.0001 per share				
Shares issued pursuant to stock options under the Warby Parker Inc. Amended and Restated 2011 Stock Plan	27,974 ⁽²⁾	\$8.66 ⁽³⁾	\$ 242,254.84	\$ 26.43
Shares issued pursuant to restricted stock unit awards granted under the Warby Parker Inc. Amended and Restated 2011 Stock Plan	2,069,775 ⁽⁴⁾	\$0.000033 ⁽⁵⁾	\$ 68.30	\$ 0.01
Shares issued pursuant to restricted stock unit awards granted under the Warby Parker Inc. 2019 Founder Stock Plan	6,681,896 ⁽⁶⁾	\$0.000033 ⁽⁵⁾	\$ 222.73	\$ 0.02
Total	8,779,645		\$ 242,545.87	\$ 26.46

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement (“Registration Statement”) shall also cover any additional shares of the Registrant’s Class A common stock, \$0.0001 par value per share (the “Class A common stock”), that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected without receipt of consideration that results in an increase to the number of outstanding shares of Registrant’s Class A common stock, as applicable.
- (2) Represents 27,974 shares of Class A common stock issued pursuant to the exercise of stock options granted under the Warby Parker Inc. Amended and Restated 2011 Stock Plan (the “2011 Plan”).
- (3) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of \$8.66 per share, which is the weighted average exercise price of shares issued pursuant to stock options granted under the 2011 Plan as of the date of this Registration Statement.
- (4) Represents 2,069,775 shares of Class A common stock issued or issuable pursuant to the settlement of restricted stock units granted under the 2011 Plan.
- (5) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(a). Given that there is no proposed maximum offering price per share of Class A common stock, the Registrant calculates the proposed maximum aggregate offering price, by analogy to Rule 457(f)(2), based on one-third of the par value per share of the Registrant’s Class A common stock, or \$0.000033 per share, because the Registrant has an accumulated capital deficit based on the Registrant’s unaudited pro forma balance sheet as of June 30, 2021. Given that the Registrant’s shares of Class A common stock are not traded on an exchange or over-the-counter, the Registrant did not use the market prices of its Class A common stock in accordance with Rule 457(c).
- (6) Represents 6,681,896 shares of Class A common stock issuable upon conversion of shares of Class B Common Stock underlying equity awards outstanding under the Warby Parker Inc. 2019 Founder Stock Plan (the “2019 Plan”).

EXPLANATORY NOTE

This registration statement contains a “reoffer prospectus” prepared in accordance with Part I of Form S-3 (in accordance with Instruction C of the General Instructions to Form S-8). This reoffer prospectus may be used for reoffers and resales on a continuous or delayed basis of certain of those shares of Class A common stock (the “**Shares**”) of Warby Parker Inc. (“**us**,” “**we**,” or the “**Registrant**”) referred to above that constitute “control securities” or “restricted securities,” within the meaning of the Securities Act, by certain stockholders that are current and former directors, officers, other employees, and consultants of the Registrant (the “**Selling Stockholders**”) for their own accounts. As specified in General Instruction C of Form S-8, the amount of securities to be reoffered or resold under the reoffer prospectus by each Selling Stockholder and any other person with whom he or she is acting in concert for the purpose of selling the Registrant’s securities, may not exceed, during any three-month period, the amount specified in Rule 144(e) under the Securities Act.

REOFFER PROSPECTUS

WARBY PARKER

WARBY PARKER INC.

8,779,645 Shares of Class A Common Stock

This prospectus relates to 8,779,645 shares of Class A common stock, \$0.0001 par value per share (the “**Shares**”), of Warby Parker Inc., which may be offered from time to time by certain stockholders that are our current or former directors, officers, other employees, and consultants (the “**Selling Stockholders**”) for their own accounts. We will not receive any of the proceeds from the sale of Shares by the Selling Stockholders made hereunder. The Shares were acquired by the Selling Stockholders pursuant to the Registrant’s Amended and Restated 2011 Stock Plan and 2019 Founder Stock Plan, each as amended (collectively, the “**Plans**”).

The Selling Stockholders may sell the securities described in this prospectus in a number of different ways and at varying prices, including sales in the open market, sales in negotiated transactions, and sales by a combination of these methods. The Selling Stockholders may sell any, all, or none of the Shares and we do not know when or in what amount the Selling Stockholders may sell their Shares hereunder following the effective date of this registration statement. The price at which any of the Shares may be sold, and the commissions, if any, paid in connection with any such sale, are unknown and may vary from transaction to transaction. The Shares may be sold at the market price of the Class A common stock at the time of a sale, at prices relating to the market price over a period of time, or at prices negotiated with the buyers of shares. The Shares may be sold through underwriters or dealers which the Selling Stockholders may select. If underwriters or dealers are used to sell the Shares, we will name them and describe their compensation in a prospectus supplement. We provide more information about how the Selling Stockholders may sell their Shares in the section titled “Plan of Distribution.” The Selling Stockholders will bear all sales commissions and similar expenses. Any other expenses incurred by us in connection with the registration and offering that are not borne by the Selling Stockholders will be borne by us.

Our Class A common stock registered pursuant to our Registration Statement on Form S-1 (File No. 333-259035), as amended, was declared effective on September 17, 2021. Our Class A common stock has been approved for listing on the New York Stock Exchange under the symbol “WRBY.”

The amount of securities to be offered or resold under this reoffer prospectus by each Selling Stockholder or other person with whom he or she is acting in concert for the purpose of selling our securities, may not exceed, during any three-month period, the amount specified in Rule 144(e) under the Securities Act.

Investing in our securities involves a high degree of risk. Before buying any securities, you should carefully read the discussion of the risks of investing in our securities in “Risk Factors” on page 6 of this prospectus.

The Securities and Exchange Commission (the “**SEC**”) may take the view that, under certain circumstances, the Selling Stockholders and any broker-dealers or agents that participate with the Selling Stockholders in the distribution of the Shares may be deemed to be “underwriters” within the meaning of the Securities Act. Commissions, discounts or concessions received by any such broker-dealer or agent may be deemed to be underwriting commissions under the Securities Act. See the section titled “Plan of Distribution.”

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is September 21, 2021

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ABOUT THIS REOFFER PROSPECTUS

You should rely only on the information contained in this prospectus or in any accompanying prospectus supplement by us or on our behalf. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the Shares. Our business, results of operations, financial condition, and prospects may have changed since that date.

Our design logo, “Warby Parker,” and our other registered or common law trademarks, service marks, or trade names appearing in this prospectus are the property of Warby Parker Inc. or its affiliates. Other trade names, trademarks, and service marks used in this prospectus are the property of their respective owners..

Unless the context otherwise requires, all references in this prospectus to “we,” “us,” “our,” “our company,” and “Warby Parker” refer to Warby Parker Inc. and its consolidated subsidiaries.

THE COMPANY

Warby Parker is a mission-driven, lifestyle brand that operates at the intersection of design, technology, healthcare, and social enterprise. We stand for fun, creativity, and doing good in the world. Every day, our team of nearly 3,000 team members is focused on our mission to inspire and impact the world with vision, purpose, and style (without charging a premium for it). Our ultimate objective is to provide vision for all.

Corporate Information

We were incorporated as JAND, Inc. in Delaware on May 7, 2009, and, in June 2021, changed our name to Warby Parker Inc. and became a public benefit corporation in Delaware. Our principal executive offices are located at 233 Spring Street, 6th Floor East, New York, New York 10013. Our telephone number is (646) 847-7215. Our website address is www.warbyparker.com. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

RISK FACTORS

Investing in our Class A common stock involves a high degree of risk. Before investing in our Class A common stock, you should carefully consider the risks set forth under the caption “Risk Factors” in our Registration Statement on Form S-1, as amended (File No. 333-259035), filed with the Securities and Exchange Commission on August 24, 2021, which are incorporated by reference herein, and subsequent reports filed with the SEC, together with the financial and other information contained or incorporated by reference in this prospectus. If any of the risks actually occur, our business, results of operations, financial condition, and prospects could be harmed. In that event, the trading price of our Class A common stock could decline, and you could lose part or all of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations or financial condition, business strategy, and plans and objectives of management for future operations are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “toward,” “will,” or “would,” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our ability to manage our future growth effectively;
- our expectations regarding cost of goods sold, gross margin, Four-Wall Margin, Average Contribution Per Customer, channel mix, customer mix, and selling, general, and administrative expenses;
- planned new retail stores in 2021 and going forward;
- increases in component and shipping costs and changes in supply chain;
- our ability to compete successfully;
- our ability to manage our inventory balances and shrinkage;
- our ability to engage our existing customers and obtain new customers;
- the growth of our brand awareness;
- the effects of the ongoing COVID-19 pandemic;
- the effects of seasonal trends on our results of operations;

- our ability to stay in compliance with extensive laws and regulations that apply to our business and operations;
- our ability to adequately maintain and protect our intellectual property and proprietary rights;
- our reliance on third parties for our products, operation and infrastructure;
- the increased expenses associated with being a public company;
- the future trading prices of our Class A common stock; and
- our plan to donate, subject to our board of directors' discretion and approval, up to an additional 1,071,432 shares of Class A common stock to the Warby Parker Impact Foundation or such other nonprofit entity designated by the board of directors in installments over time and from time to time.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and results of operations. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, and other factors described in the section titled "Risk Factors" and elsewhere in this prospectus. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. The results, events, and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events, or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. While we believe such information provides a reasonable basis for these statements, such information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made in this prospectus relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information, actual results, revised expectations, or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments.

USE OF PROCEEDS

We will not receive any of the proceeds from the sale of the Shares. All proceeds from the sale of the Shares will be for the account of the Selling Stockholders, as described below. See the sections titled “Selling Stockholders” and “Plan of Distribution” described below.

SELLING STOCKHOLDERS

The following table sets forth information regarding beneficial ownership of our common stock as of September 17, 2021, as adjusted to reflect the Shares that may be sold from time to time pursuant to this prospectus, for all Selling Stockholders, consisting of the individuals shown as having shares listed in the column entitled “Shares Being Offered.”

The Shares offered by the Selling Stockholders hereunder include an aggregate of 8,779,645 outstanding shares of Class A common stock acquired by certain of our current and former directors, officers, other employees, and consultants pursuant to the Plans, as described in this prospectus. We have determined beneficial ownership in accordance with the rules of the SEC, and thus it represents sole or shared voting or investment power with respect to our securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially owned as of September 6, 2021, subject to community property laws where applicable.

We have based percentage ownership of our common stock before this offering on 89,444,249 shares of our Class A common stock outstanding as of September 17, 2021, and 21,983,203 shares of our Class B common stock, \$0.0001 par value per share (the “***Class B common stock***”), outstanding as of September 17, 2021, which includes:

- the conversion of 53,321,107 outstanding shares of all series of our convertible preferred stock into an aggregate of 53,321,107 shares of our Class A common stock which will occur prior to our listing, as if this conversion had occurred as of September 17, 2021;
- the filing and effectiveness of our amended and restated certificate of incorporation in Delaware, which will occur prior to our listing and which will, among other things, effect (x) the reclassification of all outstanding shares of our Series A common stock (i) beneficially owned by Neil Blumenthal and Dave Gilboa or (ii) held by certain trusts and limited liability companies affiliated with Neil Blumenthal, Dave Gilboa, or their family members (collectively, the “Co-Founder Shares”), into Class B common stock and (y) the reclassification of all other outstanding shares of our Series A common stock and all outstanding shares of Series B common stock, other than the Co-Founder Shares, into Class A common stock;
- no shares of Class C common stock, \$0.0001 par value per share, outstanding as of September 17, 2021.

The table below does not reflect the 178,572 shares of Class A common stock that we donated to the Warby Parker Impact Foundation and up to an additional 1,071,432 shares of Class A common stock that our board of directors authorized for issuance, subject to our board’s discretion and approval, to the Warby Parker Impact Foundation or such other nonprofit entity designated by the board of directors, in installments over time and from time to time.

