

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

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported) March 4, 2024**

flyExclusive, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40444
(Commission
File Number)

86-1740840
(IRS Employer
Identification No.)

**2860 Jetport Road,
Kinston, NC**
(Address of principal executive offices)

28504
(Zip Code)

252-208-7715
Registrant's telephone number, including area code

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock	FLYX	NYSE American LLC
Redeemable warrants, each whole warrant exercisable for one share of Class A Common Stock at an exercise price of \$11.50 per share	FLYX WS	NYSE American LLC

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On March 4, 2024 (the “Effective Date” or the “Initial Issue Date”), flyExclusive, Inc., a Delaware corporation (the “Company”) entered into a Securities Purchase Agreement (the “Agreement”) with EnTrust Emerald (Cayman) LP, a Cayman Islands limited partnership (the “Purchaser”), pursuant to which the Company agreed to issue and sell to the Purchaser 25,000 shares of Series A Non-Convertible Redeemable Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), at a purchase price of \$1,000 per share and a warrant (the “Warrant”) to purchase shares of the Company’s Class A common stock, par value \$0.0001 per share (the “Common Stock”). The transaction closed on the Effective Date and provides the Company approximately \$25 million of capital. Gregg S. Hymowitz, a member of the Company’s Board of Directors, to which position he was designated by an affiliate of the Purchaser, serves as the Founder and Chief Executive Officer of EnTrust Global Partners LLC (“EnTrust Global”), which is an affiliate of the Purchaser and may be deemed to be the beneficial owner of approximately 21.0% of the Company’s outstanding Common Stock. Each of EnTrust Global and Mr. Hymowitz disclaims beneficial ownership of such securities except to the extent of its or his pecuniary interest therein. Gary Fegel is also a member of the Company’s Board of Directors, to which position he was designated by an affiliate of the Purchaser. As required by the Company’s internal policies, this transaction was approved by the Audit Committee of the Company’s Board of Directors, which consists of independent disinterested directors, and was also approved by the Company’s Board of Directors, with only disinterested directors voting (which excluded Mr. Hymowitz and Mr. Fegel).

The material terms of Series A Preferred Stock, the Warrant and the Agreement are summarized below.

Description of the Series A Preferred Stock

The terms of the Series A Preferred Stock are as set forth in the Certificate of Designation of Series A Non-Convertible Redeemable Preferred Stock (the “Series A Certificate of Designation”). Each share of Series A Preferred Stock has an initial stated value of \$1,000 per share. The Series A Preferred Stock do not have conversion rights.

Dividends

Each share of Series A Preferred Stock shall accrue dividends on a daily basis in arrears beginning on the Initial Issue Date at the applicable dividend rate then in effect (the “Dividend Rate”). From and after the Initial Issue Date until the first-year anniversary of the Initial Issue Date, the Dividend Rate for the Series A Preferred Stock shall be 10.00% per annum. From and after the first-year anniversary of the Initial Issue Date until the second-year anniversary of the Initial Issue Date, the Dividend Rate for the Series A Preferred Stock shall be 12.00% per annum. From and after the second-year anniversary of the Initial Issue Date until the third-year anniversary of the Initial Issue Date, the Dividend Rate shall be 14.00% per annum. From and after the third-year anniversary of the Initial Issue Date, the Dividend Rate shall be 16.00% per annum.

Dividends will be due and payable annually in arrears on March 4 (the “Dividend Payment Date”) by either (A) cash payment or (B) to the extent not declared and paid in cash on the Dividend Payment Date, automatically compounded; provided that, the Company may not declare and pay in cash any dividends prior to the third Dividend Payment Date. On the third Dividend Payment Date, the Company must declare and pay at least 43% of the dividends in cash, and with respect to each subsequent Dividend Payment Date, the Company must pay 100% of the dividends in cash.

Redemption Rights

After the first-year anniversary of the Initial Issue Date, to the extent not prohibited by law, the Company may elect to redeem all outstanding shares of Series A Preferred Stock, or any portion thereof, for cash at a redemption price per share as detailed in the Series A Certificate of Designation. After the fifth-year anniversary of the Initial Issue Date, each holder of the Series A Preferred Stock may elect to require the Company to redeem all of its outstanding shares of Series A Preferred Stock, or any portion thereof, for cash at a redemption price per share as detailed in the Series A Certificate of Designation. The Series A Certificate of Designation also describes events triggering mandatory redemption of the Series A Preferred Stock, including a Bankruptcy Event or a Change of Control Event, each as defined in the Series A Certificate of Designation.

Voting Rights

Except as otherwise required by the General Corporation Law of the State of Delaware (the “DGCL”), other applicable law, the Company’s Certificate of Incorporation, or the Series A Certificate of Designation, holders are not entitled to any vote on matters submitted to the Company’s stockholders for approval. In any case in which the holders shall be entitled to vote pursuant to the DGCL, other applicable law, the Company’s Certificate of Incorporation, or the Series A Certificate of Designation, each holder will be entitled to one vote with respect to such matter per share of Series A Preferred Stock.

Consent Rights

The prior written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock is required for the Company to effect certain enumerated actions in the Series A Certificate of Designation for so long as any shares of Series A Preferred Stock are outstanding.

Ranking and Liquidation Rights

With respect to (a) payment of dividends, (b) distribution of assets and (c) all other liquidation, winding up, dissolution, dividend and redemption rights, the Series A Preferred Stock shall rank senior in priority of payment to all Junior Stock (as defined in the Series A Certificate of Designation) in any liquidation, dissolution, winding up or distribution of the Company, and junior to any existing or future secured or unsecured debt and other liabilities (including trade payables) of the Company and any Senior Stock (as defined in the Series A Certificate of Designation).

Description of the Warrant

On the Effective Date, the Company issued the Purchaser a Warrant, granting the Purchaser the right to purchase shares of Common Stock in an aggregate amount equal to one and one-half (1½) percent of the outstanding Common Stock on a fully diluted basis (the “Share Count Cap”), calculated in accordance with the terms of the Warrant, at an exercise price of \$0.01 per share. The Warrant is exercisable beginning on the second anniversary of the Effective Date as to 50% of the Share Count Cap and, beginning on the third anniversary, as to 100% of the Share Count Cap, in each case, in accordance with the terms of the Warrant. The Warrant expires on the fifth anniversary of the Effective Date and may not be exercised for a number of shares of Common Stock having an aggregate value in excess of \$11,250,000, calculated in accordance with the terms of the Warrant.

Description of the Agreement

The Agreement contains customary representations, warranties and covenants by the parties, including certain indemnification obligations of the Company and a requirement for the Company to file a registration statement covering the resale of the shares of Common Stock issuable upon exercise of the Warrant within eighteen months of the Effective Date. The representations, warranties and covenants contained in the Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Agreement and are subject to limitations agreed upon by the contracting parties. Accordingly, the Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Agreement and not to provide investors with any other factual information regarding the Company or its business and should be read in conjunction with the disclosures in the Company’s periodic reports and other filings with the Securities and Exchange Commission.

The foregoing descriptions of the Series A Preferred Stock, the Series A Certificate of Designation, the Agreement and the Warrant and the transactions contemplated thereby do not purport to be complete and are qualified in their entirety by reference to the Agreement filed as Exhibit 10.1 hereto and the forms of the Series A Certificate of Designation and the Warrant, copies which are filed as Exhibits 3.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated in this Item 3.02 by reference. Series A Preferred Stock and the Warrant described in this Current Report on Form 8-K were offered and sold to the Purchaser in reliance upon exemption from the registration requirements under Section 4(a)(2) under the Securities Act of 1933, as amended.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

On March 4, 2024, in connection with the Agreement, the Company filed the Series A Certificate of Designation with the Secretary of State of the State of Delaware. The Series A Certificate of Designation, which is filed as Exhibit 3.1 to this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01 Other Events.

On March 5, 2024, the Company issued a press release announcing the execution of the Agreement. A copy of the press release is included herewith as Exhibit 99.1.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits.

Exhibit No.	Document
3.1	<u>Certificate of Designation of Series A Non-Convertible Redeemable Preferred Stock, filed with the Delaware Secretary of State on March 4, 2024.</u>
4.1	<u>Form of Warrant issued March 4, 2024.</u>
10.1	<u>Securities Purchase Agreement, dated March 4, 2024, by and between flyExclusive, Inc. and the Purchaser named therein.</u>
99.1	<u>Press Release, dated March 5, 2024.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

Dated: March 7, 2024

FLYEXCLUSIVE, INC.

By: /s/ Thomas James Segrave,
Jr.

Name: Thomas James Segrave, Jr.
Title: Chief Executive Officer and
Chairman

**CERTIFICATE OF DESIGNATION OF
SERIES A NON-CONVERTIBLE REDEEMABLE PREFERRED STOCK,
PAR VALUE \$0.0001,
OF
FLYEXCLUSIVE, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the “DGCL”), flyExclusive, Inc., a corporation duly organized and validly existing under the DGCL (the “Issuer” or the “Company”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Second Amended and Restated Certificate of Incorporation of the Issuer (as amended, restated, supplemented or otherwise modified from time to time, the “Certificate of Incorporation”) authorizes the issuance of up to 25,000,000 shares of preferred stock, par value \$0.0001 per share, of the Issuer (“Preferred Stock”) in one or more series; and expressly authorizes the Board of Directors of the Issuer (the “Board of Directors”), subject to limitations prescribed by law, to provide for the issue of all or any of the shares of Preferred Stock in one or more series and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series and as may be permitted by the DGCL; and

WHEREAS, on February 29, 2024, the Board of Directors approved and adopted the following certificate of designation (this “Certificate of Designation” or this “Certificate”) for purposes of issuing shares of Preferred Stock, with a par value of \$0.0001 per share, designated as a series known as “Series A Non-Convertible Redeemable Preferred Stock”, with each such share having the designations, powers, preferences and relative, participating, optional, or other rights, and the qualifications, limitations and restrictions, as set forth in this Certificate of Designation.

NOW THEREFORE, BE IT RESOLVED, that, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, the Board of Directors hereby provides out of the unissued shares of the Preferred Stock a series of Preferred Stock designated as “Series A Non-Convertible Redeemable Preferred Stock” and authorizes for issuance 25,000 shares of the Series A Preferred Stock (as defined below), and hereby fixes the designations, powers, preferences and relative, participating, optional, or other rights, and the qualifications, limitations and restrictions of the Series A Preferred Stock, as follows:

1. Designation.

(a) Series A Preferred Stock. A total of 25,000 shares of Preferred Stock, with a par value of \$0.0001 per share, shall be designated as a series known as “Series A Non-Convertible Redeemable Preferred Stock”, with each such share having an initial Stated Value of \$1,000 per share (the “Series A Preferred Stock”), which Series A Preferred Stock will have the respective designations, powers, preferences and relative, participating, optional, or other rights, and the qualifications, limitations and restrictions set forth in this Certificate of Designation.

2. Ranking; Liquidation. With respect to (a) payment of dividends, (b) distribution of assets and (c) all other liquidation, winding up, dissolution, dividend and redemption rights, the Series A Preferred Stock shall rank senior in priority of payment to all Junior Stock in any liquidation, dissolution, winding up or distribution of the Company, and junior to any existing or future secured or unsecured Debt and other liabilities (including trade payables) of the Company and any Senior Stock.

3. Voting.

(a) Generally. Except as otherwise required by the DGCL, other applicable law, the Certificate of Incorporation, or this Certificate of Designation, Holders shall not be entitled to any vote on matters submitted to the Company’s stockholders for approval. In any case in which the Holders shall be entitled to vote pursuant to the DGCL, other applicable law, the Certificate of Incorporation, or this Certificate of Designation, each Holder entitled to vote with respect to such matter shall be entitled to one vote per share of Series A Preferred Stock.

4. Dividends.

(a) Generally. Except as otherwise required by this Certificate of Designation, Dividends shall be payable to the Holders as they appear on the records of the Company on the record date for such Dividends, which shall be the date that is 15 days prior to the applicable Dividend Payment Date.

(b) Dividend Calculation. From and after the Initial Issue Date, preferential cumulative dividends (“Dividends”) shall accrue on each share of Series A Preferred Stock outstanding on a daily basis in arrears at the applicable Dividend Rate then in effect. Dividends with respect to each Dividend Period shall be the sum of the dividends calculated on a daily basis during such period. The daily dividend shall be calculated as the product of (i) the Stated Value of each share of the Series A Preferred Stock outstanding as of the Dividend Payment Date for such Dividend Period, and (ii) the applicable dividend rate specified in clause (c) below (the “Dividend Rate”) for each day elapsed during such Dividend Period *divided by* 360. Dividends will be due and payable annually in arrears by either (A) cash payment or (B) to the extent not declared and paid in cash, automatically compounded annually on each Dividend Payment Date in accordance with this Section; provided that, the Company may not declare and pay in cash any Dividends due and payable pursuant to this Section 4 prior to the first Dividend Payment Date following the second-year anniversary of the Initial Issue Date. With respect to the first Dividend Payment Date following the second-year anniversary of the Initial Issue Date, the Company will declare and pay at least 43% of Dividends in cash, and with respect to each Dividend Payment Date following the third-year anniversary of the Initial Issue Date, the Company will pay 100% of Dividends in cash, in each case, to the extent not prohibited by Section 170 of the DGCL. The Company shall promptly notify the Holders at any time the Company shall become unable to legally pay Dividends in cash pursuant to Section 170 of the DGCL. On each Dividend Payment Date related to a Dividend Period for which the Company does not for any reason (including because payment of any Dividend in cash is prohibited by law or this Certificate of Designation) pay in cash all Dividends that accumulated during such Dividend Period, any such unpaid Dividends shall (whether or not earned or declared) become part of the Stated Value of such share as of the applicable Dividend Payment Date (“Compounded Dividends”). If the Company does not for any reason (including because payment of any Dividend in cash is prohibited by law) pay in cash (i) at least 43% of all Dividends due and payable pursuant to this Section 4 on the first Dividend Payment Date following the second-year anniversary of the Initial Issue Date or (ii) at least 100% of all Dividends due and payable pursuant to this Section 4 on each Dividend Payment Date following the third-year anniversary of the Initial Issue Date, an Event of Noncompliance shall be deemed to have occurred.

