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

FORM 10-K

☐ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2019

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 001-37540

HOSTESS BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**47-4168492**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
7905 Quivira Road, Lenexa, KS	**66215**
(Address of principal executive offices)	(zip code)

(816) 701-4600
Registrant's telephone number, including area code

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

Title of Each Class	**Ticker Symbol**	**Name of Each Exchange on Which Registered**
Class A Common Stock, par value of $0.0001 per share	TWNK	The Nasdaq Stock Market LLC
56,499,790 Warrants, each exercisable for half share of Class A Common Stock	TWNKW	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: **None.**

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☐	Non-accelerated filer	☐	Smaller reporting company	☐	Emerging growth company	☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant on June 30, 2019, computed by reference to the closing price reported on the NASDAQ Capital Market on such date was $1,568,915,646 (108,650,668 shares at a closing price per share of $14.44).

Shares of Class A common stock outstanding - 123,186,308 shares at February 21, 2020

Shares of Class B common stock outstanding - 7,440,587 shares at February 21, 2020

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement relating to its 2020 annual meeting of stockholders (the "2020 Proxy Statement") are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. The 2020 Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

HOSTESS BRANDS, INC.
FORM 10-K
FOR THE YEAR ENDED December 31, 2019

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Cautionary Note Regarding Forward Looking Statements

This Annual Report on Form 10-K ("Annual Report") contains statements reflecting our views about our future performance that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that involve substantial risks and uncertainties. All statements contained in this Annual Report other than statements of historical fact, including statements regarding our future results of operations and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. Statements that constitute forward-looking statements are generally identified through the inclusion of words such as "believes," "expects," "intends," "estimates," "projects," "anticipates," "will," "plan," "may," "should," or similar language. Statements addressing our future operating performance and statements addressing events and developments that we expect or anticipate will occur are also considered as forward-looking statements. All forward-looking statements included herein are made only as of the date hereof. It is routine for our internal projections and expectations to change throughout the year, and any forward-looking statements based upon these projections or expectations may change prior to the end of the next quarter or year. Readers of this Annual Report are cautioned not to place undue reliance on any such forward-looking statements. As a result of a number of known and unknown risks and uncertainties, our actual results or performance may be materially different from those expressed or implied by these forward-looking statements. Risks and uncertainties are identified and discussed in Item 1A-Risk Factors in this Annual Report. All subsequent written or oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these risk factors. We undertake no obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise. The discussion and analysis of our financial condition and results of operations included in Item 7- Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with our consolidated financial statements and related notes included in Item 8 of this Annual Report.

Explanatory Note

Hostess Brands, Inc. (f/k/a Gores Holdings, Inc.) was originally incorporated in Delaware on June 1, 2015 as a special purpose acquisition company ("SPAC"), formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or other similar business combination with one or more target businesses. On August 19, 2015, Gores Holdings, Inc. consummated its initial public offering (the "IPO"), following which its shares began trading on the Nasdaq Capital Market ("NASDAQ").

On November 4, 2016 (the "Closing Date"), in a transaction referred to as the "Hostess Business Combination," Gores Holdings, Inc. acquired a controlling interest in Hostess Holdings, L.P. ("Hostess Holdings"), an entity owned indirectly by C. Dean Metropoulos (the "Metropoulos Entities") and certain equity funds managed by affiliates of Apollo Global Management, LLC (the "Apollo Funds" and, together with the Metropoulos Entities, the "Legacy Hostess Equityholders"). Hostess Holdings had acquired the Hostess® brand and certain strategic assets out of the bankruptcy liquidation proceedings of its prior owner ("Old Hostess"), free and clear of all past liabilities, in April 2013, and relaunched the Hostess® brand later that year.

In connection with the closing of the Hostess Business Combination, Gores Holdings, Inc. changed its name to Hostess Brands, Inc. and its trading symbols on NASDAQ from "GRSH" and "GRSHW," to "TWNK" and "TWNKW".

As a result of the Hostess Business Combination, for accounting purposes, Hostess Brands, Inc. ("we", "us", "our" or the "Company") is the acquirer and Hostess Holdings is the acquired party and accounting predecessor. Our financial statement presentation includes the financial statements of Hostess Holdings and its subsidiaries as "Predecessor" for periods prior to the completion of the Hostess Business Combination and of Hostess Brands, Inc., including the consolidation of Hostess Holdings and its subsidiaries, for periods from and after the Closing Date.