Unless otherwise indicated, the address of each beneficial owner listed below is c/o Warby Parker Inc., 233 Spring Street, 6th Floor East, New York, New York 10013.

Selling Stockholder	Shares Beneficially Owned Prior to the Offering		Shares Being Offered ⁽¹⁾	Shares Beneficially Owned After the Offering ⁽²⁾	
	Shares	Percentage ⁽³⁾	Shares	Shares	Percentage ⁽³⁾
Neil Blumenthal, Co-Chief Executive Officer, Director	3,340,948	3.0 %	3,340,948	—	*
Dave Gilboa, Co-Chief Executive Officer, Director	3,340,948	3.0 %	3,340,948	—	*
Steven Miller, Chief Financial Officer	225,995	*	225,995	—	*
Teresa Briggs, Director ⁽⁴⁾	34,358	*	34,358	—	*
Youngme Moon, Director	31,131	*	31,131	—	*
Other Named Selling Stockholders ⁽⁵⁾	1,714,273	1.5 %	1,714,273	—	*
Other Selling Stockholders ⁽⁶⁾	91,992	*	91,992	—	*

* Represents beneficial ownership of less than 1%.

- (1) Reflects shares of our Class A common stock offered under this prospectus, including shares of Class A common stock issuable upon conversion of outstanding shares of Class B common stock.
- (2) Assumes that all of the Shares held by each Selling Stockholder and being offered under this prospectus are sold, and that no Selling Stockholder will acquire additional shares of common stock before the completion of this offering.
- (3) For purposes of calculating this percentage, includes the aggregate number of shares of Class A common stock and Class B common stock held by the holders (to the extent such holder holds any shares of Class B common stock).
- (4) Includes 34,358 shares of Class A common stock held by The Teresa Briggs Trust. Ms. Briggs may be deemed to have voting power and dispositive power over the shares held by The Teresa Briggs Trust.
- (5) Includes the following 301 named non-affiliate persons, each of whom holds at least 1,000 Shares (last name listed first): Adams Ashley, Akopyan Levon, Aldarondo Daniel, Almanza Jessica, Arana Nerea, Bachelier Seth, Bak Hyung, Baker Lucas, Barad Ria, Baragona Anthony, Beck Douglas, Begien Catherine, Bensky Allan, Bentley Adam, Bernberg Brian, Berry Sean, Bhutta Safeera, Bidwal Simren, Binder Lon, Blake Stephen, Bleakley Christopher, Bloch Justin, Bowins Erica, Bradbury Patrick, Breland Jason, Brooks Aled, Broom Gregory, Brown Ricci, Brutski Andrey, Buntain Isabel, Buxbaum Lindsay, Byers John, Callewaert Matthew, Carbol Tyler, Cerasuolo Julian, Chan Stephanie, Chang Lisa, Changrani Shaan, Chaverri Vanessa, Chen Katherine, Chhaya Anushka, Chin-Petronis Tracy, Choi Sung, Christy Stephen, Cilia David, Cobarrubias Gregory, Colescott Shay, Collins Erin, Costa Christopher, Craig Michael, Dalenburg Aaron, Davis Carley, DeShazer David, D'Espinosa Joseph, Dickerson William, Dodson Benjamin, Domako Christine, Domingue Thomas, Dona Bernat Elaine, Donovan Kelly, Dowd Molly, Dowling Brian, Dramen Danielle, D'sa Noella, Duffy Taylor, Duggins Anjelica, Dunn Erica, Durning Caitlyn, Ehrensall Kenneth, Elgner Justine, Ellis Lee, Escobar Summer, Eshleman Charles, Espana Salvador, Fassino Barton, Fazzolari Lisa, Ferguson Gaebrial, Ferguson William, Fiedler Michael, Filo Blake, Forrest Lauren, Fox Alexandra, Freet Elisabeth, Frye Jessica, Gadnis Brittnie, Gallet Philip, Galloway Andrew, Garcia Anthony, Garcia Emmanuel, Garcia-Martin Brittany, Gardenswartz Sam, Garwacke David, Gaulke David, Gavlick Ian, Geary Joseph, Gerfelder Gary, Gibaja Yann, Gilsenan Sandra, Giraldo Maximilian, Gobalakrishna Mahalakshmi, Goldberg David, Goldsand Ruby, Gonzalez Abdiel, Gordon Larry, Gotterer Michael, Gottlieb Warren, Grant Tremaine, Gray Piper, Grenier Casey, Guth Courtney, Hakim Mark, Hanley Margot, Hart Stephanie, Hebert Roy, Hefner Erin, Heimsoth Megan, Herczeg Gershon, Hinger Christopher, Hippert Jody, Holguin Leslie, Horikaw Marguerite, Howard Richard, Huang Susanna, Huang Tzu-Hao, Hudson Mary, Iverson-Ammeraal Penny, James Meg, Johns Amanda, Joshi Sarang, Joyner Erika, Kaden Chelsea, Kim Christina, Kim Jennifer, King Axel, Klein Nicole, Knight James, Krauss Lori, Kruse Sarah, Krutiansky Brett, Kugizaki Jennifer, Kuzmick Nick, Kwok Jennifer, Lajoie Jody, Lal Pratil, Laundry Alexandra, Leach Michael, Lee Jennifer, Leifer Jillian, Letafat Camellia, Lewis La Toya, Li Lily, Li Peter, Liberty Daniel, Licht Aliza, Liew Cassandra, Littel Christopher, Lo Timothy, Lozada Utrera Maria, Lynch Brynna, Mackey Katie, Mackey Paul, Madden Kate, Magida Brian, Mahon Fiona, Malone Shannon, Maloney Kathleen, Mann Jonathan, Marangoni Carvalho Rafaela, March Kareem, Mazzella Jason, McClure Daniel, McKennett Colleen, McWherter Jessica, Menard James, Mendelsohn Adam, Merejo Melissa, Mikell Amanda, Miller Chrissie, Miller Jessica, Ming Caitlin, Mitchell Mike, Mizroch Zachary, Moon Cathy, Moore John, Morales Edgar, Morales Marcos, Moran Chelsea, Morel Dan, Moser Sarah, Mullins Anthony, Nair Vini, Nall Gregory, Nemser Kimberly, Nguyen Nickki, Nipper Crystal, Oliva John, Olstein Aaron, Opitz Alana, O'Quin Karen, Padolf Melinda, Paine Erik, Parker Brent, Parker Shelly, Parreira Tatiana, Patel Hina, Petito Nicolette, Pettibone Joseph, Pierce Andrew, Pope Amy, Porter Joseph, Possehl Billy, Potter Krista, Powers Patricia, Pribesh Samantha, Rakowski Michael, Rand Eugenia, Rano Cara, Rath Kevin, Ravas Thomas, Rebello Anthony, Reed Lindsey, Regena Rossobillo, Rex Georgina, Rhodes Molly, Riley Timothy, Rivadeneira Kristen, Rivas Monica, Rivera Ralph, Robinson Emily, Rodes Huntley, Romani Tina, Ruhl Heather, Ruiz Rebia, Saad Omar, Sall Elizabeth, Saloma- Chamberlain Krista, Santiago Martin, Saoud Dana, Sarrafi Susan, Saunders Jeffrey, Savage Jill, Schroeder Kimberly, Scialabba Kathryn, Scirbona Charles, Seale MacKenzie, Seta Gregory, Shah Nikita, Shay Michael, Shin Lori, Shron Maxwell, Sidhu Ashmeet, Sidhu Ranjodh, Sims Adolph, Singer Matt, Smith Ryan, Sneath Jesse, Solis Samantha, Sorcinelli Andrea, Soto Emmanuel, Spayd Erica, Speer Frances, Srednick David, Sud Rahul, Sumra Gaurav, Suss Alyssa, Tacheny Michelle (Milo), Tate Alexis, Taylor Melanie, Taylor Nicholas, Thompson Laura, Tippet Kathryn, Tkach Katherine, Torres Daniel, Triana Sara, Tuck Ryan, Tucker Colleen, Ulmer-Brown Celeste, Umarye Prasad, Underwood Dustin, Valdes Ashley, Vankeuren Chad, Vesce Diana, Vintimilla Diego, Vogel Carl, Vyas Asha, Wang Jie-Hua, Watson Kristy, Weber Travis, West Damian, Wharton Edwin, Wobbecke Sarah, Wojcik Mary, Woodland John, Yang Christina, Yaqub Rabia, Zachritz Hannah, Zayed Nura, Zevotek Michael, Zhao Bo, Zlata Jesse, Zurita Jason. Each of these persons beneficially owns less than 1% of our common stock. Certain of these persons are current or former employees of the Registrant.

- (6) Includes 166 unnamed non-affiliate persons, each of whom holds less than 1,000 Shares and each of whom may sell up to such amount using this prospectus. Each of these persons beneficially owns less than 1% of our common stock. Certain of these persons are current or former employees of the Registrant.

PLAN OF DISTRIBUTION

We are registering the Shares covered by this prospectus to permit the Selling Stockholders to conduct public secondary trading of these Shares from time to time after the date of this prospectus. We will not receive any of the proceeds of the sale of the Shares offered by this prospectus. The aggregate proceeds to the Selling Stockholders from the sale of the Shares will be the purchase price of the Shares less any discounts and commissions. We will not pay any brokers' or underwriters' discounts and commissions in connection with the registration and sale of the Shares covered by this prospectus. The Selling Stockholders reserve the right to accept and, together with their respective agents, to reject, any proposed purchases of Shares to be made directly or through agents.

The Shares offered by this prospectus may be sold from time to time to purchasers:

- directly by the Selling Stockholders, or
- through underwriters, broker-dealers, or agents, who may receive compensation in the form of discounts, commissions, or agent's commissions from the Selling Stockholders or the purchasers of the Shares.

Any underwriters, broker-dealers, or agents who participate in the sale or distribution of the Shares may be deemed to be "underwriters" within the meaning of the Securities Act. As a result, any discounts, commissions, or concessions received by any such broker-dealers or agents who are deemed to be underwriters will be deemed to be underwriting discounts and commissions under the Securities Act. Underwriters are subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory liabilities under the Securities Act and the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). We will make copies of this prospectus available to the Selling Stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. To our knowledge, there are currently no plans, arrangements, or understandings between the Selling Stockholders and any underwriter, broker-dealer, or agent regarding the sale of the Shares by the Selling Stockholders.

The Shares may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- prices related to such prevailing market prices;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in one or more transactions:

- on any national securities exchange or quotation service on which the Shares may be listed or quoted at the time of sale, including the Nasdaq Global Select Market;
- in the over-the-counter market;
- in transactions otherwise than on such exchanges or services or in the over-the-counter market;
- any other method permitted by applicable law; or
- through any combination of the foregoing.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

At the time a particular offering of the Shares is made, a prospectus supplement, if required, will be distributed, which will set forth the name of the Selling Stockholders, the aggregate amount of Shares being offered, and the

terms of the offering, including, to the extent required, (1) the name or names of any underwriters, broker-dealers, or agents, (2) any discounts, commissions, and other terms constituting compensation from the Selling Stockholders and (3) any discounts, commissions, or concessions allowed or reallocated to be paid to broker-dealers.

The Selling Stockholders will act independently of us in making decisions with respect to the timing, manner, and size of each resale or other transfer. There can be no assurance that the Selling Stockholders will sell any or all of the Shares under this prospectus. Further, we cannot assure you that the Selling Stockholders will not transfer, distribute, devise, or gift the Shares by other means not described in this prospectus. In addition, any Shares covered by this prospectus that qualify for sale under Rule 144 of the Securities Act may be sold under Rule 144 rather than under this prospectus. The Shares may be sold in some states only through registered or licensed brokers or dealers. In addition, in some states the Shares may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification is available and complied with.