(c) Dividend Rate. From and after the Initial Issue Date until the first-year anniversary of the Initial Issue Date, the Dividend Rate for the Series A Preferred Stock shall be 10.00% per annum. From and after the first-year anniversary of the Initial Issue Date until the second-year anniversary of the Initial Issue Date, the Dividend Rate for the Series A Preferred Stock shall be 12.00% per annum. From and after the second-year anniversary of the Initial Issue Date until the third-year anniversary of the Initial Issue Date, the Dividend Rate shall be 14.00% per annum. From and after the third-year anniversary of the Initial Issue Date, the Dividend Rate shall be 16.00% per annum.

(d) Increase to Dividend Rate. The applicable Dividend Rate shall be increased by 2.00% per annum upon the occurrence of either an Event of Noncompliance or the failure by the Issuer to redeem in full for cash all of the shares of Series A Preferred Stock upon a Mandatory Redemption Event (a “Redemption Failure”); *provided that* (A) the applicable Dividend Rate shall be so increased only while such Event of Noncompliance is continuing or during the period commencing upon the occurrence of a Redemption Failure and ending on the date on which all shares of Series A Preferred Stock are redeemed, as applicable, and, (B) thereafter, such increase shall not apply to the applicable Dividend Rate at such time as such Event of Noncompliance or Redemption Failure, as applicable, has been cured or is no longer continuing.

5. Redemption.

(a) Redemption Generally.

(i) Optional Redemption by the Company.

(A) At any time and from time to time, from and after the first-year anniversary of the Initial Issue Date, to the extent not prohibited by law, the Company may elect to redeem all outstanding shares of Series A Preferred Stock, or any portion thereof, in cash at a redemption price per share of Series A Preferred Stock equal to the Redemption Price on the terms and subject to the conditions set forth in this Section 5 (an “Optional Redemption”).

(B) Any election by the Company pursuant to this Section 5(a)(i) shall be made by delivery to the Holders of written notice of the Company's election to redeem, at least 10 days but no more than 60 days prior to the elected Redemption Date (each such date, an "Optional Redemption Date"), which notice shall indicate (1) the number of shares of Series A Preferred Stock being redeemed, (2) the Optional Redemption Date, (3) the Redemption Price, and (4) the manner of and place designated for surrender of the shares of Series A Preferred Stock to be redeemed. Any such notice may, at the Company's discretion, be subject to one or more conditions precedent. Any redemption that is effected pursuant to this Section 5 shall be made on a pro rata basis among the Holders in proportion to the aggregate Liquidation Value of the shares of Series A Preferred Stock held by such Holders. For the avoidance of doubt, shares of Series A Preferred Stock are not redeemable at the Company's election except pursuant to this Section 5. Upon receipt of such notice, each Holder shall promptly inform the Company of the bank or trust company designated by such Holder with which the aggregate Redemption Price shall be deposited.

(ii) Optional Redemption by Holders.

(A) At any time and from time to time, from and after the fifth-year anniversary of the Initial Issue Date, each Holder may cause the Company to redeem all of its outstanding shares of Series A Preferred Stock, or any portion thereof, in cash at a redemption price per share of Series A Preferred Stock equal to the Redemption Price (a "Holder Optional Redemption").

(B) Any election by a Holder pursuant to this Section 5(a)(ii) shall be made by delivery to the Company of written notice of the Holder's election to cause the Company to redeem, at least 30 days prior to the elected Redemption Date (such date, the "Holder Optional Redemption Date"), which notice shall indicate (1) the number of shares of Series A Preferred Stock to be redeemed, (2) the Holder Optional Redemption Date as of which such Holder desires the Company to effect such Holder Optional Redemption and (3) the bank or trust company designated by the Holder with which the aggregate Redemption Price shall be deposited (the "Holder Optional Redemption Notice"). Following receipt by the Company of the Holder Optional Redemption Notice, the Company shall send written notice to such Holder not less than 15 days prior to the Holder Optional Redemption Date, indicating the Redemption Price and the manner of and place designated for surrender of the shares of Series A Preferred Stock to be redeemed. If, on the Holder Optional Redemption Date, the Company is prohibited by law from redeeming all shares of Series A Preferred Stock indicated in the Holder Optional Redemption Notice, then the Company shall immediately provide written notice to the Holder of such prohibition and redeem such Series A Preferred Stock to the fullest extent not so prohibited. Any shares of Series A Preferred Stock that are not redeemed pursuant to the immediately preceding sentence shall remain outstanding and entitled to all of the designations, powers, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions of the Series A Preferred Stock set forth in this Certificate of Designation, including the right to continue to accumulate and receive Dividends thereon as set forth in Section 4 and, under such circumstances, the redemption rights provided hereby shall be continuous, so that at any time thereafter when the Company is not prohibited by law from redeeming such shares of Series A Preferred Stock, the Company shall immediately redeem such shares of Series A Preferred Stock at a price per share of Series A Preferred Stock equal to the Redemption Price as of the Holder Optional Redemption Date in accordance with this Section 5, together with payment of any additional accumulated and unpaid Dividends following the Holder Optional Redemption Date.

(b) Redemption Price. The total price for each share of Series A Preferred Stock redeemed pursuant to Section 5(a) or Section 6 (the "Redemption Price") shall be payable in cash and equal to the Liquidation Value.

(c) Optional Redemption Mechanics. On or before any Optional Redemption Date or Holder Optional Redemption Date, the Company shall deposit the amount of the applicable aggregate Redemption Price with a bank, trust company or exchange agent having an office in New York City irrevocably in trust for the benefit of such Holders. On the Optional Redemption Date or Holder Optional Redemption Date, the Company shall immediately cause to be paid in cash the applicable Redemption Price for such shares of Series A Preferred Stock to the account designated by such Holders. Upon such payment in full, such shares of Series A Preferred Stock will be deemed to have been redeemed, and Dividends with respect to such redeemed shares of Series A Preferred Stock shall cease to accumulate and all designations, rights, preferences, powers, qualifications, restrictions and limitations of such redeemed shares of Series A Preferred Stock shall forthwith terminate.

6. Mandatory Redemption Event.

(a) Redemption. Upon any (i) Bankruptcy Event, or (ii) Change of Control Event (together with any Bankruptcy Event, each a "Mandatory Redemption Event"), the Company shall, to the extent not prohibited by law and prior and in preference to the receipt of any funds by any holders of any other class or series of Capital Stock of the Company, redeem all of the shares of Series A Preferred Stock (such redemption, a "Mandatory Redemption") on the applicable Redemption Date pursuant to Section 6(b) (the "Mandatory Redemption Date"), in cash at a price per share of Series A Preferred Stock equal to the then applicable Redemption Price of such share under Section 5(b). If, on the Mandatory Redemption Date, the Company is prohibited by law from redeeming all shares of Series A Preferred Stock held by Holders, then the Company shall redeem such Series A Preferred Stock to the fullest extent not so prohibited. Any shares of Series A Preferred Stock that are not redeemed pursuant to the immediately preceding sentence shall remain outstanding and entitled to all of the designations, powers, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions of the Series A Preferred Stock set forth in this Certificate of Designation, including the right to continue to accumulate and receive Dividends thereon as set forth in Section 4 and, under such circumstances, the redemption requirements provided hereby shall be continuous, so that at any time thereafter when the Company is not prohibited by law from redeeming such shares of Series A Preferred Stock, the Company shall immediately redeem such shares of Series A Preferred Stock at a price per share of Series A Preferred Stock equal to the Redemption Price as of the Mandatory Redemption Date in accordance with Section 5 and this Section 6, together with payment of any additional accumulated and unpaid Dividends following the Mandatory Redemption Date.

(b) Redemption Mechanics.

(i) Prior to commencing a Mandatory Redemption, the Company shall send a notice (the "Mandatory Redemption Notice") to each Holder, which shall state:

(A) that a Mandatory Redemption is being made and that all of such Holder's shares of Series A Preferred Stock will be redeemed pursuant to this Section 6;

(B) (1) the Redemption Price, (2) the bank or trust company with which the aggregate Redemption Price shall be deposited on or prior to the Mandatory Redemption Date and (3) the Mandatory Redemption Date (or, to the extent not ascertainable at the time of such notice, a good faith estimate of the Mandatory Redemption Date); and

(C) a reasonably detailed description of the Mandatory Redemption Event, including the terms and conditions thereof.

(ii) On or before any Mandatory Redemption Date, the Company shall deposit the amount of the applicable aggregate Redemption Price with a bank, trust company or exchange agent having an office in New York City irrevocably in trust for the benefit of such Holders. On the Mandatory Redemption Date, the Company shall immediately cause to be paid in cash the applicable Redemption Price for such shares of Series A Preferred Stock to the account designated by such Holders. Upon such payment in full, such shares of Series A Preferred Stock will be deemed to have been redeemed, and Dividends with respect to such redeemed shares of Series A Preferred Stock shall cease to accumulate and all designations, rights, preferences, powers, qualifications, restrictions and limitations of such redeemed shares of Series A Preferred Stock shall forthwith terminate.

(c) Company Efforts. The Company shall take such commercially reasonable actions as are necessary to give effect to the provisions of Section 5 and this Section 6, including in the event the Company is prohibited by law from redeeming or is otherwise unable to redeem any shares of Series A Preferred Stock in connection with any Mandatory Redemption Event or Holder Optional Redemption on the applicable Redemption Date, taking any commercially reasonable action necessary or appropriate to remove promptly any impediments to its ability to redeem such shares of Series A Preferred Stock required to be so redeemed, including to the extent not prohibited by law, reducing the stated capital of the Company or revaluing the assets of the Company to their fair market values under Section 154 of the DGCL if such revaluation would create surplus sufficient to make all or any portion of such Mandatory Redemption Event or Holder Optional Redemption payment. In the event of any Change of Control Event in which the Company is not the continuing or surviving corporation or entity, proper provision shall be made so that such continuing or surviving corporation or entity shall agree to carry out and observe the obligations of the Company under this Certificate of Designation.

7. Protective Provisions.

(a) For so long as any shares of Series A Preferred Stock are outstanding, without the prior affirmative vote or written consent of a majority of the then outstanding shares of Series A Preferred Stock voting as a separate class (in addition to any other vote required by the DGCL, other applicable law, the Certificate of Incorporation, or this Certificate of Designation), the Company shall not, and shall not cause or permit any of its Subsidiaries to (either directly or indirectly, including by merger, consolidation, operation of law or otherwise):

(i) (A) authorize, create, or increase the authorized amount of, or issue any class or series of (a) Equity Interests, ranking (with respect to dividends or distributions or entitlement on a return of capital or assets in a winding up or otherwise) *pari passu* with the Series A Preferred Stock, including any additional shares of Series A Preferred Stock (“Parity Stock”), or (b) any Senior Stock, or (B) reclassify or amend the provisions of any existing class of securities of the Company or its Subsidiaries into shares of Parity Stock or Senior Stock;

(ii) authorize, create or issue any stock or debt instrument or other obligation that is convertible or exchangeable into shares of Parity Stock or Senior Stock (or that is accompanied by options or warrants to purchase such Parity Stock or Senior Stock);

(iii) amend, alter, waive or repeal any provision of the Certificate of Incorporation, this Certificate of Designation, or the Bylaws in each case, in a manner that materially adversely affects the special rights, preferences, privileges or voting powers of the Series A Preferred Stock;

(iv) declare or pay any dividends or other distributions in cash or property, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, repurchase, defeasance, retirement, or other acquisition of, any Equity Interests of any Subsidiary of the Company or with respect to any Common Stock, Junior Stock, Parity Stock or Senior Stock, except as permitted under the Senior Secured Note as in effect on the Initial Issue Date;

(v) take any action that is reasonably likely to result in any Mandatory Redemption Event unless, upon consummation of such Mandatory Redemption Event, the Series A Preferred Stock will be redeemed in full in cash in accordance with this Certificate of Designation;

(vi) take any action in order to cause the Company to suspend its reporting obligations voluntarily under the Exchange Act, or to cause there to occur a Delisting Event (except in connection with a Mandatory Redemption); provided, the foregoing shall not be deemed to include action required to be taken by rules of the Principal Trading Market (as defined in the Purchase Agreement);

(vii) make or permit a change in any, or adopt any new or different, U.S. federal or applicable income tax classification of the Company or any of its Subsidiaries, whether by affirmative election, tax filing or otherwise (other than an automatic change from a partnership to a disregarded entity or from a disregarded entity to a partnership, by reason of a change in the number of owners of such Person);

(viii) incur, create, suffer or assume any Debt or Liens, except for Permitted Aircraft Indebtedness or any other Debt or Liens permitted by the Senior Secured Note as of the Initial Issue Date;

(ix) enter into any business, directly or indirectly, except for those businesses in which the Company and its Subsidiaries are engaged on the Initial Issue Date or that are reasonably related thereto;

(x) amend, alter, waive or repeal any provision of any Material Agreement in a manner that materially adversely affects the special rights, preferences, privileges or voting powers of the Series A Preferred Stock;

(xi) merge into or consolidate with any Person, or permit any Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Noncompliance shall have occurred and be continuing (a) any Subsidiary may merge into the Company in a transaction in which the Company is the surviving Person, (b) any Subsidiary may merge into any other Subsidiary and (c) any Subsidiary may liquidate or dissolve if the Company determines in good faith that such liquidation or dissolution is in the best interests of the Company and is not materially disadvantageous to the Holders;

(xii) enter, or cause or permit any Subsidiary to enter, into any transaction with any Affiliate of the Company or its Subsidiaries, except as permitted under the Senior Secured Note as of the Initial Issue Date;

(xiii) dispose of any of its property, whether now owned or hereafter acquired, other than as permitted by the Senior Secured Note as of the Initial Issue Date;

(xiv) make any advance, loan, extension of credit (by way of guaranty or otherwise), or capital contribution to, or purchase, hold or acquire any Equity Interests, bonds, notes, debentures or other debt securities of, or any asset constituting a business unit of, or make any other investment in, any Person;

(xv) enter into or permit to exist or become effective any consensual encumbrance, restriction or prohibition on the ability of the Company or any Subsidiary to: (a) pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Company or (b) transfer any of its assets to the Company, in each case, except as permitted by the Senior Secured Note as of the Initial Issue Date;

(xvi) approve or update any budget of the Company or any of its Subsidiaries where free cash flows are expected to be negative for the subsequent calendar year;

(xvii) use the proceeds of the Series A Preferred Stock for any purpose other than general working capital purposes.