PART I

Item 1. Business

Hostess - Who We Are

We are a leading packaged food company focused on developing, manufacturing, selling and distributing baked goods in North America. The Company produces a variety of new and classic treats including Hostess® CupCakes, Twinkies®, Donettes®, Ding Dongs®, and Zingers® in addition to Danishes, Honey Buns and Coffee Cakes. In January 2020, the Company acquired Voortman Cookies, Limited (“Voortman”), which produces a variety of cookies and wafer products, including sugar-free products under the Voortman® brand. Our strategic vision is to be an iconic branded baking company that builds brands and categories to delight our consumers and customers. We seek to leverage our differentiated core competencies of strong brand equity, continuous innovation, efficient manufacturing and distribution model, collaborative customer partnerships, and significant cash flows to drive profitable and sustainable growth by engaging consumers with our sweet baked goods while seeking opportunities in adjacent bakery categories.

We operate in the growing snacking market where indulgent, sweet snacking continues to be a top driver. Our brands represented 18.8% of the Sweet Baked Goods (“SBG”) category according to Nielsen total universe for the 52-weeks ended December 28, 2019. We believe our strong brand history and market position in the SBG category combined with our entrepreneurial spirit and scalable operating model provide a strong platform to execute our strategic initiatives.

We have invested significantly in retailer and consumer data analysis to identify distribution and pricing opportunities and in automated baking and packaging lines to enhance production efficiency. These investments, combined with our Direct-to-Warehouse (“DTW”) distribution model, have maintained our leading, premium brand position within the $6.8 billion U.S. SBG category and have increased our distribution channels, paving a path towards future sustainable, profitable growth.

Our DTW distribution model uses centralized distribution centers and common carriers to fill orders, with products generally delivered to our customers’ warehouses. This model has eliminated the need for Direct-Store-Delivery (“DSD”) routes and drivers, which allows us to expand our core distribution while gaining access to new channels (e.g., further penetration into convenience, drug store, dollar, foodservice, and cash & carry).

Brands and Products

Hostess® has been an iconic American brand for generations. In 2019, we celebrated our 100 year anniversary of the launch of our first CupCake. Our extensive portfolio of timeless and universally recognized names such as Twinkies®, HoHos® and Ding Dongs® evoke an emotional affinity with consumers that has the potential to be further unlocked through effective marketing and consumer-insight based innovation. We produce Hostess®, Dolly Madison®, Cloverhill® and Big Texas® branded products. Each brand targets different key markets and consumer needs. Additionally, we added the Voortman® brand to our portfolio in January 2020.

Our Growth Strategy

We are executing our growth strategy by strengthening our core Hostess® brand and expanding into adjacent categories through innovation and strong partnerships with our customers, leveraging our highly efficient and profitable business model and executing strategic acquisitions to accelerate growth, while effectively managing our capital structure.

Optimize the core Hostess Brand and expand into adjacent categories

We believe that we have maintained the Hostess® brand power and category awareness for over a century by satisfying consumers' need for great-tasting sweet treats. We believe our portfolio of highly recognized products is synonymous with American snacking. We have established our leadership position in the SBG segment through the strength and quality of our products, developing and promoting a brand that unites our loyal consumer base and by pricing our products at a reasonable premium to other snacking alternatives.

We plan to capitalize on the strength of the Hostess® brand and our attractive retailer economics in order to drive growth by attracting new consumers and increasing the number of stores carrying our products. With the potential afforded by the extended reach of our DTW distribution model, our market share gains are expected to come from traditional channels ("core expansion") through our investment in quality, targeted marketing, product renovation and a focus on our most effective brands and SKUs.

Our brand strategy, combined with investments in highly effective marketing and brand-building, has resulted in what we believe to be one of the strongest brand equities in snacking. By expanding points of distribution and increasing SKU assortments, we plan to continue top line growth in the future. Our top three products (Donettes®, Twinkies® and CupCakes) have all commodity volume ("ACV") distribution rates in core channels that are significantly higher than the average rate achieved by other products in our portfolio (based on Nielsen 52-weeks ending December 28, 2019). These high levels are directly correlated to our focused approach on our strategic initiatives. By applying this tailored and focused approach to our other existing product lines, we will work with retailers to expand the average number of SKUs offered and attempt to reduce distribution gaps. The average number of our products selling at core retailers today is approximately 23 items.