The Selling Stockholders and any other person participating in the sale of the Shares will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the Shares by the Selling Stockholders and any other person. In addition, Regulation M may restrict the ability of any person engaged in the distribution of the Shares to engage in market-making activities with respect to the particular Shares being distributed. This may affect the marketability of the Shares and the ability of any person or entity to engage in market-making activities with respect to the Shares.

The Selling Stockholders may indemnify any broker or underwriter that participates in transactions involving the sale of the Shares against certain liabilities, including liabilities arising under the Securities Act.

LEGAL MATTERS

The validity of the Shares offered hereby has been passed upon by Latham & Watkins LLP, New York, New York.

EXPERTS

The consolidated financial statements of Warby Parker Inc. for the years ended December 31, 2019 and December 31, 2020 included in Warby Parker Inc.'s Amendment No. 2 to the Registration Statement on Form S-1 (No. 333-259035) have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

INFORMATION INCORPORATED BY REFERENCE

The following documents filed with the SEC are hereby incorporated by reference in this prospectus:

- (a) Amendment No. 2 to the Registrant's Registration Statement on [Form S-1](#) filed with the SEC on September 14, 2021 (File No. 333-259035), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed.
- (b) The Registrant's Prospectus to be filed on or about September 29, 2021 pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on Form S-1, as amended (File No. 333-259035).
- (c) The description of the Registrant's Class A common stock which is contained in a registration statement on [Form 8-A](#) filed on September 21, 2021 (File No. 001-40825) under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and other reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, including any amendments to those reports, and other information that we file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act can also be accessed free of charge by linking directly from our website at www.airbnb.com. These filings will be available as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information contained on our website is not part of this prospectus.

The Registrant hereby undertakes to provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon written or oral request of any such person, a copy of any and all of the information that has been incorporated by reference in this prospectus but not delivered with the prospectus other than the exhibits to those documents, unless the exhibits are specifically incorporated by reference into the information that this prospectus incorporates.

PART I
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registration Information and Employee Plan Annual Information.*

- * Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the “Note” to Part I of Form S-8.

PART II
INFORMATION REQUIRED IN REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE.

The following documents filed by Warby Parker Inc. (the “**Registrant**”) with the SEC are incorporated by reference into this Registration Statement:

- (a) Amendment No. 2 to the Registrant’s Registration Statement on [Form S-1](#) filed with the SEC and dated on September 14, 2021 (File No. 333-259035), which contains the Registrant’s audited financial statements for the latest fiscal year for which such statements have been filed.
- (b) The Registrant’s Prospectus to be filed on or about September 29, 2021 pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on [Form S-1](#), as amended (File No. 333-259035).
- (c) The description of the Registrant’s Class A common stock which is contained in a registration statement on [Form 8-A](#) filed on September 21, 2021 (File No. 001-40825) under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. The Registrant’s amended and restated certificate of incorporation that will be in effect immediately following the effectiveness of the Registrant’s Registration Statement on Form S-1 permits indemnification of its directors, officers, employees, and other agents to the maximum extent permitted by the Delaware General Corporation Law, and the Registrant’s amended bylaws that will be in effect immediately following the effectiveness of the Registrant’s Registration Statement on Form S-1 provide that it will indemnify its directors and officers and permit it to indemnify its employees and other agents, in each case to the maximum extent permitted by the Delaware General Corporation Law.

The Registrant has entered into indemnification agreements with its directors and officers, whereby the Registrant has agreed to indemnify its directors and officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that such director or officer is or was a director, officer,

employee or agent of the Registrant, provided that such director or officer acted in good faith and in a manner that the director or officer reasonably believed to be in, or not opposed to, the Registrant's best interest.

The indemnification provisions in the Registrant's amended and restated certificate of incorporation, amended bylaws, and the indemnification agreements that the Registrant has entered into or will enter into with its directors and executive officers may discourage stockholders from bringing a lawsuit against its directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against the Registrant's directors and executive officers, even though an action, if successful, might benefit the Registrant and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that the Registrant pays the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving a director or officer of the Registrant regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintain insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his or her capacity as such.

Certain of the Registrant's non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the Registrant's board of directors.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

The issuance of the Shares being offered by the Form S-3 resale prospectus were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about the Registrant.

ITEM 8. EXHIBITS.**EXHIBIT INDEX**

Exhibit Number	Description	Incorporated by Reference			
		Schedule Form	File Number	Exhibit	Filing Date
4.1	Specimen Class A common stock certificate of the Registrant	S-1	333-259035	4.1	August 24, 2021
4.2*	Twelfth Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect				
4.3*	Amended and Restated Bylaws of the Registrant, as currently in effect				
5.1*	Opinion of Latham & Watkins LLP.				
23.1*	Consent of Latham & Watkins LLP (included in Exhibit 5.1).				
23.2*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.				
24.1*	Power of Attorney (included on the signature page of this Form S-8).				
99.1	Warby Parker Inc. 2021 Incentive Award Plan and related form agreements	S-1/A	333-259035	10.6	September 9, 2021
99.2	Warby Parker Inc. 2021 Employee Stock Purchase Plan	S-1/A	333-259035	10.7	September 9, 2021
99.3	Warby Parker Inc. Amended and Restated 2011 Stock Plan and related form agreements	S-1/A	333-259035	10.3	August 24, 2021
99.4	Warby Parker Inc. 2019 Founder Stock Plan and related form agreements	S-1/A	333-259035	10.5	August 24, 2021

*Filed herewith.

ITEM 9. UNDERTAKINGS.

1. The undersigned Registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

- (b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
2. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on this 21st day of September, 2021.

WARBY PARKER INC.

By: /s/ Neil Blumenthal
Neil Blumenthal
Co-Chief Executive Officer

By: /s/ Dave Gilboa
Dave Gilboa
Co-Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Neil Blumenthal, Dave Gilboa, and Steven Miller, each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Neil Blumenthal</u> Neil Blumenthal	Co-Chief Executive Officer and Director (Co-Principal Executive Officer)	September 21, 2021
<u>/s/ Dave Gilboa</u> Dave Gilboa	Co-Chief Executive Officer and Director (Co-Principal Executive Officer)	September 21, 2021
<u>/s/ Steven Miller</u> Steven Miller	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 21, 2021
<u>/s/ Andrew Hunt</u> Andrew Hunt	Director	September 21, 2021
<u>/s/ Jeffrey Raider</u> Jeffrey Raider	Director	September 21, 2021
<u>/s/ Teresa Briggs</u> Teresa Briggs	Director	September 21, 2021
<u>/s/ Joel Cutler</u> Joel Cutler	Director	September 21, 2021
<u>/s/ Youngme Moon</u> Youngme Moon	Director	September 21, 2021
<u>/s/ Gabrielle Sulzberger</u> Gabrielle Sulzberger	Director	September 21, 2021
<u>/s/ Ronald A. Williams</u> Ronald A. Williams	Director	September 21, 2021

TWELFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
WARBY PARKER INC.
(a Public Benefit Corporation)

Warby Parker Inc., a public benefit corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware (the “**DGCL**”) on May 7, 2009, under the name JAND, Inc.

2. The Corporation is filing this Twelfth Amended and Restated Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”), which restates, integrates and further amends the Eleventh Amended and Restated Certificate of Incorporation, as heretofore amended (the “**Prior Certificate**”), and which was duly adopted by all necessary action of the Board of Directors of the Corporation (the “**Board of Directors**”) and the stockholders of the Corporation in accordance with the provisions of Sections 242, 245 and 228 of the DGCL.

3. The text of the Prior Certificate is hereby amended and restated in its entirety by this Certificate of Incorporation to read in full as follows:

ARTICLE I.

The name of the corporation is Warby Parker Inc. (the “**Corporation**”).

ARTICLE II.

The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive in the City of Wilmington, 19808, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III.

Section 3.1 Purposes. The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL, including, without limitation, (i) exercising all rights, powers, privileges and other incidents of ownership or possession with respect to the Corporation’s assets, including managing, holding, selling and disposing of such assets and (ii) engaging in any other activities incidental or ancillary thereto.

Section 3.2 Benefit Corporation. This Corporation shall be a public benefit corporation, as contemplated by subchapter XV of the General Corporation Law, or any successor provisions, that it is intended to operate in a responsible and sustainable manner and to produce a public benefit or benefits, and is to be managed in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by this Corporation’s conduct and the public benefit or benefits identified in this Certificate of Incorporation. Accordingly, it is intended that the business and operations of this Corporation create a material positive impact on society and the environment, taken as a whole. If the General

Corporation Law is amended to alter or further define the management and operation of public benefit corporations, then this corporation shall be managed and operated in accordance with the General Corporation Law, as so amended.

Section 3.3 Public Benefit Purpose. The specific public benefits to be promoted by the corporation are to provide access to products and services that promote vision and eye health and to work towards positively impacting the communities in which the corporation operates.

ARTICLE IV.

Section 4.1 Authorized Stock. The total number of shares of all classes of stock that the Corporation is authorized to issue is one billion one hundred million (1,100,000,000), consisting of:

- (a) seven hundred fifty million (750,000,000) shares of Class A common stock, with a par value of \$0.0001 per share (the “***Class A Common Stock***”);
- (b) one hundred fifty million (150,000,000) shares of Class B common stock, with a par value of \$0.0001 per share (the “***Class B Common Stock***”);
- (c) one hundred fifty million (150,000,000) shares of Class C common stock, with a par value of \$0.0001 per share (the “***Class C Common Stock***”, and together with the Class A Common Stock and the Class B Common Stock, the “***Common Stock***”); and
- (d) fifty million (50,000,000) shares of preferred stock, with a par value of \$0.0001 per share (the “***Preferred Stock***”).

Section 4.2 Reclassification of Common Stock; Stock Split. Upon the filing and effectiveness of this Certificate of Incorporation with the Secretary of State of the State of Delaware (the “***Effective Time***”), and without any further action required by the Corporation or its stockholders: (i) each share of Series A Common Stock (as defined in the Prior Certificate) issued and outstanding or held in treasury and (ii) each share of Series B Common Stock issued and outstanding or held in treasury, in each case, immediately prior to the Effective Time, other than the Co-Founder Series A Shares, shall be automatically reclassified into one validly issued, fully paid and non-assessable share of Class A Common Stock without any further action by the Corporation or the holder of any such share; and each Co-Founder Series A Share issued and outstanding immediately prior to the Effective Time shall be automatically reclassified into one share of Class B Common Stock without any further action by the Corporation or the holder of any such share. Each stock certificate representing shares of Series A Common Stock or Series B Common Stock immediately prior to the Effective Time shall thereafter represent the number of shares of Class A Common Stock or Class B Common Stock, as applicable, into which such shares shall have been reclassified pursuant to the provisions of this Section 4.2, until the same shall be surrendered to the Corporation. Upon surrender of any such certificates for shares outstanding prior to the Effective Time, the Corporation will issue replacement certificates evidencing the shares of Class A Common Stock or Class B Common Stock, as applicable, into which such shares were converted.

Section 4.3 Blank Check Preferred Stock. The Board of Directors is authorized, subject to any limitations prescribed by law, to provide, out of the unissued shares of Preferred

Stock, for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a “Preferred Stock Designation”), to establish from time to time the number of shares to be included in each such series and to fix the powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting powers (which may be full, limited or no voting power), rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, restrictions on the issuance of shares of such series, the dissolution preferences and the rights in respect of any distribution of assets of any wholly unissued series of Preferred Stock and the number of shares constituting any such series, and the designation thereof, or any of them and to increase (but not above the total number of authorized shares of Preferred Stock) or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series so created (except where otherwise provided in the Preferred Stock Designation), subsequent to the issue of that series. In case the authorized number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. There shall be no limitation or restriction on any variation between any of the different series of Preferred Stock as to the designations, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof; and the several series of Preferred Stock may vary in any and all respects as fixed and determined by the resolution or resolutions of the Board of Directors or by a committee of the Board of Directors, providing for the issuance of the various series of Preferred Stock. Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any Preferred Stock Designation).