(b) In the event of (i) any reclassification, statutory exchange, merger, consolidation or other similar business combination of the Company with or into another Person, in each case, pursuant to which at least a majority of the Common Stock (but not the Series A Preferred Stock) is changed or converted into, or exchanged for, securities or other property of another Person, (ii) any reclassification, recapitalization or reorganization of the Common Stock (but not the Series A Preferred Stock) into securities of another Person or (iii) the conveyance, sale, lease, assignment, transfer or other disposition of all or substantially all of the Company's assets or other properties (taken as a whole) (a "Reorganization Event"), each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of the Holders and subject to all the other terms hereof, remain outstanding unless redeemed in accordance with this Certificate of Designation in connection with such Reorganization Event; *provided*, that in no event will the Company enter into or effect any such Reorganization Event if it would materially and adversely affect the rights of Holders. This provision shall similarly apply to successive Reorganization Events. To the extent that the Company is not the surviving or resulting entity in such Reorganization Event or will be dissolved in connection with such Reorganization Event, the Company shall not consummate any such transaction constituting a Reorganization Event unless proper provision shall be made in the agreements governing such Reorganization Event for the assumption of the obligations of the Company by such surviving or resulting entity in such Reorganization Event in accordance with this provision.

8. Cancellation; No Conversion Rights. No shares of Series A Preferred Stock acquired by the Company by reason of redemption, purchase or otherwise shall be reissued or held in treasury for reissuance, and the Company shall take all necessary action to cause such shares of Series A Preferred Stock immediately to be canceled, retired and eliminated from the shares of Series A Preferred Stock which the Company shall be authorized to issue. The Holders have no rights to convert any Series A Preferred Stock into any other Equity Interests of the Company.

9. Rights and Remedies of Holders.

(a) The various provisions set forth under this Certificate of Designation are for the benefit of the Holders and, subject to the terms and conditions hereof and applicable law, will be enforceable by them, including by one or more actions for specific performance.

(b) Except as expressly set forth herein, all remedies available under this Certificate of Designation, at law, in equity or otherwise, will be deemed cumulative and not alternative or exclusive of other remedies. The exercise by any Holder of a particular remedy will not preclude the exercise of any other remedy.

(c) The shares of Series A Preferred Stock will not have any designations, powers, preferences and relative, participating, optional, or other rights, and the qualifications, limitations and restrictions other than as set forth herein or in the Certificate of Incorporation.

10. Term. Except as expressly provided in this Certificate of Designation, the shares of Series A Preferred Stock shall not be redeemable or otherwise mature and the term of the Series A Preferred Stock shall be perpetual.

11. Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon (i) the date of transmission, if sent via e-mail or (ii) the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service, in each case, addressed: (i) if to the Company, to its office at flyExclusive, Inc., 2860 Jetport Road, Kinston, NC 28504 (Attention: Thomas James Segrave, Jr.), Email:[____], with a copy to Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607 (Attention: Larry Robbins), Email: [____], (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company (which may include the records of the transfer agent for the Series A Preferred Stock, if any) or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given.

12. Waiver. Any waiver by the Company or a Holder of a right or preference granted herein or a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Company or a Holder must be in writing.

13. Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

14. Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

15. Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

16. Interpretation. Unless the context otherwise requires: (i) a term has the meaning assigned to it herein; (ii) words in the singular include the plural, and in the plural include the singular; (iii) "or" is not exclusive; (iv) "will" shall be interpreted to express a command; (v) "including" means including without limitation; (vi) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Certificate of Designation; (vii) any reference to a day or number of days, unless expressly referred to as a Business Day, shall mean the respective calendar day or number of calendar days; (viii) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; and (ix) references to sections of the United States Code shall be deemed to include any substitute, replacement or successor sections as well as the rules promulgated thereunder from time to time.

17. Definitions. As used in this Certificate of Designation, the following terms shall have the meanings specified below:

"Affiliate" shall have the meaning assigned to such term in the Purchase Agreement.

"Aircraft" means, individually and collectively as context may require, all whole aircraft assets and all fractional interests in aircraft owned by the Borrower.

"Bankruptcy Event" means:

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company or any of its Subsidiaries, or of all or substantially all of the property or assets of the Company or any of its Subsidiaries, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any of its Subsidiaries or for all or substantially all of the property or assets of the

Company or any of its Subsidiaries, or (iii) the winding-up or liquidation of the Company or any of its Subsidiaries, and in the case of any proceeding described in this clause (a), such proceeding or petition shall continue in effect and undismissed or unstayed for 90 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) the Company or any of its Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (a) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequester, conservator or similar official for the Company or any of its Subsidiaries or for all or substantially all of the property or assets of the Company or any of its Subsidiaries, or (iv) make a general assignment for the benefit of creditors, and in the case of any proceeding described in this clause (b), such proceeding or petition shall continue in effect and undismissed or unstayed for 90 days or an order or decree approving or ordering any of the foregoing shall be entered, or (v) commence any voluntary in-court or out-of-court restructuring or recapitalization transactions.

“Board of Directors” shall have the meaning assigned to such term in the recitals hereof.

“Borrower” means FlyExclusive Jet Share, LLC, a North Carolina limited liability company.

“Business Day” shall have the meaning assigned to such term in the Purchase Agreement.

“Bylaws” means the Company’s Bylaws as amended and restated and as in effect on the Initial Issue Date.

“Capital Stock” means:

- (c) in the case of a corporation, corporate stock;
- (d) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (e) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (f) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Certificate of Designation” shall have the meaning assigned to such term in the recitals hereof.

“Certificate of Incorporation” shall have the meaning assigned to such term in the recitals hereof.

“Change of Control” means the occurrence of any of the following: (a) Thomas Segrave shall cease to directly or indirectly own, free and clear of all Liens or other encumbrances, fifty-one percent (51%) of the outstanding voting Equity Interests of the Company on a fully diluted basis, so long as any reduction of Thomas Segrave’s ownership stake is the result of dilution due to the issuance of voting Equity Interests to third parties on arm’s length terms; provided that Thomas Segrave may sell, transfer or otherwise dispose or pledge as collateral his Equity Interests not to exceed \$25,000,000 in value or yielding no more than \$25,000,000 in gross proceeds in the Company, whichever is less, so long as he continues to own fifty one percent (51%) of the outstanding voting Equity Interests of the Company on a fully diluted basis; (b) the Company ceases to own, directly or indirectly, including directly or indirectly with Thomas Segrave and his Affiliates, less than one hundred percent (100%) of the outstanding Equity Interests of LGM Enterprises, LLC; (c) LGM Enterprises, LLC ceases to own, directly or indirectly, less than one hundred percent (100%) of the outstanding Equity Interests of FlyExclusive Jet Share, LLC; (d) the occurrence of any “change of control” or similar provision under any agreement governing Debt of the Company, LGM Enterprises, LLC, FlyExclusive Jet Share, LLC, or any of their respective Subsidiaries; or (e) a sale, lease or other disposition (including by casualty or condemnation) of all, substantially all, or more than fifty percent (50%) of the consolidated assets of the Company, LGM Enterprises, LLC, FlyExclusive Jet Share, LLC, and their respective Subsidiaries.

“Change of Control Event” means the occurrence of a Change of Control.

“Common Stock” means any shares of Class A common stock, with a par value of \$0.0001 per share, of the Company.

“Company” shall have the meaning assigned to such term in the recitals hereof.

“Compounded Dividends” shall have the meaning assigned to such term in Section 4(b).

“Debt” means, with respect to any Person, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, except trade payables arising in the ordinary course of business; (c) obligations evidenced by notes, bonds, debentures, or other similar instruments; (d) obligations as lessee under capital leases; (e) obligations under acceptance facilities and letters of credit; (f) guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person, or otherwise to assure a creditor against loss, in each case, in respect of indebtedness set out in clause (a) through clause (e) of any other Person and excluding any aircraft lease; and (g) indebtedness of the type set out in clauses (a) through clause (f) secured by any lien on any asset of such Person, whether or not such indebtedness has been assumed by such Person.

“Delisting Event” is deemed to occur when, after the Initial Issue Date, the shares of Common Stock are no longer listed on a Trading Market (as defined in the Purchase Agreement), except for any involuntary delisting initiated by the Trading Market.

“DGCL” shall have the meaning assigned to such term in the recitals hereof.

“Dividend Payment Date” means March 4 of each Fiscal Year of the Issuer following the Initial Issue Date (or, if such date is not a Business Day, the immediately succeeding Business Day).

“Dividend Period” means the period commencing on and including a Dividend Payment Date that ends on, but does not include, the next Dividend Payment Date; *provided* that the initial Dividend Period shall commence on and include the Initial Issue Date and end on, but not include, the first Dividend Payment Date.

“Dividend Rate” shall have the meaning assigned to such term in Section 4(b).

“Dividends” shall have the meaning assigned to such term in Section 4(b).

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“Event of Noncompliance” means any one of the following events:

(g) failure by the Issuer to pay in cash (i) 43% of any Dividends due and payable pursuant to this Certificate of Designation on the first Dividend Payment Date following the second-year anniversary of the Initial Issue Date or (ii) 100% of any Dividends due and payable pursuant to this Certificate of Designation on each Dividend Payment Date following the third-year anniversary of the Initial Issue Date;

(h) any breach of any material term of this Certificate of Designation (other than an event referred to in clause (a) above) or the Purchase Agreement, including a failure by the Issuer to redeem any Series A Preferred Stock pursuant to a Holder Optional Redemption or a Mandatory Redemption, which breach remains uncured following 15 Business Days (which period shall be extended to 45 Business Days to the extent the breach is capable of being cured and the Issuer is using commercially reasonable efforts to cure such breach); and

(i) a Bankruptcy Event.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“fair market value” means with respect to any investment, asset, property or liability, the value of the consideration obtainable in a sale of such investment, asset, property or liability at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, investment, property or liability as determined in good faith by the Board of Directors.

“Fiscal Year” means the fiscal year of the Company ending December 31 of each calendar year.

“Holder” means, as of the relevant date, any Person that is the holder of record of at least one share of Series A Preferred Stock, as of such date.

“Holder Optional Redemption” shall have the meaning assigned to such term in Section 5(a)(ii)(A).

“Holder Optional Redemption Date” shall have the meaning assigned to such term in Section 5(a)(ii).

“Holder Optional Redemption Notice” shall have the meaning assigned to such term in Section 5(a)(ii).

“Initial Issue Date” means March 4, 2024.

“Issuer” shall have the meaning assigned to such term in the recitals hereof.

“Junior Stock” means Common Stock, any other preferred stock and any other Equity Interest of the Company (other than the Series A Preferred Stock).

“Lien” means any mortgage, pledge, hypothecation, encumbrance, lien (statutory or other), charge, or other security interest.

“Liquidation Value” means, as of the relevant time and with respect to each share of Preferred Stock, the sum of (a) the Stated Value of such share as of such date, plus (b) any declared but unpaid Dividends on such share for the most recent Dividend Period as of such date (to the extent not part of the Stated Value of such Share as of such date), plus (c) the amount of accumulated and unpaid Dividends on such share from the last Dividend Payment Date to, but not including, such date (to the extent not part of the Stated Value of such share as of such date).

“Mandatory Redemption” shall have the meaning assigned to such term in Section 6(a).

“Mandatory Redemption Date” shall have the meaning assigned to such term in Section 6(a).

“Mandatory Redemption Event” shall have the meaning assigned to such term in Section 6(a).

“Mandatory Redemption Notice” shall have the meaning assigned to such term in Section 6(b)(i).

“Material Agreement” shall have the meaning assigned to such term in the Purchase Agreement.

“Optional Redemption” shall have the meaning assigned to such term in Section 5(a)(i)(A).

“Optional Redemption Date” shall have the meaning assigned to such term in Section 5(a)(i)(B).