Innovation is key to fueling our growth. We are devoted to maintaining our iconic brands while contemporizing them in order to stay relevant with our consumer base and attract new consumers. We believe that to support our premium position, we must continually evolve with changing consumer preferences and trends. We are focused on continuing to innovate and expand our core products by launching new flavors of iconic products to leverage the brand's power and drive incremental revenue and profit.The success of our product innovation is in part driven by understanding consumer preferences, providing awareness and trials by partnering with our customers, all while maintaining our iconic brands and product quality.

We are driving incremental growth in the Hostess® brand through extensions of our core products and limited time offerings. During 2019, we had great success with our Birthday CupCake. Originally created as a limited time offering to celebrate our 100 year anniversary, it was quickly added to our core product portfolio due to high consumer demand. The Birthday CupCake is now our #2 selling CupCake flavor. New products such as Triple Chocolate Brownies and Totally Nutty® expand the Hostess® brand into new consumer segments. Fun seasonable items such as Baseball CupCakes, Mint Chocolate Twinkies as well as other limited time offerings tied to cultural trends such as Unicorn CupCakes and Fruitfetti Donettes®, continue to engage our target consumers and provide a fresh perspective to the brand.

During 2019, the breakfast sub-category also provided a significant opportunity for us to expand our total share of the SBG category. This sub-category represents approximately 52% of the $6.8 billion SBG category according to Nielsen U.S. total universe for the 52-weeks ended December 28, 2019. According to a January 2019 study by Mintel, breakfast was one of the top consumer snacking opportunities. These consumption trends play to our strengths as our products conveniently come packaged in both single-serve and multipack varieties. The acquisition of the Cloverhill® Business in 2018 enabled us to leverage our existing platform and to expand our breakfast capabilities in this significant consumer segment. In 2019, we launched our new Hostess® Cinnamon Rolls, Danishes and Jumbo Donettes®. We also launched additional pack-types for our classic breakfast treats, such as the snack size Donettes®, which are addressing consumer needs for on the go products.

We continue to launch new partnerships and enter into licensing agreements to leverage our iconic brands. During 2019, we partnered with other consumer packaged goods companies to bring our iconic brands and flavor profiles to various products, including coffee and breakfast cereal. Our products are also distributed by third parties internationally, including products packed specifically for Mexico, the United Kingdom and Canada. Our products are also sold on various e-commerce platforms.

We understand the need to continually evolve while maintaining the traditional offerings our loyal consumer base has come to know and love. We continue to invest in new product development and building our long-term pipeline, leveraging our innovation pipeline and commercialization process to bring new products to market in a timely fashion.

Leverage highly efficient and profitable business model

When we relaunched the Company, we set out to disrupt the status quo business model of the SBG category. We established our innovative DTW distribution model and heavily invested in our bakeries, which has resulted in energy, labor and time savings, along with the ability to produce quality products. These investments also paved the way for new product innovation.

The DTW model uses centralized distribution centers and common carriers. During 2019, we entered into a lease for a new primary distribution center and successfully transitioned a significant portion of the shipments of our products to the new facility in Kansas. Our former primary distribution center was managed by a third party provider, while our new distribution center will be managed internally. This in-sourcing has improved visibility and control of this key component of our operating model. We continue to utilize other smaller distribution centers that are owned and operated by third parties for select products. The distribution centers are able to fill customer orders and reduce inventory on-hand as a result of this centralized consolidation of inventory. Products are delivered to customers' warehouses from the distribution centers using common carriers. A small number of our customers pick up their orders directly from our distribution centers.

The DTW model is enabled by our extended shelf life ("ESL") technology. As a result of our DTW model, we do not keep a significant backlog of finished goods inventory, as our bakery products are promptly shipped to our distribution centers after being produced. Some of our products are shipped frozen at the request of certain retailers.

We believe our DTW distribution model has created a substantial whitespace opportunity. We have greater access to convenience, drug and dollar stores. Distributing to these channels under a DSD model can be inefficient due to small average drop size. Historically, DSD snack cake companies have competed with candy and tobacco companies

for distribution; however, our DTW model has enabled us to partner with these third-party distributors who can profitably penetrate both the convenience store and drug store channels and who are looking for opportunities to gain share in the SBG category. In 2019, convenience and drug stores accounted for 31.5% of our net revenues. We have established a strong presence and market share in the convenience and drug channels and are focused on continuously expanding coverage. These partnerships further expand our distribution reach in a highly efficient manner, and we believe they will add to our growth potential going forward.