Section 4.4 Number of Authorized Shares. Notwithstanding Article VIII of this Certificate of Incorporation, the number of authorized shares of Class A Common Stock, Class B Common Stock, Class C Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote thereon, without a separate vote of any holders of shares of Class A Common Stock, Class B Common Stock or Preferred Stock, unless a separate vote of any such holders is required pursuant to the terms of any Preferred Stock Designation, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.5 Class A Common Stock, Class B Common Stock and Class C Common Stock. Except as otherwise set forth herein, the powers, preferences and rights of the Class A Common Stock, the Class B Common Stock and the Class C Common Stock, and the qualifications, limitations or restrictions thereof shall be identical in all respects.

(a) Voting Rights. Except as otherwise required by law,

(i) Each share of Class A Common Stock shall entitle the record holder thereof as of the applicable record date to one (1) vote per share in person or by proxy on all matters submitted to a vote of the holders of Class A Common Stock, whether voting separately as a class or otherwise.

(ii) Each share of Class B Common Stock shall entitle the record holder thereof as of the applicable record date to ten (10) votes per share in person or by proxy on all matters submitted to a vote of the holders of Class B Common Stock, whether voting separately as a class or otherwise.

(iii) Each holder of record of Class C Common Stock shall not be entitled to vote on any matter submitted to a vote of the stockholders of the Corporation, except as expressly required by applicable law or regulation.

(iv) Except as otherwise required in this Certificate of Incorporation as the same may be amended and/or restated from time to time, including by the filing of one or more Preferred Stock Designations or applicable law, the holders of shares of Class A Common Stock, and Class B Common Stock shall vote together as a single class (or, if any holders of shares of Preferred Stock are entitled to vote together with the holders of Class A Common Stock and Class B Common Stock, as a single class with such holders of Preferred Stock) on all matters submitted to a vote of stockholders of the Corporation.

(b) Dividends. Subject to applicable law, and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock, Class B Common Stock and Class C Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock, Class B Common Stock and Class C Common Stock out of the assets or funds of the Corporation that are by law available therefor, at such times and in such amounts as the Board of Directors in its discretion shall determine. Dividends may not be declared or paid (x) on the Class A Common Stock unless a dividend of the same amount per share and same type of cash or property (or combination thereof) per share is concurrently declared or paid on the Class B Common Stock and Class C Common Stock, (y) on the Class B Common Stock unless a dividend of the same amount per share and same type of cash or property (or combination thereof) per share is concurrently declared or paid on the Class A Common Stock and Class C Common Stock or (z) on the Class C Common Stock unless a dividend of the same amount per share and same type of cash or property (or combination thereof) per share is concurrently declared or paid on the Class A Common Stock and Class B Common Stock; provided, however, in the event any dividend is declared or paid in-kind in shares of Class A Common Stock, shares of Class B Common Stock or shares in Class C Common Stock (or other securities exercisable, exchangeable or convertible into such shares), as applicable, then the holders of Class A Common Stock will be entitled to receive such dividends only in the form of shares of Class A Common Stock (or other securities exercisable, exchangeable or convertible into such shares), the holders of Class B Common Stock will be entitled to receive such dividend only in the form of shares of Class B Common Stock (or other securities exercisable, exchangeable or convertible into such shares) and the holders of Class C Common Stock will be entitled to receive such dividend only in the form of shares of Class C Common Stock (or other securities exercisable, exchangeable or convertible into such shares) (provided, any such dividend shall be required to be declared and paid at the same rate on the outstanding shares of (i) Class A Common Stock as it is on the outstanding shares of Class B Common Stock and Class C Common Stock, (ii) Class B Common Stock as it is on the outstanding shares of Class A Common Stock and Class C Common Stock and (iii) Class C

Common Stock as it is on the outstanding shares of Class A Common Stock and Class B Common Stock).

(c) Liquidation Rights. In the event of liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and after making provisions for preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock, Class B Common Stock and Class C Common Stock with respect to payments in liquidation shall be entitled, the remaining assets and funds of the Corporation available for distribution shall be divided among and paid ratably to the holders of all outstanding shares of Common Stock in proportion to the number of shares held by each such stockholder. A consolidation, reorganization or merger of the Corporation with any other Person or Persons (as defined below), or a sale of all or substantially all of the assets of the Corporation, shall not be considered to be a dissolution, liquidation or winding up of the Corporation within the meaning of this Section 4.5(c).

(d) Adjustments for Stock Splits or Combinations.

(i) If at any time or from time to time after the Effective Time, the Corporation effects a subdivision or split of the outstanding shares of the Class A Common Stock into a greater number of shares of Class A Common Stock, the Corporation shall simultaneously effect an equivalent subdivision or split of (x) the outstanding shares of Class B Common Stock into a greater number of shares of Class B Common Stock and (y) the outstanding shares of Class C Common Stock into a greater number of shares of Class C Common Stock. If at any time or from time to time after the Effective Time, the Corporation effects a subdivision or split of the outstanding shares of the Class B Common Stock into a greater number of shares of Class B Common Stock, the Corporation shall simultaneously effect an equivalent subdivision or split of (x) the outstanding shares of Class A Common Stock into a greater number of shares of Class A Common Stock and (y) the outstanding shares of Class C Common Stock into a greater number of shares of Class C Common Stock. If at any time or from time to time after the Effective Time, the Corporation effects a subdivision or split of the outstanding shares of the Class C Common Stock into a greater number of shares of Class C Common Stock, the Corporation shall simultaneously effect an equivalent subdivision or split of (x) the outstanding shares of Class A Common Stock into a greater number of shares of Class A Common Stock and (y) the outstanding shares of Class B Common Stock into a greater number of shares of Class B Common Stock.

(ii) If at any time or from time to time after the Effective Time, the Corporation effects a combination of the outstanding shares of the Class A Common Stock into a smaller number of shares of Class A Common Stock, the Corporation shall simultaneously effect an equivalent combination of (x) the outstanding shares of Class B Common Stock into a smaller number of shares of Class B Common Stock and (y) the outstanding shares of Class C Common Stock into a smaller number of shares of Class C Common Stock. If at any time or from time to time after the Effective Time, the Corporation effects a combination of the outstanding shares of the Class B Common Stock into a smaller number of shares of Class B Common Stock, the Corporation shall simultaneously effect an equivalent combination of (x) the outstanding shares of Class A Common Stock into a smaller number of shares of Class A Common Stock and (y)

the outstanding shares of Class C Common Stock into a smaller number of shares of Class C Common Stock. If at any time or from time to time after the Effective Time, the Corporation effects a combination of the outstanding shares of the Class C Common Stock into a smaller number of shares of Class C Common Stock, the Corporation shall simultaneously effect an equivalent combination of (x) the outstanding shares of Class A Common Stock into a smaller number of shares of Class A Common Stock and (y) the outstanding shares of Class B Common Stock into a smaller number of shares of Class B Common Stock.

(e) Class B Common Stock. From and after the Effective Time, shares of Class B Common Stock may be issued only to, and registered only in the name of any Key Holder and any Person in such Key Holder's Permitted Ownership Group (any such Person, a "***Permitted Class B Holder***").

Section 4.6 Transfers of Class B Common Stock.

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

(b) If a Permitted Class B Holder Transfers shares of Class B Common Stock to any Person in the same Permitted Ownership Group as such Permitted Class B Holder, such shares shall remain shares of Class B Common Stock upon consummation of such Transfer. If a Permitted Class B Holder Transfers shares of Class B Common Stock to any Person that is not in the same Permitted Ownership Group as such Permitted Class B Holder, such shares shall automatically, without any further action by the Corporation or the holder of any such share, convert into shares of Class A Common Stock, on a one-for-one basis, upon consummation of such Transfer.

(c) If a Permitted Class B Holder, voluntarily or involuntarily (including by way of a foreclosure), purportedly Transfers, or attempts to Transfer, any such shares of Class B Common Stock to any Person that is not in the same Permitted Ownership Group as such Permitted Class B Holder, upon consummation of such Transfer, such shares of Class B Common Stock shall be automatically, without any further action by the Corporation or the holder of any such share, converted into an equal number of shares of Class A Common Stock and the purported transferee of such shares of Class B Common Stock shall not obtain any rights in, to or with respect to such shares of Class B Common Stock (the "***Class B Restricted Shares***") (other than rights in, to or with respect to the shares of Class A Common Stock into which such Class B Restricted Shares are converted), and the purported Transfer of such Class B Restricted Shares shall not be recognized by the Corporation, the transfer agent or the Secretary of the Corporation (other than to the extent necessary to recognize the ownership by the transferee of the shares of Class A Common Stock into which such Class B Restricted Shares are converted).

(d) Upon a determination by the Corporation that a Permitted Class B Holder has attempted or may attempt to Transfer shares of Class B Common Stock to a Person that is not in the same Permitted Ownership Group as such Permitted Class B Holder, the Corporation may take such action as it deems necessary or advisable to refuse to give effect to such Transfer

or acquisition on the books and records of the Corporation, including without limitation to cause the transfer agent or the Secretary of the Corporation, as applicable, to not record the purported transferee as the record owner of the Class B Restricted Shares, and to institute proceedings to enjoin or rescind any such Transfer or acquisition (in each case, other than to the extent necessary to recognize the ownership by the transferee of the shares of Class A Common Stock into which such Class B Restricted Shares are converted).

(e) The Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by bylaw or otherwise, regulations and procedures not inconsistent with the provisions of this Section 4.6 for determining whether any Transfer or acquisition of shares of Class B Common Stock is being made to a Person that is not in the same Permitted Ownership Group as the transferor, and for the orderly application, administration and implementation of the provisions of this Section 4.6. Any such procedures and regulations shall be kept on file with the Secretary of the Corporation and with the transfer agent and shall be made available for inspection by and, upon written request shall be mailed to, any requesting holders of shares of Class B Common Stock.

Section 4.7 Other Conversions of Class B Common Stock.

(a) Voluntary Conversion. Each share of Class B Common Stock shall be convertible, at the option of the holder thereof, at any time after the Effective Time at the office of Corporation or any transfer agent for such stock, into one (1) fully paid and nonassessable share of Class A Common Stock. Before any holder of Class B Common Stock shall be entitled to voluntarily convert the same into shares of Class A Common Stock, he, she or it shall (i) if such holder's shares are certificated, surrender the certificate or certificates therefor (or, if such holder alleges that such certificate(s) has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, at the office of the Corporation or of any transfer agent for the Common Stock, and (ii) give written notice to the Corporation at its principal corporate office, of the election to convert the same and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees (i) in which such holder wishes the certificate or certificates for shares of Class A Common Stock to be issued (if such shares of Class A Common Stock are to be certificated) or (ii) in which such shares of Class A Common Stock are to be registered in book entry (if such shares of Class A Common Stock are uncertificated). If required by the Corporation, such holder shall furnish, in a form satisfactory to the Corporation, a written instrument or instruments of transfer, duly executed by the holder or his, her or its attorney duly authorized in writing. As soon as practicable after the conversion of such shares, there shall be issued and delivered to such holder, or to his, her or its nominees, a certificate or certificates (if such shares are to be certificated) or a book entry or book entries (if such shares are to be uncertificated) for the number of shares of Class A Common Stock into which the shares of Class B Common Stock so surrendered were converted and a certificate (if such shares are to be certificated) or a book entry or book entries (if such shares are to be uncertificated) for the number (if any) of the shares of Class B Common Stock represented by the surrendered certificate or a book entry or book entries that were not converted into Class A Common Stock.