“Parity Stock” shall have the meaning assigned to such term in Section 7(a)(i).

“Permitted Aircraft Indebtedness” means any third-party asset-level Debt incurred by the Borrower on an arm’s length basis and on terms consistent with past practice used for the acquisition of, or refinancing of, acquired Aircraft.

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

“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up, including, in the case of the Company, the Series A Preferred Stock.

“Purchase Agreement” means the Securities Purchase Agreement, entered into as of the date hereof, by and between the Company and EnTrust Emerald (Cayman) LP.

“Redemption Date” means an Optional Redemption Date, Holder Optional Redemption Date or a Mandatory Redemption Date, as applicable.

“Redemption Failure” shall have the meaning assigned to such term in Section 4(d).

“Redemption Price” shall have the meaning assigned to such term in Section 5(b).

“Reorganization Event” shall have the meaning assigned to such term in Section 7(b).

“Senior Secured Note” shall have the meaning assigned to such term in the Purchase Agreement.

“Senior Stock” means any class or series of Capital Stock of the Company the terms of which expressly provide that such class or series ranks senior to the Series A Preferred Stock with respect to dividend rights or rights upon a liquidation, winding-up or dissolution of the Company, (including any warrants, rights, calls or options exercisable for or convertible into such Capital Stock) and any existing or future secured or unsecured Debt and other liabilities of the Company.

“Series A Preferred Stock” shall have the meaning assigned to such term in Section 1(a).

“Stated Value” means, as of the relevant date and with respect to each share of Series A Preferred Stock, the sum of (a) \$1,000 (adjusted as appropriate in the event of any stock or securities dividend, stock or securities split, stock or securities distribution, recapitalization or combination) plus (b) the aggregate Compounded Dividends with respect to such share as of such date.

“Subsidiary” shall have the meaning assigned to such term in the Purchase Agreement.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be signed by a duly authorized officer this 4th day of March 2024.

FLYEXCLUSIVE, INC.

By: /s/ Thomas James Segrave, Jr.
Name: Thomas James Segrave, Jr.
Title: Chief Executive Officer and Chairman

[Signature Page to Series A Certificate of Designation]

Exhibit 4.1

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR UNDER APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

COMMON STOCK PURCHASE WARRANT FLYEXCLUSIVE, INC.

Warrant Number: 1 Issue Date: March 4, 2024

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value received, EnTrust Emerald (Cayman) LP, a Cayman Islands limited partnership, or its registered assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, to subscribe for and purchase from flyExclusive, Inc., a Delaware corporation (the “Company”), shares of Class A common stock, par value \$0.0001 per share, of the Company (the “Common Stock”) in accordance with the terms of this Warrant (such shares of Common Stock, the “Warrant Shares”). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

This Warrant is issued pursuant to that certain Securities Purchase Agreement, dated March 4, 2024, by and among the Company and the Holder (the “Purchase Agreement”).

Section 1. Definitions: Purchase Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement. For the avoidance of doubt, whenever this Warrant references terms of, or provisions being in accordance with provisions of, the Purchase Agreement, such terms and provisions of the Purchase Agreement shall be deemed incorporated into this Warrant and to be part hereof as though set forth herein.

Section 2. Exercise.

(a) Exercise of Warrant. Beginning on the second anniversary of the date hereof and until the third anniversary of the date hereof (the “Initial Exercise Period”), this Warrant may be exercised, in whole or in part, at any time or times, with respect to a number of shares of Common Stock equal to 50% (the “Initial Exercise Period Percentage Cap” and any portion of this percentage that is not exercised during the Initial Exercise Period, the “Remaining Initial Exercise Period Percentage Cap”) of 1.5% of the Company’s outstanding shares of Common Stock on a fully diluted basis (“Share Count Cap”) as of the Trading Day immediately prior to the date of delivery of the Notice of Exercise (as defined below) (the “Determination Date”). In the event of a partial exercise of this Warrant during the Initial Exercise Period, any subsequent exercise of this Warrant during the Initial Exercise Period shall be permitted with respect to a number of shares of Common Stock equal to the Remaining Initial Exercise Period Percentage Cap of the Share Count Cap as of the Determination Date with respect to such subsequent exercise. Beginning on the third anniversary of the date hereof and ending at 5:00

p.m., New York City time, on March 4, 2029 (the “Termination Date” and such exercise period, the “Subsequent Exercise Period”), this Warrant may be exercised, in whole or in part, at any time or times, with respect to a number of shares of Common Stock equal to 100% (the “Exercise Period Percentage Cap” and any portion of this percentage that is not exercised during the Initial Exercise Period or the Subsequent Exercise Period, the “Remaining Exercise Period Percentage Cap”) of the Share Count Cap as of the Determination Date with respect to such exercise. In the event of a partial exercise of this Warrant during the Initial Exercise Period, any subsequent exercise of this Warrant during the Subsequent Exercise Period shall be permitted with respect to a number of shares of Common Stock equal to: a percentage equal to 50 plus the Remaining Initial Exercise Period Percentage Cap of the Share Count Cap as of the Determination Date with respect to such subsequent exercise. In the event of a partial exercise of this Warrant during the Subsequent Exercise Period, any subsequent exercise of this Warrant during the Subsequent Exercise Period shall be permitted with respect to a number of shares of Common Stock equal to the Remaining Exercise Period Percentage Cap of the Share Count Cap as of the Determination Date with respect to such subsequent exercise. Notwithstanding the foregoing, in no event shall this Warrant be exercised for (1) a number of Warrant Shares having an aggregate value in excess of \$11,250,000 or (2) an aggregate number of Warrant Shares in excess of 1.5% of the Company’s outstanding shares of Common Stock on a fully diluted basis as of the most recent Determination Date. For purposes of the immediately preceding sentence, the value of each Warrant Share issued pursuant to this Warrant shall be calculated in accordance with Section 2(c)(A) on the date of the Notice of Exercise that results in the issuance of such Warrant Share. This Warrant may be exercised by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form attached hereto as Exhibit A (the “Notice of Exercise”). Within two (2) Trading Days following the date of exercise, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank, unless the cashless exercise procedure referenced in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required if the Warrant Shares are to be issued in the exact name of the Holder as shown on the records of the Company or its transfer agent at the time of exercise. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company to effect an exercise hereunder until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. It is understood and agreed that to surrender this Warrant to the Company for any purpose under this Warrant, the Holder only needs to e-mail to the Company e-mail address provided in Section 5(h) an electronic copy of the Warrant and state such Holder’s intent to surrender the Warrant. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$0.01 (the “Exercise Price”).

(c) Cashless Exercise. At any time, as an alternative to a cash exercise, this Warrant may be exercised, in whole or in part, by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing $((A-B) \times (X))$ by (A), where:

(A) = as applicable: (i) the VWAP on the date of the applicable Notice of Exercise (excluding the date of the applicable Notice of Exercise) if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day, (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such date, or (3) both executed and delivered pursuant to Section 2(a) hereof during “regular trading hours” on a Trading Day or (ii) the VWAP on the date of the applicable Notice of Exercise (including the date of the applicable Notice of Exercise) if such Notice of Exercise is executed and delivered after the close of “regular trading hours” on a Trading Day;

(B) = the Exercise Price of this Warrant; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the average of the daily volume weighted average price of the Common Stock for the five (5) Trading Days immediately preceding such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time) determined without regard to afterhours trading or any other trading outside the regular trading session or trading hours), (b) if OTCQB or OTCQX is not a Trading Market, the average of the daily volume weighted average price of the Common Stock for the five (5) Trading Days immediately preceding such date on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the average of the daily volume weighted average ask price per share of the Common Stock so reported for the five (5) Trading Days immediately preceding such date, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically deemed exercised via cashless exercise pursuant to this Section 2(c).

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder’s or its designee’s balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”) if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the resale of the Warrant Shares by the Holder, (B) the Warrant Shares are eligible for resale by the Holder under Rule 144 without volume or manner-of-sale limitations

and without the Company being in compliance with the current public information requirements of Rule 144, (C) the Holder has concurrently confirmed a sale of the Warrant Shares pursuant to the requirements of Rule 144, or (D) a legend is not otherwise required on the Warrant Shares under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission), and otherwise by delivery of evidence of issuance of the Warrant Shares in book entry with the Transfer Agent, registered in the Company's share register in the name of the Holder or its designee, to the email address specified in such Notice of Exercise, by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, if the Company has by such date received the Exercise Price (other than in the case of cashless exercise), and (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within two (2) Trading Days following delivery of the Notice of Exercise. The Company agrees to maintain a transfer agent that is a participant in the DTC Fast Automated Securities Transfer (FAST) Program so long as this Warrant remains outstanding and exercisable.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical to this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise by delivering written notice to the Company at any time prior to the delivery of the Warrant Shares. Additionally, in the event that the Company provides notice to the Holder of any stop order relating to, or the suspension or withdrawal of the effectiveness of, the Registration Statement in accordance with Section 4.6 of the Purchase Agreement, the Company shall, at the election of the Holder, either (y) rescind any previously submitted (and outstanding) Warrant Exercise Notice and the Company shall return any Exercise Price paid to the Holder or (z) treat the attempted exercise as a cashless exercise as described herein and return any Exercise Price paid to the Holder.

(iv) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(v) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company in accordance with Section 5.1 of the Purchase Agreement, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder in the Notice of Exercise; provided, however, that notwithstanding Section 5.1 of the Purchase Agreement, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company

shall have the right to require, as a condition thereto, the prior or contemporaneous payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The provisions of Section 5.1 of the Purchase Agreement shall not be limited except as to the extent provided for in the foregoing sentence. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares, in each case, if applicable.

(vi) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time on or after the date of the Purchase Agreement and while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), or (ii) subdivides (by any stock split, recapitalization or otherwise) outstanding shares of Common Stock into a greater number of shares, the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to any such dividend, distribution or subdivision shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to such combination shall be proportionately decreased. Any adjustment made pursuant to this Section 3(a) shall become effective at the close of business on the effective date of the dividend, subdivision or combination.

(b) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company (including without limitation through a Subsidiary), directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (including without limitation through a Subsidiary), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted for shares representing more than 50% of the outstanding Common Stock or more than 50% of the voting power of the common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reorganization of the Company or any of its Subsidiaries or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company (including without limitation through a Subsidiary), directly or indirectly, in one or more related transactions (other than one or more bona fide financing transactions) consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock or more than 50% of the voting power of the common equity of the Company ("group" status being determined in accordance with Section 13(d) of the Exchange Act) (each a "Fundamental Transaction"), to the extent any portion of this Warrant remains unexercised, then following such Fundamental Transaction the Holder shall have the right to receive, upon exercise of this Warrant, in lieu of or in addition to (as the case may be) the number of Warrant Shares then

exercisable under this Warrant, the same amount and kind of securities, cash or property as the Holder would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "Alternate Consideration"). In such case, appropriate adjustment (in form and substance satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Section 3 hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant. If the Company undertakes a Fundamental Transaction in which the Company is not the surviving entity and the Alternate Consideration includes securities of another Person, then the Company shall provide that, prior to or simultaneously with the consummation of such Fundamental Transaction, any successor to the Company, surviving entity or other Person (including any purchaser of assets of the Company) shall assume the obligation to deliver to the Holder such Alternate Consideration as the Holder is entitled to receive in accordance with the foregoing provisions, and to assume the other obligations under this Warrant. The provisions of this paragraph (b) shall similarly apply to subsequent transactions analogous of a Fundamental Transaction type.

(c) Certain Events. If any event of the type contemplated by the provisions of this Section 3 but not expressly provided for by such provisions occurs at any time, then the Company shall make an appropriate adjustment in the number of Warrant Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this Section 3; provided, that no such adjustment pursuant to this Section 3(c) shall decrease the number of Warrant Shares issuable as otherwise determined pursuant to this Section 3 without the consent of the Holder, unless such adjustment applies to all outstanding shares of Common Stock.

(d) Calculations. All calculations under this Section 3 shall be made to the nearest 1/100th of a share. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(e) NYSE American Issuance Limitations. No Holder will be entitled to receive shares of Common Stock issuable pursuant to Section 2, Section 3(a)-(c) or as otherwise provided in this Warrant to the extent such issuance would result in a violation of the NYSE American Company Guide or rules of the national securities exchange upon which the Common Stock is then listed (the "NYSE American Issuance Limitation"), unless the Company (i) obtains Stockholder Approval, or (ii) determines upon advice of counsel that Stockholder Approval is not required to effect such transaction, in each such case, the NYSE American Issuance Limitation will no longer apply. "Stockholder Approval" means stockholder approval of the proposal to issue Common Stock pursuant to Section 3 hereof for purposes of Rule 713 of the New York Stock Exchange American Listed Company Manual, or to comply with the applicable rules of the national securities exchange upon which the Common Stock is then listed.

(f) Notice to Holder.

(i) Notice as to Adjustment. Whenever any adjustments are made pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by email a notice setting forth in reasonable detail such adjustment, including the number of Warrant Shares or the amount, if any, of other securities issuable or assets or other consideration to which the Holder is entitled as a result of such adjustment.