We have a tailored channel based go-to-market model that demonstrates key capabilities for growth. We continue to invest in data capabilities, which enables focus on store-level compliance and growth opportunities with our Hostess Partner Program ("HPP"). We also have a unique consortium retail merchandising approach where we partner with brokers to drive in-store performance at lower costs.

We believe that impulse purchase decisions are another fundamental driver of retail sales of our products, which makes prominent in-store placement an essential growth lever. The DTW and centralized distribution model provide us with a competitive advantage through the ability to utilize retail-ready corrugate displays. These pre-built displays are visually impactful, produced economically, and require minimal in-store labor to assemble or load, thus providing cost-efficient display vehicles that benefit both us and the retailer. Preloaded displays also allow us full control over our brand marketing, which allows us to execute retailer-wide campaigns regionally or nationally in a consistent manner, providing a unique competitive advantage across the entire SBG category, which is predominantly DSD-served.

Our business model is supported by cost-advantaged manufacturing and distribution, expanded channel/retail store reach and enhanced in-store merchandising capabilities, and offers our retail partners attractive margins that incentivize further distribution of our products.

We have continued to invest in the business since the re-launch in 2013 and anticipate continued investment in the business to further our strategic initiatives. Our disciplined capital investment focus will be on operational capabilities that directly support or expand our growth and innovation with strong return on investment metrics. Further, we anticipate continued investment in automation, which allows for improved product quality, consistency and efficiency.

Platform for acquisitions

We have a solid platform for growth through acquisitions. Within the fragmented consumer packaged goods market, the opportunity exists to drive value creation through acquisitions by leveraging our brand, infrastructure and performance-driven management culture. We are committed to seeking-out opportunities that add new capabilities to our already broad offerings.

The 2018 acquisition and integration of the Cloverhill® business in Chicago, Illinois, is another example where we are leveraging our warehouse model and expanding our breakfast capabilities. The transformation and significant capital investment we have made in this facility have provided us with a platform to leverage our brand in the breakfast sub-category. Net revenue from the sale of Hostess® products through the club channel increased 44.7% from the prior year, demonstrating our ability to leverage customer relationships acquired from the Cloverhill® business to drive sales in our core product portfolio.

On August 30, 2019, we sold the In-Store Bakery operations in order to provide more focus on future investments in areas of our business that better leverage our core competencies. We sold the In-Store Bakery operations for $65.0 million, subject to post-closing adjustments.

The acquisition of Voortman in January 2020 diversifies and expands our product offerings and manufacturing capabilities in the attractive, adjacent $7.8 billion cookie category based on Nielsen data as of December 28, 2019. The Voortman® brand and its unique product offerings have the #1 share of the sugar-free and wafer segments within this category. The acquisition also leverages our broad customer reach and lean and agile business model. The combined company expects to realize additional benefits of scale via sharing established, efficient infrastructure and strengthening of collaborative retail partnerships in the United States and Canada. We expect the transaction to

deliver on key growth opportunities while achieving significant cost synergies within the first 12 - 18 months following the close of the transaction.

As we explore other opportunities, we will consider our ability to leverage our existing brands or reinvigorate acquired brands within the snacking category. We will also consider our ability to integrate acquisitions with our existing business and the opportunities to generate synergies through leveraging of our existing assets and warehouse model. We believe our scale, access to capital and management experience will allow us to consider acquisitions in the future and to efficiently integrate them.

The Category: Large and Attractive

The average American is snacking 3-5 times per day and the larger snacking market is expected to grow by 20% between 2018 and 2022 according to Mintel. The U.S. SBG category is one of the largest categories within the broader U.S. Total Snack category, with estimated retail sales of $6.8 billion in 2019 according to the Nielsen U.S. total universe for the 52-weeks ended December 28, 2019. The SBG category includes breakfast items (*e.g.*, donuts, breakfast danishes, and muffins) and all-day snacking items (*e.g.*, snack cakes, pies, bars, brownies, blondies, and cookies). With a January 2019 Mintel study showing that flavor is the most important snacking attribute to consumers and the number one reason for snacking is to "satisfy a craving or treat myself", our product portfolio is well positioned to benefit from these broader snacking trends.

During 2019, point of sale for our combined brands grew 77.6 million representing 60.3% of total SBG category growth. Our combined brands represented 18.8% share of the SBG category during 2019, which represents an opportunity for continued growth in comparison to 22.8% share prior to the Hostess® brands hiatus from 2012 to 2013.