(b) Mandatory Conversion. Each share of Class B Common Stock held by any Permitted Class B Holder shall convert into one (1) fully paid and nonassessable share of Class A Common Stock upon the earlier of (i) the Transfer of such share to a Person that is not in the same Permitted Ownership Group as such Permitted Class B Holder, as contemplated by Section 4.6 hereof, (ii) October 1, 2031, or (iii) with respect to any shares held by any Person in Neil Blumenthal's Permitted Ownership Group, (A) such time as Neil Blumenthal is removed or resigns from the Board of Directors, or otherwise ceases to serve as a Director on the Board of Directors, (B) such time as Neil Blumenthal ceases to be either an employee, officer or consultant of the Corporation or any of its subsidiaries, or (C) the date that is 12 months after the death or Disability of Neil Blumenthal, (iv) with respect to any shares held by any Person in David Gilboa's Permitted Ownership Group, (A) such time as David Gilboa is removed or resigns from the Board of Directors, or otherwise ceases to serve as a Director on the Board of Directors, (B) such time as David Gilboa ceases to be either an employee, officer or consultant of the Corporation or any of its subsidiaries, or (C) the date that is 12 months after the death or Disability of David Gilboa.

(c) Record Holders. The Persons entitled to shares of Class A Common Stock upon conversion of Class B Common Stock shall be treated for all purposes as the record holders of such shares of Class A Common Stock as of the date of conversion. Notwithstanding anything to the contrary in this Certificate of Incorporation, if the date on which any share of Class B Common Stock is converted into Class A Common Stock occurs after the record date for the determination of the holders of Class B Common Stock entitled to receive any dividend or distribution to be paid on the shares of Class B Common Stock, the holder of such shares of Class B Common Stock as of such record date will be entitled to receive such dividend or distribution on such payment date; provided, that, notwithstanding any other provision of this Certificate of Incorporation, to the extent that any such dividend or distribution is payable in shares of Class B Common Stock (or other securities exercisable, exchangeable or convertible into such shares), such dividend or distribution shall be deemed to have been declared, and shall be payable in, shares of Class A Common Stock (or other securities exercisable, exchangeable or convertible into such shares) and no shares of Class B Common Stock (or other securities exercisable, exchangeable or convertible into such shares) shall be issued in payment thereof.

(d) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of the Class B Common Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Class B Common Stock, in addition to such other remedies as shall be available to the holders of Class B Common Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in commercially reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(e) Status of Converted Stock. In the event any shares of Class B Common Stock shall be converted pursuant to the terms of this Certificate of Incorporation or otherwise acquired by the Corporation, the shares so converted shall be cancelled and shall not be reissued by the Corporation and the Corporation shall take all actions necessary to cancel and retire such shares.

(f) Taxes Payable. The Corporation shall not be required to pay any tax which may be payable in respect of any Transfer involved in the issuance and delivery of shares of Class A Common Stock in a name other than that in which the shares of Class B Common Stock, so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not otherwise payable.

Section 4.8 Certificates; Notice. All certificates representing shares of Class B Common Stock shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN THE CERTIFICATE OF INCORPORATION OF THE CORPORATION (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR).

All holders of uncertificated shares of Class B Common Stock shall be given notice within a reasonable time after the issuance or transfer of uncertificated shares of such stock, in writing or by electronic transmission, that the Class B Common Stock represented by book entry or book entries are subject to the restrictions (including restrictions on transfer) set forth in this Certificate of Incorporation (a copy of which is on file with the Secretary of the Corporation and shall be provided free of charge to any stockholder making a request therefor)

Section 4.9 Fractions. No fractional shares of Class A Common Stock shall be deliverable upon any conversion contemplated by this Section 4. Stockholders who otherwise would have been entitled to receive any fractional share of Class A Common Stock pursuant to a conversion contemplated by this Section 4, in lieu of receipt of such fractional interest, shall be entitled to receive from the Corporation an amount in cash equal to the fair value of such fractional share as of the time of conversion.

Section 4.10 Amendment. Except as otherwise required by law, holders of Class A Common Stock and Class B Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

Section 4.11 Equal Treatment in a Change of Control Transaction. In connection with any Change of Control Transaction, shares of Class A Common Stock and Class B Common Stock shall be treated equally, identically and ratably, on a per share basis, with respect to any consideration into which such shares are converted or any consideration paid or otherwise distributed to stockholders of the Corporation, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and by the affirmative vote of the holders of a majority of the outstanding shares of Class B Common Stock, each voting separately as a class. Any merger or consolidation of the Corporation with or into any other entity, which is not a Change of Control Transaction, shall require approval by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and by the affirmative vote of the holders of a majority of the outstanding shares of Class B Common Stock, each voting separately as a class, unless (i) the shares of Class A Common Stock and Class B Common Stock remain outstanding and no other consideration is received in respect thereof or (ii) such shares are converted on a pro rata basis into shares of the surviving or parent entity in such transaction having identical rights to the shares of Class A Common Stock and Class B Common Stock, respectively.

ARTICLE V.

Subject to any additional vote required by this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, repeal, alter, amend or rescind the Bylaws of the Corporation (as may be amended and/or restated from time to time, the “*Bylaws*”). The affirmative vote of at least a majority of the Whole Board of Directors shall be required in order for the Board of Directors to adopt, repeal, alter, amend or rescind the Bylaws. The stockholders shall also have power to adopt, repeal, alter, amend or rescind the Bylaws. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation, such adoption, repeal, alteration, amendment or rescission of the Bylaws by the stockholders shall require the affirmative vote of the holders of at least two-thirds of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE VI.

Section 6.1 Ballot. Elections of directors (each such director, in such capacity, a “*Director*”) need not be by written ballot unless the Bylaws shall so provide.

Section 6.2 Classification of the Board of Directors. Except as may be provided in a resolution or resolutions of the Board of Directors providing for any series of Preferred Stock with respect to any directors elected (or to be elected) by the holders of such series and except as otherwise required by applicable law, the Directors shall be divided into three classes, designated as Class I, Class II and Class III, as nearly equal in number as possible. Directors already in office shall be assigned to each class at the time such classification becomes effective, in accordance with a resolution or resolutions adopted by the Board of Directors. Class I Directors shall initially serve for a term expiring at the first annual meeting of stockholders following the time at which the initial classification of the Board of Directors becomes effective, Class II Directors shall initially serve for a term expiring at the second annual meeting of stockholders following the time at which the initial classification of the Board of Directors becomes effective

and Class III Directors shall initially serve for a term expiring at the third annual meeting of stockholders following the time at which the initial classification of the Board of Directors becomes effective. At each annual meeting of stockholders commencing with the first annual meeting of stockholders following the time at which the initial classification of the Board of Directors becomes effective, the Directors of the class to be elected at each annual meeting of stockholders shall be elected for a three-year term. If the total number of such Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible, and any such additional Director of any class elected to fill a newly created Directorship resulting from an increase in such class, in accordance with Section 6.4, shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the total number of Directors remove or shorten the term of any incumbent Director. Notwithstanding the foregoing provisions of this Section 6.2, each Director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation, disqualification, retirement, or removal.

Section 6.3 Number and Terms of the Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances (such directors, “***Preferred Stock Directors***”), the number of Directors shall be fixed from time to time exclusively by a majority of the Whole Board of Directors. For purposes of this Certificate of Incorporation, the term “***Whole Board of Directors***” shall mean the total number of authorized directors (from time to time) whether or not there exist any vacancies in previously authorized directorships or newly created directorships.

Section 6.4 Newly Created Directorships and Vacancies. Except as otherwise required by law and the separate rights of the holders of any series of Preferred Stock then outstanding in respect of Preferred Stock Directors, unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, disqualification, removal from office or other cause shall be filled only by a majority of the Directors then in office, though less than a quorum, or by a sole remaining Director, and not by the stockholders. Any director elected to fill a newly created directorship or vacancy in accordance with the preceding sentence shall hold office until the next annual meeting of stockholders held to elect the class of directors to which such director is elected and until his or her successor is duly elected and qualified or until his or her earlier death, resignation, retirement, disqualification, or removal.

Section 6.5 Removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding in respect of Preferred Stock Directors, any Director may be removed for cause only by an affirmative vote of the holders of at least two-thirds of the voting power of all the outstanding shares of stock entitled to vote generally in the election of directors, at a meeting duly called for that purpose.

Section 6.6 Notice. Advance notice of stockholder nominations for election of Directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws.

Section 6.7 Preferred Directors. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or

separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any Preferred Stock Designation) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.3 hereof, and the total number of directors constituting the Whole Board of Directors shall be automatically adjusted accordingly. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

ARTICLE VII.

No action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting. No action shall be taken by the stockholders of the Corporation by consent.

ARTICLE VIII.

Except with respect to Articles I, II and III, in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Certificate of Designation in respect of one or more series of Preferred Stock), the adoption, amendment or repeal of the Certificate of Incorporation shall require the affirmative vote of the holders of at least two-thirds of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote thereon. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any Person or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any sentence of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other Persons and circumstances shall not in any way be affected or impaired thereby.

ARTICLE IX.

The Corporation is authorized to indemnify, and to advance expenses to, each current or former Director, officer, employee or agent of the Corporation to the fullest extent permitted by Section 145 of the DGCL as it presently exists or may hereafter be amended. To the fullest extent permitted by the laws of the State of Delaware as it exists on the date hereof or as it may hereafter be amended, no Director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of his or her fiduciary duties as a director. No amendment to, or modification or repeal of, this Article IX shall adversely affect any right or

protection of a Director or of any officer, employee or agent of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, modification or repeal.

Any disinterested failure to satisfy Section 365 of the DGCL shall not, for the purposes of Sections 102(b)(7) or 145 of the DGCL, or for purposes of any use of the term “good faith” in this Certificate of Incorporation or the Bylaws in regard to the indemnification or advancement of expenses of officers, directors, employees or agents, constitute an act or omission not in good faith, or a breach of the duty of loyalty.

ARTICLE X.

Section 10.1 Corporate Opportunity.

(a) To the fullest extent permitted by the laws of the State of Delaware and in accordance with Section 122(17) of the DGCL, (i) the Corporation hereby renounces all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to any Director or stockholder who is not employed by the Corporation or its subsidiaries (each such Person, an “**Exempt Person**”); (ii) no Exempt Person will have any duty to refrain from (1) engaging in a corporate opportunity in the same or similar lines of business in which the Corporation or its subsidiaries from time to time is engaged or proposes to engage or (2) otherwise competing, directly or indirectly, with the Corporation or any of its subsidiaries; and (iii) if any Exempt Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such Exempt Person or any of his or her respective Affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such Exempt Person shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such Exempt Person may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other Person. Notwithstanding the foregoing, the preceding sentence of this Section 10.1(a) shall not apply to any potential transaction or business opportunity that is expressly offered to a Director, executive officer or employee of the Corporation or its subsidiaries, solely in his or her capacity as a Director, executive officer or employee of the Corporation or its subsidiaries.

(b) To the fullest extent permitted by the laws of the State of Delaware, no potential transaction or business opportunity may be deemed to be a corporate opportunity of the Corporation or its subsidiaries unless (i) the Corporation or its subsidiaries would be permitted to undertake such transaction or opportunity in accordance with this Certificate of Incorporation, (ii) the Corporation or its subsidiaries at such time have sufficient financial resources to undertake such transaction or opportunity, (iii) the Corporation or its subsidiaries have an interest or expectancy in such transaction or opportunity and (iv) such transaction or opportunity would be in the same or similar line of business in which the Corporation or its subsidiaries are then engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business.

Section 10.2 Liability. To the fullest extent permitted by law, no stockholder and no Director will be liable to the Corporation or its subsidiaries or stockholders for breach of any

duty solely by reason of any activities or omissions of the types referred to in this Article X, except to the extent such actions or omissions are in breach of this Article X.

ARTICLE XI.