(ii) Notice to Allow Exercise by Holder. If during the term in which the Warrant may be exercised (A) the Company shall declare a dividend (or any other

distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Warrant Register of the Company, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with any applicable securities laws and to the provisions of Section 4.1 of the Purchase Agreement, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer, in accordance with Section 2(d)(v). Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company, unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers a duly executed Assignment Form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be

dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares in a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then, such action may be taken or such right may be exercised on the next succeeding Trading Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of this Warrant will, upon such exercise and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue that are payable by the Holder in accordance with Section 2(d)(v)).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will, so long as any of the Warrants are outstanding, (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation, including governing law, of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company or to the Company by the Holder shall be delivered in accordance with the notice provisions of the Purchase Agreement.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to seek specific performance of its rights under this Warrant. The Company agrees that monetary damages may not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant

and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) No Third-Party Beneficiaries. This Warrant is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant.

(n) Amendment; Waiver. Except as otherwise provided herein, the provisions of the Warrants may be modified or amended, or the obligations of the Company waived, only if the Company has obtained the written consent of the Holder.

(o) Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.

(p) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(q) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

FLYEXCLUSIVE, INC.

By:
Name:
Title:

EXHIBIT A

NOTICE OF EXERCISE

TO: flyExclusive, Inc.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant, and tenders herewith payment of the Exercise Price in full, together with all applicable transfer taxes, if any.

(2) The Exercise Price shall take the form of (check applicable box):

] lawful money of the United States; or

] the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below.

(4) The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FLYEXCLUSIVE, INC.

FOR VALUE RECEIVED, all of or [_____] shares of Warrant Number _____ and all rights evidenced thereby are hereby assigned to the following:

Name: _____

Address: _____

Dated: _____, _____

Holder's Name:

Holder's Signature:

Holder's Address:

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

SECURITIES PURCHASE AGREEMENT

This **Securities Purchase Agreement** (this "**Agreement**") is dated as of March 4, 2024 (the "**Closing Date**"), between **flyExclusive, Inc.**, a Delaware corporation (the "**Company**"), and EnTrust Emerald (Cayman) LP, a Cayman Islands limited partnership (including its successors and assigns, the "**Purchaser**").

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company desires to issue and sell to the Purchaser, and the Purchaser wishes to purchase from the Company, the aggregate number of shares of Preferred Stock (as defined below) and the Warrants (as defined below), in each case, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

Article I
DEFINITIONS

1.1 **Definitions.** In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Certificate of Designation (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"**Action**" means any action, suit, inquiry, notice of violation, arbitration, complaint, proceeding (including any partial proceeding such as a deposition) or investigation pending or, to the Company's Knowledge, threatened in writing against the Company, any Subsidiary or any of their respective properties or any officer, director or employee of the Company or any Subsidiary acting in his or her capacity as an officer, director or employee before or by any federal, state, county, local or foreign court, arbitrator, governmental or administrative agency, regulatory authority, stock market, stock exchange or trading facility.

"**Adverse Disclosure**" means any public disclosure of material non-public information, which information the Company has a bona fide business purpose (including confidentiality obligations) for not making such information public, and which disclosure, in the good faith determination of the Board of Directors, after consultation with Company Counsel, (a) would be required to be made in any registration statement or prospectus in order for it to comply with applicable disclosure requirements, and (b) would not be required to be made at such time if the registration statement were not being filed or already effective.

"**Affiliate**" as to any Person, means any other Person that, directly or indirectly through one or more intermediaries, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning ascribed to such term in the preamble.

"**Anti-Corruption Laws**" means all Laws, rules, and regulations of any jurisdiction applicable to the Company from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"**Board of Directors**" means the board of directors of the Company.

"**Business Day**" means a day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York, Charlotte, North Carolina and London, England are authorized or required by Law to close.

"**Bylaws**" means the Company's Bylaws as amended and restated and as in effect on the Closing Date.

"**Certificate of Designation**" means the Certificate of Designation to be filed prior to the Closing by the Company with the Secretary of State of Delaware, in the form of Exhibit A attached hereto.

"**Certificate of Incorporation**" means the Company's second amended and restated certificate of incorporation, as amended and restated and as in effect on the Closing Date.

“**Closing**” means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

“**Closing Date**” has the meaning ascribed to such term in the preamble.

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

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the Class A common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“**Company**” has the meaning ascribed to such term in the preamble.

“**Company Counsel**” means Wyrick Robbins Yates & Ponton LLP, with offices located at 4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607.

“**Company’s Knowledge**” means with respect to any statement made to the knowledge of the Company, that the statement is based upon the actual knowledge, after reasonable inquiry, of the executive officers of the Company.

“**Consolidated Group**” means any affiliated, combined, consolidated, unitary or similar group with respect to any Taxes, including any affiliated group within the meaning of Section 1504 of the Code electing to file consolidated federal income Tax Returns and any similar group under foreign, state or local Law.

“**Depository**” has the meaning ascribed to such term in Section 4.5(c).

“**Environmental Laws**” has the meaning ascribed to such term in Section 3.1(l).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) of the Code.

“**ERISA Event**” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the thirty (30)-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Company or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Company or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of the Company or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by the Company or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any notice, concerning the imposition upon the Company or any ERISA Affiliate of liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA, or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

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

“**Form S-1 Shelf**” has the meaning ascribed to such term in Section 4.6(a).

“**Form S-3 Shelf**” has the meaning ascribed to such term in Section 4.6(a).

“**GAAP**” has the meaning ascribed to such term in Section 3.1(f).

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) or any arbitrator or arbitral body (public or private).

“**Intellectual Property Rights**” has the meaning ascribed to such term in Section 3.1(k).

“**Law**” as to any Person, means any law (including common law), statute, ordinance, treaty, rule, regulation, order, decree, judgment, writ, injunction, requirement or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Material Adverse Effect**” means (a) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (b) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (c) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

“**Material Agreement**” shall have the meaning assigned to such term in the Senior Secured Note as in effect on the Initial Issue Date. For the avoidance of doubt, each of the Transaction Documents is a Material Agreement.

“**Money Laundering Laws**” has the meaning ascribed to such term in Section 3.1(cc).

“**Multiemployer Plan**” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which the Company or any ERISA Affiliate had an obligation to contribute over the five (5) years prior to the date hereof.

“**Plan**” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA, and in respect of which the Company or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Preferred Stock**” means the shares of the Company’s Series A Non-Convertible Redeemable Preferred Stock, par value \$0.0001, issued hereunder having the rights, preferences and privileges set forth in the Certificate of Designation.

“**Principal Trading Market**” means the Trading Market on which the Common Stock is primarily listed on and quoted for trading, which, as of the Closing Date, shall be the NYSE American.

“**Proceeding**” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened in writing.

“**Purchaser**” has the meaning ascribed to such term in the preamble.

“**Purchaser Party**” has the meaning ascribed to such term in Section 4.4.

“**Registration Statement**” or “**Registration Statements**” means the registration statement(s) meeting the requirements set forth in Section 4.6 and covering the resale of the Warrant Shares by the Purchaser as provided for herein.

“**Required Board Approvals**” has the meaning ascribed to such term in Section 2.2(a)(v).

“**Required Minimum**” means, as of any date, the maximum aggregate number of shares of Common Stock potentially issuable in the future pursuant to the Transaction Documents, including any Warrant Shares issuable upon exercise in full of all Warrants ignoring any exercise limits set forth therein.

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“**SEC Reports**” has the meaning ascribed to such term in Section 3.1(f).

“**Securities**” means the Preferred Stock, the Warrants and the Warrant Shares.

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

“**Senior Secured Note**” means that certain Senior Secured Note, dated as of January 26, 2024, by and among FlyExclusive Jet Share, LLC, a North Carolina limited liability company, as borrower, the Company and LGM Enterprises, LLC, a North Carolina limited liability company, as guarantors, ETG FE LLC, a Delaware limited liability company, as the initial noteholder, the other noteholders from time to time party thereto, Kroll Agency Services Limited, as administrative agent and Kroll Trustee Services Limited, as collateral agent, as amended, restated, amended and restated, supplemented, extended, replaced, refinanced or otherwise modified from time to time.

“**Shelf**” has the meaning ascribed to such term in Section 4.6.

“**Standard Settlement Period**” has the meaning ascribed to such term in Section 4.1(c).

“**Stockholder Claimant**” has the meaning ascribed to such term in Section 4.4.

“**Subscription Amount**” means \$25,000,000 less the Upfront Fee.

“**Subsequent Shelf Registration Statement**” has the meaning ascribed to such term in Section 4.6(d).

“**Subsidiary**” means, with respect to any Person, a corporation, partnership, limited liability company, unlimited liability company or other entity of which that Person owns, directly or indirectly, outstanding Equity Interests having more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of that corporation, partnership, limited liability company, or other entity.

“**Tax**” or “**Taxes**” means (a) any taxes, assessments, fees, unclaimed property and escheat obligations and other governmental charges imposed by any Governmental Authority, including income, profits, gross receipts, net proceeds, alternative or add on minimum, ad valorem, value added, turnover, sales, use, property, personal property (tangible and intangible), environmental, stamp, leasing, lease, user, excise, duty, franchise, Capital Stock, transfer, registration, license, withholding, social security (or similar), unemployment, disability, payroll, employment, social contributions, fuel, excess profits, occupational, premium, windfall profit, severance, estimated, or other charge of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not; (b) any liability for the payment of any amounts of the type described in clause (a) as a result of being a member of a Consolidated Group for any period; and (c) any liability for the payment of any amounts of the type described in clause (a) or (b) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“**Trading Day**” means a day on which the Principal Trading Market is open for trading.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“**Transaction Documents**” means this Agreement, the Certificate of Designation, the Warrant, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“**Transfer Agent**” means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, with a mailing address of One State Street, 30th Floor, New York, NY 10004, and any successor transfer agent of the Company.

“**Upfront Fee**” means \$750,000.

“**Warrant Shares**” means the shares of Common Stock issuable upon exercise of the Warrants.

“**Warrantholder**” means each Person in whose name any Warrant is registered.

“**Warrants**” means the warrants to purchase shares of Common Stock in the form of Exhibit B attached hereto.

Article II **PURCHASE AND SALE**

1.1 **Closing.** On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchaser agrees to purchase, in exchange for the Subscription Amount, 25,000 shares of Preferred Stock and Warrants. Upon satisfaction of the covenants set forth in Section 2.2, the Closing shall occur remotely by mutual exchange of signature pages by electronic means. The Preferred Stock and the Warrants will be issued in a private placement pursuant to an exemption from the registration requirements of Section 5 of the Securities Act contained in Section 4(a)(2) thereof.

1.2 **Deliveries.**

(a) At the Closing, the Company shall deliver or cause to be delivered to the Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) a copy of a certificate issued by the Company (or an executed letter from the Company to the Transfer Agent instructing the Transfer Agent to credit the shares of Preferred Stock to an electronic account as of the Closing Date) evidencing the shares of Preferred Stock purchased pursuant hereto, registered in the name of the Purchaser (or its nominee in accordance with the Purchaser’s delivery instructions), and evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Delaware;

(iii) a Warrant registered in the name of the Purchaser (or its nominee in accordance with the Purchaser’s delivery instructions) to purchase up to the number of Warrant Shares specified in the Warrant, subject to adjustment as set forth therein and evidenced in the form of one or more certificates, substantially in the form of Exhibit B;

(iv) the Company’s wire instructions;

(v) a certificate of the Secretary of the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to the Purchaser, (A) certifying resolutions duly adopted by the Board of Directors (and any approval by the Audit Committee of the Company or other body of independent directors necessary or advisable) approving the transactions contemplated hereby and the other Transaction Documents and performance by the Company of its obligations hereunder and thereunder (collectively, the “**Transactions**”) and the Transaction Documents, and taking such other action as is required to duly authorize the Transactions and the Transaction Documents, the filing of the Certificate of Designation, and the issuance of the Preferred Stock, the Warrants and the Warrant Shares (collectively, the “**Required Board Approvals**”); (B) certifying the Certificate of Incorporation and Bylaws and (C) certifying as to the signatures and authority of Persons signing the Transaction Documents and related documents on behalf of the Company;

(vi) a certificate evidencing the good standing of the Company in Delaware issued by the Secretary of State of Delaware, as of a date within five (5) Business Days of the Closing Date; and

(vii) an opinion of counsel substantively in the form attached hereto as Exhibit C, executed by Company Counsel as of the Closing Date and addressed to the Purchaser.

(b) At the Closing, the Purchaser shall deliver or cause to be delivered to the Company, the following:

(i) this Agreement duly executed by the Purchaser;

- (ii) the Subscription Amount by wire transfer in immediately available funds to the account specified by the Company;
- (iii) an Internal Revenue Service Form W-8, duly and validly executed by the Purchaser (or its nominee in accordance with the Purchaser's delivery instructions); and
- (iv) a certificate evidencing the good standing of the Purchaser under the Laws of the Cayman Islands issued by the Registrar of Partnerships in the Cayman Islands, as of a date within five (5) Business Days of the Closing Date.

Article III

REPRESENTATIONS AND WARRANTIES

1.1 **Representations and Warranties of the Company.** The Company hereby makes the following representations and warranties to the Purchaser as of the Closing Date (except for the representations that speaks of a specific date, which shall be made as of such date):

(a) **Organization and Qualification.** The Company and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing (to the extent that such concept applies) under the Laws of the jurisdiction of its incorporation or organization, with the requisite corporate power and authority to own or lease its properties and assets and to carry on its business as currently conducted. Neither the Company nor any of its Subsidiaries is in violation or default of any of the provisions of its respective certificate of incorporation, bylaws or other organizational or charter documents. Except where such violation would not be expected to have a Material Adverse Effect, the Company and each of its Subsidiaries (a) is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned or leased by it makes such qualification necessary, (b) is in compliance with all applicable Laws, writs, injunctions and orders and (c) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted.