Competitive landscape

Hostess® is the #2 brand in the U.S. SBG category. The top three brands, Hostess, Little Debbie, and Entenmann's account for 62%of the SBG retail sales according to Nielsen, while the rest of the category remains fairly fragmented. With limited private label penetration in the category, consumers have shown a strong preference for trusted brands within the SBG category. The leading positions are solidified through extensive product portfolios, strong brand awareness, established distribution capabilities and long-standing relationships with critical high-volume retailers. Furthermore, high levels of capital investment are required to establish manufacturing and distribution capabilities of meaningful scale, providing additional barriers to entry.

We face competition from other brands, large national bakeries, smaller regional operators and supermarket chains with their own private label brands. The key competitive factors in the industry include product quality, price, customer service, brand recognition and loyalty, promotional activities, access to retail outlets, sufficient shelf-space and ability to identify and satisfy consumer preferences. Some of our largest national competitors include Flowers Foods, Inc., Grupo Bimbo, S.A. and McKee Foods Corporation. In addition, we also compete with regional sweet goods branded manufacturers and other companies that produce cookies, candies and other sweet snacks. At times, we experience pricing pressure in certain of our markets from competitor promotions and other pricing practices. However, we believe our brand recognition, product quality and innovation have generated consumer loyalty to many of our products which helps mitigate this impact.

Seasonality

Sweet baked goods revenues tend to be moderately seasonal, with declines during the early winter period, which we believe are attributable to altered consumption patterns during the holiday season. We expect this trend to continue to be applicable to our business. We strive to mitigate the seasonality by running certain targeted promotional campaigns.

Production

We have a lean, agile and scalable model that delivers quality results. We produce our products at five bakeries located in Emporia, Kansas; Columbus, Georgia; Indianapolis, Indiana; Chicago, Illinois; and our newly acquired bakery in Canada. Our state of the art auto-bake technologies have resulted in significant energy, labor and time savings. The technology provides fully-automated industrial baking ovens and systems, combining cost efficient, compact and continuous baking solutions that can be custom configured. We have also invested in equipment that fully-automates the packaging process (from wrapping to palletizing). A portion of our products are manufactured and packaged by third parties under our brands and distributed through our facilities.

Raw Materials

Our principal raw materials are flour, sweeteners, edible oils and compound coating, as well as corrugate and films used to package our products. We utilize various buying strategies to lock in prices for certain raw materials and packaging to reduce the impact of commodity price fluctuations. In addition, we are dependent on natural gas as fuel for firing our ovens. Our third-party common carriers use gasoline and diesel as fuel for their trucks.

We have strategic, long-term relationships with our key suppliers for our raw materials and packaging that help leverage our buying power. While the cost of some raw materials has, and may continue to increase or decrease over time, we believe that we will be able to purchase an adequate supply of raw materials as needed. We also sole source certain raw materials. We have multiple vendors that meet our supply requirements for the sole sourced materials, except in the case of certain enzymes used in our ESL technology. With respect to the enzymes, we continue to evaluate other sources in order to maintain business continuity and flexibility.

Customers

Our top 10 customers in 2019 accounted for 62.3% of total net revenue. During 2019, our largest customer, Wal-Mart and related entities, represented23.6% of our net revenue. No other customer accounted for more than 10% of 2019 net revenue. The loss of, or a material negative change in, our relationship with Wal-Mart or any of our other top 10 customers could have a material adverse effect on our business. Our customers include mass merchandisers, supermarkets and other retailers and distributors, convenience, drug and dollar stores.

Trademarks and Other Intellectual Property

We believe that our intellectual property has substantial value and has contributed to the success of our business. In particular, our trademarks, including our registered Hostess®, Dolly Madison®, Cloverhill®, and Big Texas® and Voortman® brand trademarks and our sub-brand trademarks, including Twinkies®, Ding Dongs®, Ho Hos®, Zingers®, Sno Balls®, and Donettes®, are valuable assets that we believe reinforce our consumers' favorable perception of our products. This value provides us the opportunity to sell our products at premium price points and pursue licensing opportunities.

From time to time, third parties have used names similar to ours, have applied to register trademarks similar to ours and, we believe, have infringed or misappropriated our intellectual property rights. Third parties have also, from time to time, opposed our trademarks and challenged our intellectual property rights. We respond to these actions on a case-by-case basis. We rely on laws and regulations, as well as contractual restrictions, to protect our intellectual property and proprietary rights.

Research and Development

The majority of our research and development spend is dedicated to enhancing and expanding our product lines, responding to changing consumer preferences and trends and continuing to enhance the taste of our products. In addition, our research and development organization provides technical support to ensure that our core products are consistently produced in accordance with our high standards of quality and specifications. Finally, this department is charged with developing processes to reduce our costs without adversely affecting the quality of our products.