Unless the Corporation consents in writing to the selection of an alternative forum, (a) (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former Director, officer or other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (iii) any action, suit or proceeding asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws (as either may be amended or restated) or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery of the State of Delaware (the "***Court of Chancery***"), or (iv) any action, suit or proceeding asserting a claim governed by the internal affairs doctrine, shall be exclusively brought in the Court of Chancery or, if such court does not have subject matter jurisdiction thereof, the federal district court of the District of Delaware or other state courts of the State of Delaware; and (b) the federal district courts of the United States of America (the "***Federal Courts***") shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. If any action, the subject matter of which is within the scope of the first sentence of this Article XI, is filed in a court other than the Court of Chancery or the Federal Courts, as applicable, (a "***Foreign Action***") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the Court of Chancery and the other state and federal courts in the State of Delaware or the Federal Courts, as applicable, in connection with any action brought in any such court to enforce the first sentence of this Article XI and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI. The provisions of this Article XI shall not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the federal courts of the United States have exclusive jurisdiction.

ARTICLE XII.

Section 12.1 Definitions. As used in this Certificate of Incorporation, the following terms shall have the following meaning:

(a) "***Affiliate***" means, with respect to any Person, any other Person who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified Person;

(b) “**Change of Control Transaction**” means (i) a merger or consolidation of the Corporation into or with another corporation or entity (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation and/or the Affiliates of such holders collectively continue to hold at least a majority of the voting power of the capital stock of the surviving corporation) or (ii) the sale, transfer or license of all or substantially of the assets of the Corporation.

(c) “**Co-Founder Series A Shares**” means the shares of Series A Common Stock beneficially owned by or affiliated with the Key Holders as of immediately prior to the Effective Time, which, for the avoidance of doubt, such affiliated individuals or entities shall include, (i) with respect to Neil Blumenthal, Neil Blumenthal, Cobalt Pisces Trust, Neil H. Blumenthal 2011 Family Trust, Teal Aquarius Trust, Navy Leo LLC, Royal Blue Aries Trust, Tiffany Blue Gemini Trust, and Indigo Aries Trust, and (ii) with respect to David Gilboa, David Gilboa, David A. Gilboa 2012 Family Trust, DAG Delaware WP Holdings LLC, DAG WP Holdings LLC, and Ruth Gilboa 2017 GST-Exempt Trust.

(d) “**Disability**” means, with respect to Neil Blumenthal and David Gilboa, the permanent and total disability of Neil Blumenthal or David Gilboa, as the case may be, such that Neil Blumenthal or David Gilboa, as applicable, is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death within 12 months or which has lasted or can be expected to last for a continuous period of not less than 12 months as determined by a licensed medical practitioner jointly selected by a majority of the Whole Board of Directors and Neil Blumenthal (solely if the Disability relates to Neil Blumenthal) or David Gilboa (solely if the Disability relates to Dave Gilboa). If Neil Blumenthal or David Gilboa, as applicable, is incapable of selecting a licensed physician, then the spouse of Neil Blumenthal or David Gilboa, as applicable, shall make the selection on behalf of Neil Blumenthal or David Gilboa, as applicable, or in the absence or incapacity of such spouse, the adult children of Neil Blumenthal or David Gilboa, as applicable, by majority vote, shall make the selection on behalf of Neil Blumenthal or David Gilboa, as applicable, or in the absence such adult children or their inability to act by majority vote, a natural person then acting as the successor trustee of a revocable living trust which was created by Neil Blumenthal or David Gilboa, as applicable, and which holds more shares of all classes of capital stock of the Corporation than any other revocable living trust created by Neil Blumenthal or David Gilboa, as applicable, shall make the selection on behalf of Neil Blumenthal or David Gilboa, as applicable, or in absence of any such successor trustee, the legal guardian or conservator of the estate of Neil Blumenthal or David Gilboa, as applicable, shall make the selection on behalf of Neil Blumenthal or David Gilboa, as applicable.

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

(f) “**Family Member**” means, in respect of any Person, the spouse, domestic partner, parents, grandparents, lineal descendants, siblings and lineal descendants of siblings of such Person (including adopted persons, former spouses or former domestic partners of such Person).

(g) “**Key Holder**” means each of Neil Blumenthal and David Gilboa.

(h) **“Permitted Ownership Group”** means, with respect to any Key Holder that is an individual, each of the following Persons: (A) such Key Holder, (B) any Affiliate of such Key Holder, (C) a trust which is directly or indirectly controlled by such Key Holder and the income from which may be paid only to beneficiaries who are such Key Holder and his Family Members, (D) a corporation, partnership or limited liability company, which is directly or indirectly controlled by such Key Holder and the other equityholders of which (if any) are only such Key Holder and his Family Members, in the case of clauses (C) and (D), which is established for bona fide estate planning purposes of such individual, and (E) a private foundation, organization or similar entity established by a Key Holder and/or one or more of his Family Members and controlled (directly or indirectly) by such Key Holder.

(i) **“Person”** means any individual, corporation, partnership, limited partnerships, limited liability company, unincorporated association, trusts or other entity.

(j) **“Securities Act”** means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

(k) **“Transfer”** (and, with a correlative meaning, **“Transferring”**) means any sale, transfer, assignment, redemption or other disposition of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of Law) (a) any interest (legal or beneficial) in any shares of capital of stock of the Corporation or (b) any equity or other interest (legal or beneficial) in any stockholder if substantially all of the assets of such stockholder consist solely of shares of capital stock of the Corporation. In addition, the entry into a binding agreement conveying voting control over any shares of capital stock (or over equity or other interest (legal or beneficial) in any stockholder if substantially all of the assets of such stockholder consist solely of shares of capital stock of the Corporation) shall constitute a “Transfer” of such stock for all purposes hereof, except in connection with (i) the grant of a proxy to officers or directors of the Corporation at the request of the Board of Directors of the Corporation in connection with actions to be taken at an annual or special meeting of stockholders or (ii) the entering into a support, voting, tender or similar agreement, arrangement or understanding (with or without granting a proxy) in connection with a Change of Control Transaction; *provided, however*, that such Change of Control Transaction was approved by a majority of the Whole Board of Directors. Notwithstanding the foregoing, in the event that Neil Blumenthal or any Person in Neil Blumenthal’s Permitted Ownership Group enters into or consummates a transaction that would otherwise constitute a “Transfer” under the first sentence of this definition involving a transferee other than Neil Blumenthal or any Person in Neil Blumenthal’s Permitted Ownership Group, and in connection with such transaction, such transferee conveys voting control, directly or indirectly, over the applicable shares of capital stock or equity or other interest back to Neil Blumenthal or such transferring Person in Neil Blumenthal’s Permitted Ownership Group, then such transaction shall not be deemed a Transfer for purposes hereof until such time as Neil Blumenthal or such transferring Person ceases to retain such voting control.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed on this September 17, 2021.

WARBY PARKER INC.

By:	<u>/s/ Neil Blumenthal</u>
Name:	Neil Blumenthal
Title:	Co-Chief Executive Officer

AMENDED AND RESTATED BYLAWS

OF

WARBY PARKER INC.

(A DELAWARE PUBLIC BENEFIT CORPORATION)

Dated as of September 17, 2021

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ARTICLE I.
CORPORATE OFFICES

Section 1.01 Registered Office. The address of the registered office of Warby Parker Inc., a Delaware public benefit corporation (the “**Corporation**”) in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be further amended, restated, amended and restated or otherwise modified from time to time, the “**Certificate of Incorporation**”).

Section 1.02 Other Offices. The Corporation may have additional offices at any place or places, within or without the State of Delaware, as the Corporation’s Board of Directors (the “**Board of Directors**”) may from time to time establish or as the business of the Corporation may require.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

Section 2.01 Place of Meetings. Meetings of stockholders of the Corporation (the “**Stockholders**”), may be held at any place, within or without the State of Delaware, as may be designated by or in the manner determined by the Board of Directors. In the absence of such designation, meetings of Stockholders shall be held at the principal executive office of the Corporation. The Board of Directors may, in its sole discretion, determine that a meeting of Stockholders shall not be held at any place, but may instead be held solely by means of remote communication authorized by, and in accordance with, Section 211(a) of the General Corporation Law of the State of Delaware (the “**DGCL**”).

Section 2.02 Annual Meetings. The annual meeting of Stockholders shall be held for the election of directors at such date and time as may be designated by or in the manner determined by resolution of the Board of Directors from time to time. Any other business as may be properly brought before the annual meeting may be transacted at the annual meeting. The Board of Directors may postpone, recess, reschedule or cancel any annual meeting of Stockholders previously scheduled by the Board of Directors.

Section 2.03 Special Meetings. Special meetings of Stockholders for any purpose or purposes may be called only by a chairperson or co-chairperson of the Board of Directors (a “**Chairperson**”) or pursuant to a resolution adopted by a majority of the Whole Board of Directors. For purposes of these Bylaws, the term “**Whole Board of Directors**” shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Special meetings validly called in accordance with this Section 2.03 of these amended and restated bylaws (as the same may be further amended, restated, amended and restated or otherwise modified from time to time, these “**Bylaws**”) may be held at such date and time as specified in the applicable notice. Notice of every special meeting shall state the purpose or purposes of the meeting, and the business transacted at any special meeting of Stockholders shall be limited to the purpose or purposes stated in the notice. The Board of Directors may postpone, recess, reschedule or cancel any special meeting of Stockholders previously scheduled by a Chairperson or the Board of Directors.

Section 2.04 Notice of Meetings. Whenever Stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the Stockholders entitled to vote at the meeting (if such date is different from the record date for Stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Stockholder entitled to vote at the meeting as of the record date for determining the Stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder's address as it appears on the records of the Corporation.

Section 2.05 Adjournments. Any meeting of Stockholders, annual or special, may be adjourned from time to time by the chairperson of the meeting, whether or not there is a quorum (or, in the absence of a quorum, by the Stockholders in accordance with Section 2.06), to reconvene at the same or some other place, if any, and the same or some other time, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of Stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for determining Stockholders entitled to notice of such adjourned meeting in accordance with Section 2.09(a) of these Bylaws, and shall give notice of the adjourned meeting to each Stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder's address as it appears on the records of the Corporation.

Section 2.06 Quorum. At any meeting of the Stockholders, the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation ("**Stock**") entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, the rules of any stock exchange upon which the Corporation's securities are listed, the Certificate of Incorporation or these Bylaws. In the absence of a quorum, then either (i) the chairperson of the meeting or (ii) if the Board of Directors so determines, the Stockholders by the affirmative vote of a majority of the voting power of the outstanding shares of Stock entitled to vote thereon, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time in the manner provided in Section 2.05 of these Bylaws until a quorum is present or represented. Where a separate vote by a class or classes or series of Stock is required by law or the Certificate of Incorporation, the holders of a majority of voting power

of the shares of such class or classes or series of Stock issued and outstanding and entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 2.07 Organization. Meetings of Stockholders shall be presided over by a Chairperson or by such other officer or director of the Corporation as designated by the Board of Directors or a Chairperson, or in the absence of such person or designation, by a chairperson chosen at the meeting by the affirmative vote of a majority of the voting power of Stock present or represented at the meeting and entitled to vote at the meeting (provided there is a quorum). The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.08 Voting; Proxies. Each Stockholder entitled to vote at any meeting of Stockholders shall be entitled to the number of votes, if any, for each share of Stock held of record by such Stockholder which has voting power upon the matter in question that is set forth in the Certificate of Incorporation or, if such voting power is not set forth in the Certificate of Incorporation, one vote per share. Each Stockholder entitled to vote at a meeting of Stockholders or express consent to corporate action without a meeting (if permitted by the Certificate of Incorporation) may authorize another person or persons to act for such Stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy may be authorized by an instrument in writing or by a transmission permitted by law and shall be filed in accordance with the procedure established for the meeting. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person (including by means of remote communication, if applicable) or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of Stockholders need not be by written ballot. Unless otherwise provided in the Certificate of Incorporation, at all meetings of Stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect directors. No holder of shares of Stock shall have the right to cumulate votes. All other elections and questions presented to the Stockholders at a meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority of votes cast (excluding abstentions and broker non-votes) on such matter, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities in which case such different or minimum vote shall be the applicable vote required on the matter.