(b) **Authorization; Enforcement, Validity.** (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and each of the other Transaction Documents to which it is a party, and to issue the Securities in accordance with the terms hereof and thereof, (ii) the execution and delivery of this Agreement and each of the other Transaction Documents to which it is a party by the Company and the consummation by it of the transactions contemplated hereby and thereby, including without limitation, the issuance of the Securities pursuant to this Agreement, have been duly authorized by the Required Board Approvals and no further consent or authorization is required by the Company, the Board of Directors or its stockholders, (iii) this Agreement and each of the other Transaction Documents has been duly executed and delivered by the Company and (iv) this Agreement constitutes, and each other Transaction Document upon its execution and delivery on behalf of the Company shall constitute, the valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except (A) as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar Laws relating to, or affecting generally, the enforcement of creditors' rights and remedies, (B) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (C) insofar as indemnification and contribution provisions may be limited by applicable Law.

(c) **Capitalization.** As of the Closing Date, the authorized Capital Stock of the Company is set forth in the Company's most recent SEC Report. The Company's disclosure of its issued and outstanding Capital Stock in its most recent SEC Report containing such disclosure was accurate in all material respects as of the date indicated in such SEC Report. All of the issued and outstanding shares of Capital Stock of the Company have been duly authorized and validly issued, are fully paid and are non-assessable. None of the issued and outstanding shares of the Company were issued in violation of any preemptive rights. As of the Closing Date, and except as disclosed in the SEC Reports or as provided in any of the Transaction Documents: (i) no shares of the Company's Capital Stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company, (ii) there are no outstanding debt securities, (iii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of Capital Stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of Capital Stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of Capital Stock of the Company or any of its Subsidiaries, (iv) there are no agreements or arrangements under which the

Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act, (v) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries, (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities as described in this Agreement and (vii) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The Company has furnished to the Purchaser true and correct copies of the Certificate of Incorporation and the Bylaws, and summaries of the terms of all securities convertible into or exercisable for Common Stock which are not otherwise disclosed in the SEC Reports, if any, and copies of any documents containing the material rights of the holders thereof in respect thereto that are not otherwise filed with the SEC Reports.

(d) **Issuance, Sale and Delivery of the Preferred Stock and Warrant Shares.** The Preferred Stock is duly authorized and, when issued, delivered and paid for in accordance with the applicable Transaction Documents, will be validly issued, fully paid and nonassessable and free and clear of all liens, encumbrances and rights of refusal of any kind. Except as disclosed in the SEC Reports and for the rights described in the Transaction Documents, no stockholder of the Company has any right to require the Company to register the sale of any Capital Stock owned by such stockholder under the Registration Statement. The Warrant Shares will be duly and validly authorized and reserved for issuance and, upon exercise of the Warrant in accordance with its terms, including the payment of any exercise price therefor, will be validly issued, fully paid and nonassessable and will be free and clear of all liens, encumbrances and rights of refusal of any kind, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities Laws. Assuming the accuracy of the representations and warranties of the Purchaser in Section 3.2 hereof, the Warrant Shares will be issued in compliance with all applicable federal and state securities Laws.

(e) **No Conflicts.** The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the Certificate of Incorporation or the Bylaws, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument that is material to the Company and its Subsidiaries, taken as a whole, and to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any Law (including federal and state securities Laws and the rules and regulations of the Principal Trading Market applicable to the Company or any of its Subsidiaries) or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except in the case of clause (ii) and (iii), which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the Securities Act or applicable state securities Laws and the rules and regulations of the Principal Trading Market, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents in accordance with the terms hereof or thereof.

(f) **SEC Reports: Financial Statements.** The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve (12) months preceding the Closing Date (or such shorter period as the Company was required by Law to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder. None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements included in the SEC Reports have been prepared in accordance with the requirements of Regulation S-X under the Securities Act and United States generally accepted accounting principles applied on a consistent basis during the periods involved ("**GAAP**"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(g) **Absence of Certain Changes.** Since the date of the last audited financial statements included within the SEC Reports, except as set forth in the SEC Reports, there has been no material adverse change

in the business, properties, operations, financial condition or results of operations of the Company or its Subsidiaries.

(h) **Absence of Litigation.** Except as disclosed in the SEC Reports, there is no action, suit, proceeding, or investigation before or by any court, public board, government agency, regulatory (or self-regulatory) organization or body pending or, to the Company's Knowledge, threatened against or affecting the Company, the Preferred Stock, the Warrants, the Common Stock or any of the Company's or its Subsidiaries' officers or directors in their capacities as such, which would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(i) **Acknowledgment Regarding Purchaser's Status.** The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby and any advice given by the Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Purchaser's purchase of the Preferred Stock and Warrants. The Company further represents to the Purchaser that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives and advisors.

(j) **No Aggregated Offering.** Neither the Company, nor, to the Company's Knowledge, any of its Affiliates, nor any Person acting on their behalf has, directly or indirectly, at any time within the past six (6) months, made any offers or sales of any security or solicited offers to buy any security, under circumstances that would (i) adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby or would require registration of the Preferred Stock, the Warrants or the Warrant Shares under the Securities Act or (ii) cause this offering of the Preferred Stock, Warrants and Warrant Shares to be aggregated with prior offerings by the Company in a manner that would require stockholder approval pursuant to the rules of the Principal Trading Market on which any of the securities of the Company are listed or designated. The issuance and sale of the Preferred Stock and Warrants hereunder does not contravene the rules and regulations of the Principal Trading Market. Assuming the accuracy of the representations and warranties of the Purchaser set forth in Section 3.2, the offer and sale of the Preferred Stock and Warrants to the Purchaser as contemplated hereby is exempt from the registration requirements of the Securities Act.

(k) **Intellectual Property Rights.** The Company and its Subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, the "**Intellectual Property Rights**") reasonably necessary for the conduct of the Company's business as now conducted, except where the failure to own or possess such rights would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received any notice of infringement or of conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

(l) **Environmental Laws.** The Company and each of its Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local Laws relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(m) **Title.** The Company and its Subsidiaries do not own any real property. The Company and its Subsidiaries have good title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries. Any property held under lease by the Company and its Subsidiaries which is material to the business of the Company and its Subsidiaries is held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries.

(n) **Insurance.** The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged and in same or similar locations.

(o) **Tax Status.**

(i) The Company and each of its Subsidiaries have filed all federal, state, local and foreign Tax Returns required to be filed through the Closing Date or have requested extensions thereof (except where the failure to file would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect) and have paid all Taxes required to be paid thereon (except for cases in which the failure to file or pay would not reasonably be expected to, singly or in the aggregate, have a Material Adverse Effect, or, except as currently being contested by appropriate Proceedings in good faith and for which reserves required by GAAP have been created in the financial statements of the Company), and no Tax deficiency or assessment that has been determined adversely to the Company or any of its Subsidiaries which, individually or in the aggregate, has had (nor does the Company nor any of its Subsidiaries have any notice or knowledge of any Tax deficiency or assessment which would reasonably be expected to be determined adversely to the Company or its Subsidiaries and which would reasonably be expected to have) a Material Adverse Effect.

(ii) The Company is not (nor has ever been) (a) a “United States real property holding corporation” within the meaning of Code Section 897(c) or (b) a “qualified investment entity” within the meaning of Code Section 860(b).

(p) **Transactions With Affiliates.** Except as set forth in the SEC Reports, none of the officers or directors of the Company, the Company’s stockholders, or any immediate family member of any of the foregoing, has either directly or indirectly any interest in, or is a party to, any transaction that would be required to be disclosed as a related party transaction pursuant to Rule 404 of Regulation S-K promulgated under the Securities Act.

(q) **Application of Takeover Protections.** The Company and the Board of Directors have taken or will take prior to the Closing Date all necessary action, if any, in order to render inapplicable any control share acquisition, business combination (as defined in the DGCL), poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation or the Laws of the state of its incorporation, which is or could become applicable to the Purchaser as a result of the transactions contemplated by this Agreement, including, without limitation, the Company’s issuance of the Preferred Stock and Warrants and the Purchaser’s ownership of the Preferred Stock and Warrants.

(r) **Foreign Corrupt Practices: Anti-Bribery.** Neither the Company, nor to the Company’s Knowledge, any agent or other Person acting on behalf of the Company, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any Person acting on its behalf of which the Company is aware) which is in violation of Law, (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or Anti-Corruption Laws; or (v) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(s) **DTC Eligibility.** The Company, through the Transfer Agent, currently participates in the DTC Fast Automated Securities Transfer (FAST) Program and the Common Stock can be transferred electronically to third parties via the DTC Fast Automated Securities Transfer (FAST) Program.

(t) **Sarbanes-Oxley.** Except as disclosed in the SEC Reports, the Company is in compliance in all material respects with all provisions of the Sarbanes-Oxley Act of 2002, as amended, which are applicable to it as of the Closing Date.

(u) **Certain Fees.** No brokerage or finder’s fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents.

(v) **Investment Company.** Neither the Company nor any Subsidiary is, and, following the consummation of the transaction contemplated by this Agreement, will not be, an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for an investment company, within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder.

(w) **Listing and Maintenance Requirements.** The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to the Company’s Knowledge is likely to have the effect of, terminating the registration of the Common Stock pursuant to the Exchange Act nor has the Company received any notification that the Commission is currently contemplating terminating such registration. Except as disclosed in the SEC Reports, the Company has not, in the twelve months preceding the Closing Date, received any notice from any Person to the effect that the Company is not in compliance with the listing or maintenance requirements of the Principal Trading Market. Except as disclosed in the SEC Reports, the Company is in compliance with all such listing and maintenance requirements.

(x) **Accountants.** The Company’s accountants are set forth in the SEC Reports and, to the Company’s Knowledge, such accountants are an independent registered public accounting firm as required by the Securities Act.

(y) **No Market Manipulation.** The Company has not, and to the Company’s Knowledge, no Person acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Preferred Stock, Warrants or the Warrant Shares, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Preferred Stock or Warrants, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company in violation of Regulation M promulgated under the Exchange Act.

(z) **Shell Company Status.** The Company is not currently an issuer identified in Rule 144(i)(1) under the Securities Act.

(aa) **No Directed Selling Efforts or General Solicitation.** Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising in connection with the offer or sale of any of the Preferred Stock or Warrants.

(ab) **Private Placement.** Assuming the accuracy of the Purchaser’s representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Preferred Stock and Warrants by the Company to the Purchaser as contemplated hereby.

(ac) **Accounting Controls and Disclosure Controls and Procedures.** Except as disclosed in the SEC Reports, the Company and each of its Subsidiaries taken as a whole maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Since the end of the Company’s most recent audited fiscal year, except as disclosed in the SEC Reports, there has been (A) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (B) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(ad) **Registration Rights.** Other than as disclosed in the SEC Reports and pursuant to Section 4.6, no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(ae) **Money Laundering.** The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable money laundering statutes in all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the “**Money Laundering Laws**”), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the

Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened in writing.

(af) **ERISA.** No ERISA Event has occurred in the five (5) year period prior to the Closing Date or is reasonably expected to occur that, when taken together with all other such ERISA Events for which material liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans, in each case, in an amount that would reasonably be expected to have a Material Adverse Effect.

(ag) **Employment Matters.** The hours worked by and payments made to employees of the Company and its Subsidiaries have been in compliance with applicable Law in all material respects. There are no labor strikes, lockouts or material slowdowns against the Company or any Subsidiary pending or to the Company's Knowledge threatened.

1.2 **Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) **Organization; Authority.** The Purchaser is an entity duly incorporated or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents to which the Purchaser is or will be a party and performance by the Purchaser of the transactions contemplated hereby and thereby has been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of the Purchaser. Each Transaction Document to which the Purchaser is or will be a party has been or will be duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law.

(b) **No Conflicts.** The execution, delivery and performance by the Purchaser of this Agreement, the other Transaction Documents to which it is a party, and the consummation by the Purchaser of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Purchaser, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Purchaser is a party, or (iii) assuming the accuracy of the representations and warranties of the Company in Article III, result in a violation by the Purchaser of any Law (including federal and state securities Laws) applicable to the Purchaser, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations under the Transaction Documents to which it is a party.

(c) **Understandings or Arrangements.** The Purchaser is acquiring the Securities, and upon exercise of the Warrants, will acquire the Warrant Shares issuable upon exercise of the Warrants, as principal for its own account, for investment purposes only, and has no direct or indirect arrangement or understandings with any other Persons to distribute or regarding the distribution of such Securities (this representation and warranty not limiting the Purchaser's right to sell the Securities in compliance with applicable federal and state securities Laws). The Purchaser is acquiring the Securities hereunder in the ordinary course of its business. The Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities Law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities Law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities Law and has no direct or indirect arrangement or understandings with any other

Persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities Law (this representation and warranty not limiting the Purchaser's right to sell the Securities pursuant to the Registration Statement(s) or otherwise in compliance with applicable federal and state securities Laws).

(d) **Purchaser Status.** At the time the Purchaser was offered the Securities, it was, and as of the Closing Date it is, and on each date on which it exercises any Warrants, it will be either: (i) an "accredited investor" as defined in Rule 501 under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(e) **Experience of the Purchaser.** The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of its decision to purchase Securities pursuant to the Transaction Documents. The Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, Tax or investment advice. The Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(f) **General Solicitation.** The Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of the Purchaser, any other general solicitation or general advertisement. The Purchaser also represents that the Purchaser was contacted regarding the sale of the Securities by the Company (or an authorized agent or representative of the Company) with which the Purchaser had a substantial pre-existing relationship.

(g) **Access to Information.** The Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company, its Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(h) **No Governmental Review.** The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect the Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

Article IV OTHER AGREEMENTS OF THE PARTIES

1.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities Laws. In connection with any transfer of Securities, other than pursuant to an effective registration statement or Rule 144, or to the Company or to an Affiliate of the Purchaser, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of the Purchaser under this Agreement.

(b) The Purchaser agrees to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES FOR WHICH THIS SECURITY IS [EXERCISABLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR UNDER APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

(c) The Warrant Shares shall not be required to contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement (including the Registration Statement(s)) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Warrant Shares pursuant to the requirements of Rule 144, (iii) if such Warrant Shares are eligible for sale under Rule 144 without volume or manner-of-sale restrictions and without the Company being in compliance with the current public information requirements of Rule 144 or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the applicable Warrant Shares, or if such Warrant Shares may be sold under Rule 144 without volume or manner-of-sale restrictions and without the Company being in compliance with the current public information requirements of Rule 144, or if the Purchaser has concurrently confirmed a sale of such Warrant Shares pursuant to the requirements of Rule 144, or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission), then such Warrant Shares shall be issued free of all legends. The Company agrees that following such time as such legend is no longer required under this Section 4.1(c), it will, no later than the number of Trading Days comprising the Standard Settlement Period (as defined below) following written request by the Purchaser to the Company or the Transfer Agent, together with such other letters of representation as the Company may reasonably request, deliver or cause to be delivered to the Purchaser confirmation that such shares are free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4.1. As used herein, “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the Company’s Principal Trading Market with respect to the Common Stock as in effect on the date the Purchaser delivers a written request to the Company or the Transfer Agent to remove the restrictive legends.

(d) The Purchaser agrees with the Company that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from Securities as set forth in this Section 4.1 is predicated upon the Company’s reliance upon this understanding.

(e) As long as the Purchaser owns any Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the Closing Date pursuant to Sections 13(a) or 15(d) of the Exchange Act. The Company further covenants that it shall take such further action as the Purchaser may reasonably request, all to the extent required from time to time to enable the Purchaser to sell the Securities without registration under the Securities Act, including within the limitation of the exemptions provided by Rule 144, including providing any legal opinions. Upon the request of the Purchaser, the Company shall deliver to the Purchaser a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

1.2 **Integration.** The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and

regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

1.3 **Securities Laws Disclosure; Publicity.** The Company and the Purchaser shall consult with each other in issuing any press releases or making any other public statement with respect to the transactions contemplated hereby, and neither the Company nor the Purchaser shall issue any press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release or public statement of the Purchaser, or without the prior consent of the Purchaser, with respect to any press release or public statement of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by Law, in which case the disclosing party shall provide the other party with written notice at least 2 Business Days in advance of making such public statement or communication.

1.4 **Indemnification of Purchaser.** Subject to the provisions of this Section 4.4 and in addition to the indemnity provided to the Purchaser in Section 4.6(i), the Company will indemnify and hold the Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls the Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling Persons (each, a "**Purchaser Party**") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents; provided that such claim for indemnification relating to a breach of the representations or warranties is made prior to the expiration of the survival periods for such representations or warranties set forth in Section 5.11, or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of the Purchaser Party (a "**Stockholder Claimant**"), with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon (i) a material breach of the Purchaser Party's representations, warranties or covenants under the Transaction Documents, (ii) any agreements or understandings the Purchaser Party may have with any Stockholder Claimant, (iii) any violations by the Purchaser Party of state or federal securities Laws or (iv) any conduct by the Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ (at the Company's cost) separate counsel in any such action and participate in the defense thereof; provided, however, that the Company shall only be responsible for the reasonable fees and expenses of one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by such Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to such Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.4 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred; provided that, if the Purchaser Party is determined by final judgment of a court of competent jurisdiction to be not entitled to indemnification, the Purchaser Party shall promptly reimburse the Company for the funds that were advanced. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to Law.

1.5 **Reservation and Listing of Securities**

(a) The Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents, including without limitation the exercise of the Warrants.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Certificate of Incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 75th day after such date, provided that the Company will not be required at any time to

authorize a number of shares of Common Stock greater than the maximum remaining number of shares of Common Stock that could possibly be issued after such time pursuant to the Transaction Documents.

(c) The Company shall, if applicable: (i) in the time and manner required by the Principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchaser evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation (the “**Depository**”), including, without limitation, by timely payment of fees to the Depository in connection with such electronic transfer.

(d) So long as the Purchaser holds any securities of the Company contemplated by this Agreement, the Company shall make all filings with the Commission required under the Exchange Act in the time and manner required by the Commission.

1.6 **Registration Rights.**

(a) The Company shall file, within eighteen (18) months of the Closing Date, a registration statement for a shelf registration on Form S-3 (the “**Form S-3 Shelf**”), or if Company is ineligible to use a Form S-3 Shelf, a registration statement for a shelf registration on Form S-1 (the “**Form S-1 Shelf**,” and together with the Form S-3 Shelf (and any Subsequent Shelf Registration Statement (as defined below)), each, a “**Shelf**” or “**Registration Statement**”), in each case, covering the resale of any shares of Common Stock issued or issuable upon the exercise of the Warrants (determined as of two (2) Business Days prior to such filing) on a delayed or continuous basis. The Shelf shall provide for the resale of any shares of Common Stock issued or issuable upon the exercise of the Warrants pursuant to any method or combination of methods legally available to, and requested by, any Warrantholder.

(b) The Company shall use its reasonable best efforts to cause the Shelf to become effective as soon as practicable after such filing, but no later than the earlier of (A) March 4, 2026 and (B) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review, or (C) if the day determined under clause (A) or clause (B) falls on a Saturday, Sunday or other day that the Commission is closed for business, the next Business Day immediately following the day determined under clause (A) or clause (B) on which the Commission is open for business. The Company shall maintain a Shelf in accordance with the terms of this Agreement, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep such Shelf continuously effective, available for use and in compliance with the provisions of the Securities Act until such time as all Warrant Shares have been sold, transferred or otherwise disposed of pursuant to a Registration Statement, Rule 144 or another available exemption under the Securities Act.

(c) In the event the Company files a Form S-1 Shelf, the Company shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration Statement) to a Form S-3 Shelf as soon as practicable after the Company is eligible to use Form S-3.

(d) If any Shelf ceases to be effective under the Securities Act for any reason at any time while there are any Warrants outstanding, the Company shall use its reasonable best efforts to, as promptly as is reasonably practicable, cause such Shelf to again become effective under the Securities Act (including using its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its reasonable best efforts to, as promptly as is reasonably practicable, amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf (a “**Subsequent Shelf Registration Statement**”) registering the resale of shares of Common Stock issued or issuable upon the exercise of the Warrants from time to time, and pursuant to any method or combination of methods legally available to, and requested by, any Warrantholder whose shares of Common Stock issued or issuable upon the exercise of the Warrants are included therein. Any such Subsequent Shelf Registration Statement shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form.

(e) If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to (i) cause such Subsequent Shelf Registration Statement to become effective under the

Securities Act as promptly as is reasonably practicable after the filing thereof and (ii) keep such Subsequent Shelf Registration Statement continuously effective, available for use to permit all Warrantholders whose shares of Common Stock issued or issuable upon the exercise of the Warrants are included therein to sell their shares of Common Stock issued or issuable upon the exercise of the Warrants included therein and in compliance with the provisions of the Securities Act until such time as all Warrant Shares have been sold, transferred or otherwise disposed of pursuant to a Registration Statement, Rule 144 or another available exemption under the Securities Act.

(f) The Company shall provide to the Transfer Agent and each Warrantholder prompt written notice of any time that (i) the Commission has issued a stop order with respect to the Registration Statement, (ii) the Commission otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or (iii) the Company has suspended or withdrawn the effectiveness of the Registration Statement in accordance with this Section 4.6, either temporarily or permanently.

(g) In connection with any registration pursuant to this Section 4.6, the Company shall reimburse the Warrantholders for the reasonable documented fees and disbursements of one counsel chosen by the holders of a majority of the Warrants Shares included in such registration.

(h) If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Warrantholders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event more than twice or an aggregate of ninety (90) days in any twelve (12)-month period, determined in good faith by the Company to be necessary for such purpose. In the event the Company exercises its rights under the preceding sentence, the Warrantholders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the prospectus relating to such registration in connection with any sale or offer to sell of securities pursuant to such Registration Statement or prospectus. The Company shall immediately notify the Warrantholders of the expiration of any period during which it exercised its rights under this Section 4.6.

(i) The Company agrees to indemnify and hold harmless each Purchaser Party against all losses, claims, damages, losses, liabilities and reasonable expenses (including attorneys' fees) (or actions in respect thereto) caused by, resulting from, arising out of or based upon (A) any untrue or alleged untrue statement of material fact contained in any Registration Statement, prospectus or preliminary prospectus or similar document incident to any registration, qualification, compliance or sale effected pursuant to this Section 4.6 or any amendment thereof or supplement thereto, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, or (B) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities Laws, and will reimburse, as incurred, each such Purchaser Party for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action. Notwithstanding the foregoing, the Company will not be liable in any such case to the extent that any such claim, damage, loss, liability or expense are caused by or arises out of or is based on any untrue statement or omission made in reliance and in conformity with written information furnished to the Company by or on behalf of the Purchaser expressly for use therein.

1.7 **Covenants.** For so long as the Securities remain outstanding, the Company shall:

(a) **Financial Statements.** Furnish to the Purchaser, as soon as available, but in any event not later than forty five (45) days after the end of each calendar quarter, the unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year. Notwithstanding the foregoing, the Company shall be deemed to have satisfied its obligations pursuant to this Section 4.7(a) upon timely filing SEC Reports that include financial statements required by this Section 4.7(a).

(b) **Notices.** Promptly, and in any event within five (5) Business Days, give notice to the Purchaser of:

- (i) any event of default or material breach under, or any material modification of or amendment to, any Material Agreement;
- (ii) any litigation, investigation, or proceeding that may exist at any time between the Company or any of its Subsidiaries and any Governmental Authority or other Person;
- (iii) any Mandatory Redemption Event;

- (iv) any of Event of Noncompliance; or
- (v) any development or event that has had or would reasonably be expected to have a Material Adverse Effect.

(c) **Maintenance of Existence and Property.** (a) Preserve, renew, and maintain in full force and effect the Company's and its Subsidiaries' respective corporate or organizational existence and (b) take all reasonable action to maintain all rights, privileges, and franchises necessary or desirable in the normal conduct of the Company's and its Subsidiaries' respective business, and (c) preserve all of the Company's and its Subsidiaries' respective property useful and necessary in their respective business in good working order and condition (ordinary wear and tear and casualty events excepted), except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(d) **Compliance.** (a) Comply in all material respects with all Laws applicable to the Company and its Subsidiaries and their respective business and its obligations under its Material Agreements and (b) maintain in effect and enforce policies and procedures designed to achieve compliance in all material respects by the Company and its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws and applicable Sanctions.

(e) **Payment Obligations.** Pay, discharge, or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Company's and its Subsidiaries' Tax and other material obligations of whatever nature, except (i) where the amount or validity thereof is currently being contested diligently and in good faith by appropriate proceedings, and reserves in conformity with GAAP with respect thereto have been provided, as of the Closing Date, to the extent outstanding as of the date of the applicable financial statement, on such financial statement, and will be provided, following the Closing Date, on the financial statements delivered pursuant to [Section 4.7\(a\)](#), or (ii) solely with respect to obligations that do not relate to Taxes, where the amount thereof is not material.

(f) **Material Agreements.** (a) Perform and observe, and cause its Subsidiaries to perform and observe, all the terms and provisions of each Material Agreement to be performed or observed by the Company and its Subsidiaries, (b) maintain each such Material Agreement in full force and effect and (c) enforce each such Material Agreement in accordance with its terms, except where the failure to do so would not have more than a de minimus impact on the business of the Company or its Subsidiaries.

(g) **Maintenance of Insurance.** Maintain insurance with respect to the Company and its Subsidiaries' property and business as required pursuant to the Senior Secured Note as of the Closing Date.

(h) **Books and Records; Inspections.**

(i) Keep proper books of records and accounts in which full, true, and correct entries in conformity with GAAP and all requirements of Law shall be made of all dealings and transactions and assets in relation to the Company's and its Subsidiaries' respective business and activities.

(ii) Permit the Purchaser to visit and inspect any of the Company's and its Subsidiaries' properties and examine and make abstracts from any of their respective books and records at any reasonable time and as often as may reasonably be desired, and to discuss their respective business operations, properties, and financial and other condition with their respective officers and employees and their respective independent public accountants, at any reasonable time and as often as may reasonably be desired.

(i) **Declaration of Dividends.** Not declare any dividends with respect to the Preferred Stock unless paid to the Purchaser immediately in cash. Notwithstanding the foregoing, the Company's compliance with Section 4 of the Certificate of Designation shall not constitute a breach of this [Section 4.7\(i\)](#).