Section 2.09 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the Stockholders entitled to notice of any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting.

If the Board of Directors so fixes a date, such date shall also be the record date for determining the Stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining Stockholders entitled to notice of and to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of Stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for Stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of Stockholders entitled to vote in accordance with the foregoing provisions of this Section 2.09(a) at the adjourned meeting.

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

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the Stockholders entitled to consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining Stockholders entitled to consent to corporate action without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law or the Certificate of Incorporation, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law and (ii) if prior action by the Board of Directors is required by law or the Certificate of Incorporation, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 2.10 List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the Stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the Stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list shall be open to the examination of

any Stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of Stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any Stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the “stock ledger” shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders required by this Section 2.10 or to vote in person or by proxy at any meeting of Stockholders. For purposes of these Bylaws, the term “stock ledger” means one or more records administered by or on behalf of the Corporation in which the names of all of the Corporation’s Stockholders of record, the address and number of shares registered in the name of each such Stockholder, and all issuances and transfers of stock of the Corporation are recorded.

Section 2.11 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of Stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of Stockholders, the person presiding at the meeting may, and to the extent required by law, shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of Stock outstanding and the voting power of each such share, (ii) determine the shares of Stock represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of Stock represented at the meeting and such inspectors’ count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 2.12 Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting designated in accordance with Section 2.07 of these Bylaws. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted. The Board of Directors may adopt by

resolution such rules and regulations for the conduct of the meeting of Stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of Stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to Stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.13 Advance Notice Procedures for Business Brought before a Meeting. This Section 2.13 shall apply to any business that may be brought before an annual meeting of Stockholders other than nominations for election to the Board of Directors at such a meeting, which shall be governed by Section 2.14 of these Bylaws. Stockholders seeking to nominate Persons for election to the Board of Directors must comply with Section 2.14 of these Bylaws, and this Section 2.13 shall not be applicable to nominations for election to the Board of Directors except as expressly provided in Section 2.14 of these Bylaws.

(a) At an annual meeting of the Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or a duly authorized committee thereof, (b) if not specified in a notice of meeting, otherwise brought before the meeting by the Board of Directors or the chairperson of the meeting, or (c) otherwise properly brought before the meeting by a Stockholder present in person who (A)(1) was a Stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 2.13 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.13 or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “*Exchange Act*”), which proposal has been included in the proxy statement for the annual meeting. The foregoing clause (c) shall be the exclusive means for a Stockholder to propose business to be brought before an annual meeting of the Stockholders. The only

matters that may be brought before a special meeting are the matters specified in the Corporation's notice of meeting given by or at the direction of the Person calling the meeting pursuant to Section 2.03 of these Bylaws. For purposes of these Bylaws, "**Person**" shall mean any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity. For purposes of this Section 2.13 and Section 2.14 of these Bylaws, "**present in person**" shall mean that the Stockholder proposing that the business be brought before the meeting or a qualified representative of such proposing Stockholder, appear at such annual meeting, and a "qualified representative" of such proposing Stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(b) Without qualification, for business to be properly brought before an annual meeting by a Stockholder, the business must constitute a proper matter for stockholder action and the Stockholder must (a) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (b) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.13. To be timely, a Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting (in the case of the first annual meeting of Stockholders following the listing of the Corporation's Class A Common Stock, the date of the preceding year's annual meeting shall be deemed to be June 4, 2021); *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the Stockholder to be timely must be so delivered, or mailed and received, not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 2.13(h)) of the date of such annual meeting was first made (such notice within such time periods, "**Timely Notice**"). In no event shall any adjournment, recess or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 2.13, a Stockholder's notice to the Secretary shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the number of shares of each class or series of Stock that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of Stock as to which such Proposing Person has a right to acquire

beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as “**Stockholder Information**”);

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“**Synthetic Equity Position**”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of Stock; *provided* that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided, further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of Stock owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (F) a representation that such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies or votes from Stockholders in support of such proposal and (G) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) are referred to as “**Disclosable Interests**”); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust

company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the Stockholder proposes to bring before the annual meeting, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and the text of any proposed amendment to these Bylaws), (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other Person or entity (including their names) in connection with the proposal of such business by such stockholder and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; *provided, however*, that the disclosures required by this Section 2.13(c) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the Stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(d) For purposes of this Section 2.13, the term “**Proposing Person**” shall mean (a) the Stockholder providing the notice of business proposed to be brought before an annual meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such Stockholder in such solicitation.

(e) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.13 shall be true and correct as of the record date for Stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for Stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation’s rights with respect to any deficiencies in any notice provided by a Stockholder, extend any applicable deadlines hereunder

or enable or be deemed to permit a Stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the Stockholders.

(f) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.13. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.13, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(g) In addition to the requirements of this Section 2.13 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.13 shall be deemed to affect the rights of Stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(h) For purposes of these Bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

Section 2.14 Advance Notice Procedures for Nominations of Directors.

(a) Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (a) by or at the direction of the Board of Directors, including by any committee authorized to do so by the Board of Directors or these Bylaws, or (b) by a Stockholder present in person (as defined in Section 2.13) (1) who was a Stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 2.14 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.14 as to such notice and nomination. The foregoing clause (b) shall be the exclusive means for a Stockholder to make any nomination of a person or persons for election to the Board of Directors at any annual meeting or special meeting of Stockholders.

(b)

(i) Without qualification, for a Stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the Stockholder must (a) provide Timely Notice (as defined in Section 2.13(b) of these Bylaws) thereof in writing and in proper form to the Secretary at the principal executive offices of the Corporation, (b) provide the information, agreements and questionnaires with respect to such Stockholder and its candidate for nomination as required by this Section 2.14, and (c) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.14.

(ii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a Stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the Stockholder must (a) provide timely notice thereof in writing and in proper form to the Secretary at the principal executive offices of the Corporation, (b) provide the information, agreements and questionnaires with respect to such Stockholder and its candidate for nomination required by this Section 2.14, and (c) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.14. To be timely for purposes of this Section 2.14(b)(ii), a Stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed to and received by the Secretary of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 2.13(h)) of the date of such special meeting at which directors are to be elected was first made.

(iii) In no event shall any adjournment, recess or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above.

(iv) In no event may a Nominating Person (as defined below) provide notice under this Section 2.14 or otherwise with respect to a greater number of director candidates than are subject to election by Stockholders at the applicable meeting. Notwithstanding anything in Section 2.14(b)(i)(a) to the contrary, if the number of directors subject to election at an annual meeting is increased effective after the time period for which nominations would otherwise be due under Section 2.14(b)(i)(a) and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the one-year anniversary of the preceding year's annual meeting, a Stockholder's notice required by this Section 2.14 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary of the Corporation not later than the tenth (10th) day following the date on which public disclosure (as defined in Section 2.13(h)) is first made by the Corporation.

(c) To be in proper form for purposes of this Section 2.14, a Stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person, the Stockholder Information (as defined in Section 2.13(c)(i) of these Bylaws) except that for purposes of this Section 2.14, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.13(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.13(c)(ii)), except that for purposes of this Section 2.14 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.13(c)(ii) and the disclosure with respect to the business to be brought before the meeting in Section 2.13(c)(iii) shall be made

with respect to nomination of each Person for election as a director at the meeting); and

(iii) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a Stockholder's notice pursuant to this Section 2.14 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the Corporation's proxy statement as a nominee of the Nominating Person and to serving as a director if elected), (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as "**Nominee Information**"), and (D) a completed and signed questionnaire, representation and agreement as provided in Section 2.14(f).

(d) For purposes of this Section 2.14, the term "**Nominating Person**" shall mean (a) the Stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made and (c) any participant (as defined in paragraphs (a) (ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such Stockholder in such solicitation.

(e) A Stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 shall be true and correct as of the record date for Stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for Stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any

deficiencies in any notice provided by a Stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a Stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(f) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in this Section 2.14 and the candidate for nomination, whether nominated by the Board of Directors or by a Stockholder of record, must have previously delivered (with respect to candidates nominated by a Stockholder, in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board of Directors), to the Secretary at the principal executive offices of the Corporation, (i) a completed written questionnaire (in the form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such candidate for nomination and (ii) a written representation and agreement (in the form provided by the Corporation upon written request therefor) that such candidate for nomination (A) is not, and will not become a party to, any agreement, arrangement or understanding with any Person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director of the Corporation that has not been disclosed in such written questionnaire, (B) has not given and will not (1) give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question that has not been disclosed to the Corporation (a “***Voting Commitment***”) or (2) enter into any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law and (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to all directors and in effect during such Person’s term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

(g) The Board of Directors may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of Stockholders at which such candidate’s nomination is to be acted upon in order for the Board of Directors to determine the eligibility of such candidate for nomination to be an independent director of the Corporation.

(h) A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 2.14, if necessary, so that the information provided or required to be provided pursuant to this Section 2.14 shall be true and correct as of the record date for Stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) (A) not later than five (5) business days after the record date for Stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and (B) not later than eight (8) business

days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(i) In addition to the requirements of this Section 2.14 with respect to any nomination proposed to be made at a meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(j) No candidate proposed by a Nominating Person shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with this Section 2.14, as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.14, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(k) Notwithstanding anything in these Bylaws to the contrary, no candidate proposed by a Nominating Person for nomination at an annual or special meeting shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with this Section 2.14.

Section 2.15 Delivery to the Corporation. Whenever Section 2.13 or 2.14 of this Article II requires one or more persons (including a record or beneficial owner of stock of the Corporation) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, with respect to any notice from any stockholder of record or beneficial owner of the Corporation's capital stock pursuant to Section 2.13 or 2.14 of this Article II, to the fullest extent permitted by law, the Corporation expressly opts out of Section 116 of the DGCL.

ARTICLE III. BOARD OF DIRECTORS

Section 3.01 Number; Tenure; Qualifications. Subject to the Certificate of Incorporation and the rights of holders of any series of Preferred Stock to elect directors, the total

number of directors constituting the entire Board of Directors shall be fixed from time to time exclusively by resolution adopted by a majority of the Whole Board of Directors. Each director shall hold office until his or her death, resignation, disqualification or removal, or as otherwise set forth in the Certificate of Incorporation. Directors need not be Stockholders to be qualified for election or service as a director of the Corporation.

Section 3.02 Election; Resignation; Removal; Vacancies. Except as otherwise provided in the Certificate of Incorporation or these Bylaws, directors shall be elected at the annual meeting of Stockholders by such Stockholders that have the right to vote on such election. Any director may resign at any time upon written or electronic notice to the Corporation. Such resignation shall be effective upon delivery unless otherwise specified. Directors of the Corporation may be removed only as expressly provided in the Certificate of Incorporation. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, disqualification, removal from office or other cause shall be filled as set forth in the Certificate of Incorporation. Any director so chosen shall hold office until his or her successor shall be elected and qualified.

Section 3.03 Regular Meetings. Regular meetings of the Board of Directors may be held at such places, if any, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. A notice of regular meetings shall not be required.

Section 3.04 Special Meetings. Special meetings of the Board of Directors may be called by a Chairperson or a majority of the directors then in office and shall be held at such time, date and place, if any, within or without the State of Delaware as he or she or they shall fix. Notice to directors of the date, place and time of any special meeting of the Board of Directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice may be given in person, by United States first-class mail, or by e-mail, telephone, telecopier, facsimile or other means of electronic transmission. If the notice is delivered in person, by e-mail, telephone, telecopier, facsimile or other means of electronic transmission, it shall be delivered or sent at least twenty-four (24) hours before the time of holding of the meeting. If the notice is sent by mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting.