(j) **General Tax Cooperation.** Use commercially reasonable efforts to provide the Purchaser with any Tax information reasonably requested by it (including applicable calculations of the Company's earnings and profits). The Company shall promptly furnish to the Purchaser any information that the Purchaser may require or reasonably request in order to withhold Tax or to file Tax Returns and reports or to furnish Tax information to any of its investors. The Company shall reasonably cooperate with the Purchaser by providing any additional Tax information and/or assisting in the filing of additional Tax forms, as reasonably requested by the Purchaser (including by providing the Purchaser with a properly executed statement that the Company is not a "United States real property holding corporation" within the meaning of Code Section 897(c) pursuant to the rules

provided in U.S. Department of Treasury Regulations Section 1.897-2). If the Company intends to deduct or withhold any amount from any payment to the Purchaser pursuant to any applicable Law, the Company shall provide notice to the Purchaser of such intention at least ten (10) days prior to the day such payment is to be made, and the parties shall cooperate in good faith to minimize to the extent permissible under applicable Law the amount of any such deduction or withholding on payments, including by providing any certificates or forms that are reasonably requested to establish an exemption from (or reduction in) any deduction or withholding.

1.8 **Fiduciary Duties.** The Purchaser and the Company hereby agree, notwithstanding anything to the contrary in any other agreement or at law or in equity, that, to the maximum extent permitted by Law, when the Purchaser or any of its Affiliates takes any action under this Agreement or any of the other Transaction Documents on behalf of the Purchaser in its capacity as owner of the Securities and party to this Agreement and the other Transaction Documents, such Persons shall have no duty (fiduciary or other) to consider the interests of the Company or the other stockholders of the Company and may act exclusively in the Purchaser's own interest as owner of the Securities and party to this Agreement and the other Transaction Documents; provided, however, that the foregoing shall in no way affect the obligations of the parties hereto to comply with the provisions of this Agreement and the other Transaction Documents.

Article V **MISCELLANEOUS**

1.1 **Fees and Expenses.** The Company shall pay all reasonable and documented fees and expenses incurred by the Company and the Purchaser in connection with the Transaction Documents (including any Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any exercise notice delivered by the Purchaser, if applicable)), and all state and local transfer, sales, use, stamp, registration or other similar Taxes (but not any Tax based upon income, profits, gross receipts, net proceeds, alternative or add on minimum Taxes) levied in connection with the transactions contemplated by this Agreement or any of the Transaction Documents (including, for the avoidance of doubt, any Tax imposed pursuant to Section 4501(a) of the Code as a result of any action taken pursuant to any of the Transaction Documents) and delivery of any Securities to the Purchaser, the legal fees and expenses of the Purchaser's counsel, Vinson & Elkins L.L.P., in connection with the negotiation, execution and delivery of the Transaction Documents and the Company's preparation and filing with the Commission of the Registration Statement (including any amendments thereto) covering the resale of the Warrant Shares, and the fees and expenses of the Purchaser's securities agent, Kroll Agency Services Limited, in connection with its role as securities agent for the Purchaser's Securities.

1.2 **Tax Treatment of Securities.** The Company and the Purchaser agree that it is their intention for U.S. federal and applicable state and local income and withholding tax purposes that (i) the Preferred Stock is treated as equity (and not debt) of the Company and (ii) the Warrants are treated as conveying the tax ownership of the Warrant Shares underlying the Warrants. The Company and the Purchaser shall report and file all Tax Returns consistent with the foregoing and shall take no Tax position contrary thereto or inconsistent therewith, unless required to do so by applicable Law or a final determination as defined in Section 1313 of the Code or with the consent of the other party (not to be unreasonably withheld, conditioned or delayed). In the event that such treatment is disputed by any Governmental Authority, the party receiving notice of the dispute shall promptly notify the other party concerning resolution of the dispute.

1.3 **Investment Unit.** The Company and the Purchaser agree that it is their intention for U.S. federal and applicable state and local tax purposes that the consideration paid by the Purchaser for the Securities under this Agreement be allocated such that \$4,840,000 be allocated to the Warrants, and \$20,160,000 be allocated to the Preferred Stock. The Company and the Purchaser shall report and file all Tax Returns consistent with the foregoing and shall take no Tax position contrary thereto or inconsistent therewith, unless required to do so by applicable Law or a final determination as defined in Section 1313 of the Code or with the consent of the other party (not to be unreasonably withheld, conditioned or delayed). In the event that such treatment is disputed by any Governmental Authority, the party receiving notice of the dispute shall promptly notify the other party concerning resolution of the dispute.

1.4 **Entire Agreement.** The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

1.5 **Notices.** Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and given by hand or private courier service or via email attachment at the e-

mail address set forth on the signature pages attached, and shall be deemed given upon (a) the time of transmission, if such notice or communication is delivered via email or (b) the earlier of receipt thereof and three (3) Business Days following the date of mailing, if delivered by hand or private courier service. The address for such notices and communications shall be as set forth on the signature pages attached hereto or such other address as the Company or Purchaser, as the case may be, shall have designated by notice similarly given.

1.6 **Amendments; Waivers.** No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser and, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. Any amendment effected in accordance with this Section 5.6 shall be binding upon Purchaser and any subsequent holder of Securities and the Company.

1.7 **Headings.** The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

1.8 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser (other than by merger). The Purchaser may assign any or all of its rights under this Agreement to any Person to whom the Purchaser assigns or transfers any Securities, provided, that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchaser."

1.9 **No Third-Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.4 and Section 4.6(i).

1.10 **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal Laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the courts of the State of Delaware and the United States District Court for the District of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of the State of Delaware and the United States District Court for the District of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by Law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, in addition to the obligations of the Company under Section 4.4, then the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

1.11 **Survival.** Subject to the applicable statute of limitations, the representations and warranties set forth in Section 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e), 3.1(i), 3.1(u), 3.1(w) and 3.1(bb) shall survive the Closing and the delivery of the Securities indefinitely. All other representations and warranties set forth herein shall survive the Closing and the delivery of the Securities until the date that is twelve (12) months following the Closing Date. Notwithstanding the foregoing, any *bona fide* claims (a) asserted in good faith with reasonable specificity (to the extent known at such time) and in writing prior to the expiration date of the applicable survival period or (b) that the Purchaser failed to discover prior to the expiration date of the applicable survival period as a result of the fraud or willful misconduct of the Company or the Company's breach of its obligations hereunder, shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved. All of the covenants and other agreements of the parties set forth herein shall survive the Closing and the delivery of the Securities until fully performed or fulfilled.

1.12 **Execution.** This Agreement may be executed in counterparts, each of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by

each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

1.13 **Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

1.14 **Rescission and Withdrawal Right.** Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever the Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of an exercise of a Warrant, the Purchaser shall be required to return any shares of Common Stock subject to any such rescinded exercise notice concurrently with the return to the Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of the Purchaser's right to acquire such shares pursuant to the Purchaser's Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

1.15 **Replacement of Securities.** If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

1.16 **Remedies.** In addition to being entitled to exercise all rights provided herein or granted by Law, including recovery of damages, each of the Purchaser and the Company will be entitled to seek specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at Law would be adequate.

1.17 **Payment Set Aside.** To the extent that the Company makes a payment or payments to the Purchaser pursuant to any Transaction Document or the Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any Law, then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

1.18 **Saturdays, Sundays, Holidays, etc.** If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

1.19 **Construction.** The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

1.20 **WAIVER OF JURY TRIAL, IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH**

KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

FLYEXCLUSIVE, INC. Address for Notice:

flyExclusive, Inc.
2860 Jetport Road
Kinston, North Carolina
28504
Attention: Thomas James Segrave, Jr.
Email: [_____]

By: /s/ Thomas James Segrave, Jr.
Name: Thomas James Segrave, Jr.
Title: Chief Executive Officer and Chairman

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

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607
Attention: Larry E. Robbins
Email: [_____]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR THE PURCHASER FOLLOWS]

[Signature Page to the Securities Purchase Agreement]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

ENTRUST EMERALD (CAYMAN) LP
BY: ENTRUST GLOBAL PARTNERS LLC, AS GENERAL PARTNER

By: /s/ Matthew A. Lux.

Name of Authorized Signatory: Matthew A. Lux
Title of Authorized Signatory: Senior Managing Director & General Counsel
Email Address of Authorized Signatory: mlux@entrustglobal.com
Address for Notice to Purchaser: EnTrust Global
375 Park Avenue, 24th Floor
New York, New York 10152
Attention: Sophia Mullen, Peter Iannicelli and Matthew Lux
Email: [_____]

c/o Vinson & Elkins LLP
1114 Avenue of the Americas, 32nd Floor
New York, New York 10036
Attn: Stancell Haigwood and Sarah Morgan
Email: [_____]

[Signature Page to the Securities Purchase Agreement]

Exhibit A

CERTIFICATE OF DESIGNATION

[See attached.]

Exhibit B

FORM OF WARRANT

[See attached.]

Exhibit C

FORM OF OPINION

[See attached.]

flyExclusive Announces \$25 Million Equity Investment

Capital to fund flyExclusive's working capital, including aircraft acquisition plans

KINSTON, NC (March 5, 2024) – [flyExclusive](#), Inc. (NYSEAMERICAN: FLYX) (“flyExclusive” or the “Company”) a provider of premium private jet charter experiences, today announced that it has entered into a securities purchase agreement with an investment vehicle managed by EnTrust Global (“the Investor”) pursuant to which the Investor purchased 25,000 shares of Series A Non-Convertible Redeemable Preferred Stock, par value of \$0.0001 per share (the “Series A Preferred Stock”), at a purchase price of \$1,000 per share. The Company received approximately \$25 million in cash proceeds in connection with the transaction, which closed on March 4, 2024 (the “Issue Date” or “Effective Date”).

“We’re thrilled to expand our relationship with EnTrust Global, a partner that recognizes the significant opportunity flyExclusive has to become the nation’s first vertically integrated private aviation company,” said Jim Segrave, Founder and CEO of flyExclusive. “Expanding our fleet will allow us to further build out our fractional program and bring greater reliability and convenience to our customers.”

The Series A Preferred Stock accrues dividends beginning on the Issue Date and ending on the first-year anniversary of the Issue Date at 10.00% per annum, at 12.00% per annum for the second year, at 14.00% per annum for the third year and at 16.00% per annum for the fourth year and thereafter. The dividends will compound annually for the first two years. On the third annual dividend payment date, the Company must pay at least 43% of the dividends in cash, and on each subsequent annual dividend payment date the Company must pay 100% of the dividends in cash. After the first-year anniversary of the Issue Date, flyExclusive may elect to redeem all or a portion of the outstanding shares of Series A Preferred Stock, or any portion thereof, for cash at a redemption price per share as detailed in the Series A Certificate of Designation. After the fifth-year anniversary of the Issue Date, each holder of the Series A Preferred Stock may elect to require the Company to redeem all or a portion of its outstanding shares of Series A Preferred Stock for cash at a redemption price per share as detailed in the Series A Certificate of Designation. The Series A Preferred Stock is generally not entitled to any vote but holds certain consent rights as described in the Series A Certificate of Designation. If voting is required by applicable law or otherwise, each holder of Series A Preferred Stock will be entitled to one vote per share.

On the Effective Date, flyExclusive also issued the Investor a warrant, granting the Investor the right to purchase shares of the Company’s Class A common stock (“Common Stock”) in an aggregate amount equal to 1.5% of the Company’s outstanding Common Stock on a fully diluted basis (the “Share Count Cap”), calculated in accordance with the terms of the Warrant, at an exercise price of \$0.01 per share (the “Warrant”). The Warrant is not exercisable until the second anniversary of its issuance, at which time only one half of the Share Count Cap may be purchased. Beginning on the third anniversary of the issuance, 100% of the Share Count Cap may be purchased. The Warrant expires on the fifth anniversary of the Effective Date and may not be exercised for a number of shares of Common Stock having an aggregate value in excess of \$11,250,000, calculated in accordance with the terms of the Warrant.

About flyExclusive

flyExclusive is a vertically integrated, FAA-regulated operator of private jet experiences offering customers on-demand charter, Jet Club, and fractional ownership services to destinations across the globe. flyExclusive has one of the world’s largest fleets of Cessna Citation aircraft, and it operates a combined total of approximately 100 jets, ranging from light to large cabin sizes. The company manages all aspects of the customer experience, ensuring that every flight is on a modern, comfortable, and safe aircraft. flyExclusive’s in-house repair station, including paint, interiors, and avionics capabilities, are provided from its campus headquarters in Kinston, North Carolina. To learn more, visit www.flyexclusive.com.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains certain forward-looking statements within the meaning of the federal securities laws. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “intend,” “strategy,” “future,” “opportunity,” “plan,” “may,” “should,” “will,” “would,” “will be,” “will continue,” “will likely result,” and similar expressions. Forward-looking statements are predictions, projections, and other statements about future events that are based on current expectations and assumptions and, as a result, are subject to risks and uncertainties. Many factors could cause actual future events to differ materially from the forward-looking statements in this document, including but not limited to: the potential dilution of stock ownership by our capital raising efforts; the ability of the Company to repay its debt; management of growth; the outcome of any legal proceedings; the ability to maintain the listing of the Company’s securities on a national securities exchange; volatility of the price of the Company’s securities due to a variety of factors, including changes in the competitive and highly regulated industries in which flyExclusive operates, variations in operating performance across competitors, changes in laws and regulations affecting flyExclusive’s business; the ability to implement business plans, forecasts, and other expectations, and identify and realize additional opportunities; and the risk of downturns and a changing regulatory landscape in the highly competitive aviation industry. The foregoing list of factors is not exhaustive. You should carefully consider the foregoing factors and the other risks and uncertainties described in the “Risk Factors” section of flyExclusive’s registration statement on Form S-1 and other documents filed by the Company from time to time with the SEC. These filings identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise. The Company does not give any assurance that it will achieve its expectations.

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investors@flyexclusive.com