Section 3.05 Telephonic Meetings Permitted. Members of the Board of Directors may participate in any meetings of the Board of Directors thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.05 shall constitute presence in person at such meeting.

Section 3.06 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the Whole Board of Directors shall constitute a quorum for the transaction of business; *provided* that, solely for the purposes of filling vacancies pursuant to Section 3.02 of these Bylaws, a meeting of the Board of Directors may be held if a majority of the directors then in office participate in such meeting. The affirmative vote of a majority of the directors present at any meeting of the Board of Directors at which a quorum is present shall be

the act of the Board of Directors, except as may be otherwise specifically required by applicable law, the Certificate of Incorporation or these Bylaws.

Section 3.07 Organization. Meetings of the Board of Directors shall be presided over by at least one Chairperson, or in his, her or their absence by the person whom a Chairperson shall designate, or in the absence of the foregoing persons by a Chairperson chosen at the meeting by the affirmative vote of a majority of the directors present at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the Chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 3.08 Action by Unanimous Consent of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission. Thereafter, the writing or writings or electronic transmissions shall be filed with the minutes of proceedings of the Board of Directors or such committee in accordance with applicable law.

Section 3.09 Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary or other compensation as a director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings. Any director of the Corporation may decline any or all such compensation payable to such director in his or her discretion.

Section 3.10 Chairpersons. The Board of Directors may appoint from its members a Chairperson or Chairpersons of the Board of Directors. The Board of Directors may, in its sole discretion, from time to time appoint one or more vice chairpersons (each, a “*Vice Chairperson*”) each of whom as such shall report directly to the Chairperson or Chairpersons, as applicable.

ARTICLE IV. COMMITTEES

Section 4.01 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of any committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management

of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee (or resolution of the committee designating the subcommittee, if applicable), a majority of the directors then serving on a committee or subcommittee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee. Special meetings of any committee of the Board of Directors may be held at any time or place, if any, within or without the State of Delaware whenever called by the Chairperson of such committee or a majority of the members of such committee.

Section 4.02 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 4.03 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these Bylaws.

ARTICLE V. OFFICERS

Section 5.01 Officers. The officers of the Corporation shall be one (1) or more Chief Executive Officers and a Secretary. The Corporation may also have, at the discretion of the Board of Directors, a Chairperson or Chairpersons of the Board of Directors, a Vice Chairperson of the Board of Directors, a President, a Chief Financial Officer, a Treasurer, a General Counsel, one (1) or more Assistant Secretaries, one (1) or more Assistant Treasurers, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Each officer of the Corporation shall hold office for such term as may be prescribed by the Board of Directors and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No officer need be a stockholder or director of the Corporation.

Section 5.02 Appointment of Officers. The Board of Directors shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.03 of these Bylaws.

Section 5.03 Subordinate Officer. The Board of Directors may appoint, or empower a Chief Executive Officer or, in the absence of a Chief Executive Officer, a President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine, subject in each case to the control of the Board of Directors.

Section 5.04 Removal and Resignation of Officers. Any officer may be removed, either with or without cause, by an affirmative vote of the Board of Directors or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. If a resignation is made effective at a later date and the Corporation accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor shall not take office until the effective date. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5.05 Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or as provided in Section 5.03.

Section 5.06 Chief Executive Officer(s). Subject to such supervisory powers, if any, as may be given by the Board of Directors to a Chairperson, if any, the Chief Executive Officer or the Co-Chief Executive Officers (the “**Co-CEOs**”) (if such officer or officers are appointed) shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. In the absence or nonexistence of a Chairperson, the Chief Executive Officer or either or both Co-CEOs shall preside at all meetings of the Board of Directors at which he, she or they, as applicable, are present and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.07 President. The Board of Directors may appoint a President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to a Chairperson (if any), the Chief Executive Officer or either or both Co-CEOs, as applicable, the President, if appointed, shall have general supervision, direction, and control of the business and other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.08 Secretary. The Secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and Stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors’ meetings or committee meetings, the number of shares present or represented at Stockholders’ meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation’s transfer agent or registrar, as determined by resolution of the Board of Directors, a stock ledger, or a duplicate stock ledger, showing the names of all Stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares (if such shares are to be certificated), and the number and date of

cancellation of every certificate surrendered for cancellation. The Secretary shall give, or cause to be given, notice of all meetings of the Stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

Section 5.09 Chief Financial Officer. The Chief Financial Officer (the “**CFO**”) shall be the treasurer and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director. The CFO shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the President, if any is appointed, the Chief Executive Officer or the Co-CEOs, as applicable, or the directors, upon request, an account of all his or her transactions as CFO and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.10 Representation of Equity Interests of Other Entities. Unless otherwise directed by the Board of Directors, the Chief Executive Officer or either or both Co-CEOs, as applicable, or the President or any other person authorized by the Board of Directors, the Chief Executive Officer or either or both Co-CEOs, as applicable, or the President is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares, securities or interests of any other corporation or entity standing in the name of the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

Section 5.11 Authority and Duties of Officers. All officers of the Corporation shall respectively have such powers and authority and shall perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 5.12 Compensation. The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board of Directors. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

ARTICLE VI. STOCK

Section 6.01 Certificates; Public Benefit Corporation Notice. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors by resolution may provide that some or all of the shares of any class or series of stock of the Corporation shall be uncertificated. Certificates for the shares of stock, if any, shall note

conspicuously that the corporation is a public benefit corporation formed pursuant to Subchapter XV of the DGCL. Any notice given by the corporation pursuant to Section 151(f) of the DGCL upon the issuance or transfer of uncertificated shares shall state conspicuously that the corporation is a public benefit corporation formed pursuant to Subchapter XV of the DGCL. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Chairperson or Vice Chairperson of the Board, the Chief Executive Officer or either Co-CEO, as applicable, a President, Vice President, Chief Financial Officer, the Treasurer, any Assistant Treasurer, the General Counsel, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

Section 6.02 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate for shares of Stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may establish regulations, rules or procedures concerning the proof required for adequately alleging the loss, theft or destruction of any Stock certificate and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 6.03 Shares Without Certificates. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

ARTICLE VII. INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 7.01 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law (including as it presently exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such

amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person (a “**Covered Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (any such action, suit or proceeding, a “**proceeding**”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.04 of these Bylaws, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors.

Section 7.02 Indemnification of Others. The Corporation shall have the power (but not the obligation) to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any proceeding by reason of the fact that he or she, or a Person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such Person in connection with any such proceeding.

Section 7.03 Advancement of Expenses. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VII or otherwise.

Section 7.04 Claims. If a claim for indemnification under this Article VII (following the final disposition of such proceeding) is not paid in full within sixty (60) days after the Corporation has received a written claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VII is not paid in full within thirty (30) days after the Corporation has received a written statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 7.05 Non-exclusivity of Rights. The rights conferred on any Covered Person by this Article VII shall not be exclusive of any other rights which such Covered Person may have or hereafter acquires under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of Stockholders or disinterested directors or otherwise.

Section 7.06 Insurance. The Corporation may purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust enterprise or non-profit entity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

Section 7.07 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit enterprise.

Section 7.08 Continuation of Indemnification. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a Person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such Person.

Section 7.09 Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws or an amendment to the Certificate of Incorporation after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses is sought.

Section 7.10 Other Indemnification and Advancement of Expenses. This Article VII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VIII. PUBLIC BENEFIT CORPORATIONS

Section 8.01 Required Statement in Stockholder Meeting Notice. The Corporation shall include in every notice of a meeting of stockholders a statement that it is a public benefit corporation formed pursuant to Subsection XV of the DGCL.

Section 8.01 Periodic Statements. The Corporation shall no less than biennially provide the stockholders with a statement as to the corporation's promotion of the public benefit

or public benefits identified in the Certificate of Incorporation and of the best interests of those materially affected by the Corporation's conduct. The statement shall include

- (a) The objectives the Board has established to promote such public benefit or public benefits and interests;
- (b) The standards the Board has adopted to measure the Corporation's progress in promoting such public benefit or public benefits and interests;
- (c) Objective factual information based on those standards regarding the Corporation's success in meeting the objectives for promoting such public benefit or public benefits and interests; and
- (d) An assessment of the Corporation's success in meeting the objectives and promoting such public benefit or public benefits and interests.

ARTICLE IX. MISCELLANEOUS

Section 9.01 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 9.02 Execution of Corporate Contracts and Instruments. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. Any document, including without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law.

Section 9.03 Dividends. The Board of Directors, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends out of funds legally available therefor upon the shares of its Stock. Dividends may be paid in cash, in property or in shares of the Corporation's Stock. The Board of Directors may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

Section 9.04 Registered Stockholders. The Corporation: (i) shall be entitled to recognize the exclusive right of a Person registered on its books as the owner of shares to receive

dividends and to vote as such owner; and (ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 9.05 Corporate Seal. The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 9.06 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

Section 9.07 Manner of Notice.

(a) *Notice by Electronic Transmission*. Without limiting the manner by which notice otherwise may be given effectively to Stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to Stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission to the extent permitted by law.

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

An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For the purposes of these Bylaws, an "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) *Notice to Stockholders Sharing an Address*. Without limiting the manner by which notice otherwise may be given effectively to Stockholders, and except as prohibited by applicable law, any notice to Stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a single written notice to Stockholders who share an address if consented to by the Stockholders at

that address to whom such notice is given. Any such consent shall be revocable by the Stockholder by written notice to the Corporation. Any Stockholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 9.07, shall be deemed to have consented to receiving such single written notice.

(c) *Notice to Directors.* Except as otherwise provided herein or permitted by applicable law, notices to any director may be in writing and delivered personally or mailed to such director at such director's address appearing on the books of the Corporation, or may be given by telephone or by any means of electronic transmission (including, without limitation, electronic mail) directed to an address for receipt by such director of electronic transmissions appearing on the books of the Corporation.

Section 9.08 Waiver of Notice of Meetings of Stockholders, Directors and Committees. A written waiver of any notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, Board of Directors, or committee or subcommittee of the Board of Directors need be specified in a waiver of notice.

Section 9.09 Form of Records. Any records maintained by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method or one or more electronic networks or databases, provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and the stock ledger is maintained in accordance with applicable law.

Section 9.10 Amendment of Bylaws. Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, repeal, alter, amend or rescind these Bylaws. The affirmative vote of at least a majority of the Whole Board of Directors shall be required in order for the Board of Directors to adopt, repeal, alter, amend or rescind these Bylaws. The Stockholders shall also have power to adopt, repeal, alter, amend or rescind these Bylaws. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by the Certificate of Incorporation, such adoption, repeal, alteration, amendment or rescission of these Bylaws by the Stockholders shall require the affirmative vote of the holders of at least two-thirds of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class.

* * *

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September 21, 2021

Warby Parker Inc.
233 Spring Street, 6th Floor East
New York, New York 10013

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to Warby Parker Inc., a Delaware corporation (the “**Company**”), in connection with the registration for resale from time to time by certain registered stockholders (the “**Registered Stockholders**”) of up to 8,779,645 shares (the “**Shares**”) of the Company’s Class A common stock, \$0.0001 par value per share, issued to the Registered Stockholders by the Company. The Shares are included in a registration statement (the “**Registration Statement**”) on Form S-8 under the Securities Act of 1933, as amended (the “**Act**”), and the related prospectus included in the Registration Statement (the “**Prospectus**”), filed with the Securities and Exchange Commission (the “**Commission**”) on September 21, 2021. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the

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General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, the Shares are validly issued, fully paid and nonassessable.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Amended and Restated 2011 Stock Plan and the 2019 Founder Stock Plan of Warby Parker Inc. of our report dated June 21, 2021, with respect to the consolidated financial statements of Warby Parker Inc. included in its Amendment No. 2 to the Registration Statement on Form S-1 (No. 333-259035) for the years ended December 31, 2019 and 2020 filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

New York, New York
September 21, 2021