Government Regulation

Our operations, including the manufacturing, processing, formulating, packaging, labeling and advertising of products, are subject to regulation by various federal agencies, including the Food and Drug Administration (the “FDA”), the Federal Trade Commission (the “FTC”), and the Environmental Protection Agency (the “EPA”). Our products are subject to various local, state, and federal laws, regulations and administrative practices affecting our business. We must comply with provisions regulating registrations and licensing, health and sanitation standards, current Good Manufacturing Practices and traceability, hazard analysis and risk-based preventative controls, food labeling, equal employment, wage and hour requirements, and environmental protection, among others. We take compliance and the safety of our products seriously and take all steps that we consider necessary or appropriate to comply with all applicable laws, rules and regulations.

Experienced Team

The Company’s culture is an integral part of our strategy, built on entrepreneurship, innovation, collaboration and a competitive spirit. Embodying these tenets is a strong and experienced management team, led by Andy Callahan, our President and Chief Executive Officer. Members of the management team have extensive experience in the consumer packaged goods industry across the sales, operations, marketing, legal and finance disciplines.

Our management team is complemented by an experienced Board of Directors, all of whom have senior executive leadership and bring with them extensive consumer products knowledge. Our board members and management include:

Board of Directors:	**Management:**
Andy P. Callahan, Director	Andy P. Callahan, President and Chief Executive Officer
C. Dean Metropoulos, Chairman	Brian T. Purcell, Executive Vice President, Chief Financial Officer
Craig D. Steeneck, Director	Michael J. Cramer, Executive Vice President, Chief Administrative Officer
Gretchen R. Crist, Director	Andrew W. Jacobs, Executive Vice President, Chief Operating Officer
Ioannis Skoufalos, Director	Thomas A. Peterson, Executive Vice President, Strategy and M&A
Jerry D.Kaminski, Director	John L. Kalal, Senior Vice President of Bakery Operations and Supply Chain
Laurence D. Bodner, Director	Chad S. Lusk, Senior Vice President, Chief Marketing Officer
	Darryl P. Riley, Senior Vice President of Quality, Food Safety and R&D
	Jolyn J. Sebree, Senior Vice President, General Counsel and Secretary
	Robert C. Weber, Senior Vice President, Chief Human Resources Officer

A detailed biography of each of our board members and key management team members can be found at www.hostessbrands.com. Unless expressly stated otherwise, the information contained on or accessible through our website is not incorporated by reference into this Annual Report on Form 10-K.

As of December 31, 2019, we employed approximately 2,000 people. Of our total workforce, approximately 81% were located at our bakery facilities. The remaining workers comprised functions including operations management, sales and supply chain, among other corporate functions. We have entered into collective bargaining agreements with the local unions of the Bakery, Confectionery, Tobacco Workers and Grain Millers Union in Indianapolis, Indiana and Columbus, Georgia, AFL-CIO and the Chemical Production Workers Union Local No. 30 in Chicago, Illinois. Approximately 901 employees are covered by these collective bargaining agreements. We consider our relations with employees to be good and have not experienced a strike or significant work stoppage.

Employee Safety and Environmental Sustainability

We are committed to keeping our employees safe, protecting the environment and providing developmental opportunities for our employees. We endeavor to be a company of energized people and to be a good corporate citizen.

Our goal is to create a higher standard of living and quality of life for our employees and our communities. We believe new automation, safety investments and behavioral safety training have resulted in higher employee engagement and lower workers' compensation costs. We meet periodically with local and state leaders to discuss business planning and ways to become a better community partner with educational, municipal and regulatory agencies. We promote participation in charitable organizations and make philanthropic donations in the communities where we operate. We also routinely donate a portion of our excess production to food banks in areas where we operate.

Available Information

This discussion of the business should be read in conjunction with, and is qualified by reference to, Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") under Item 7 herein. In addition, the information set forth under the headings "Forward Looking Statements," and "Introduction" in the MD&A and the segment and geographic information included in Item 8, Financial Statements and Supplementary Data - Note 6. Segment Reporting are incorporated herein by reference in partial response to this Item 1.

The Company's Internet website address is www.hostessbrands.com. The Company makes available free of charge (other than an investor's own Internet access charges) through its Internet website its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports, on the same day they are electronically filed with, or furnished to, the Securities and Exchange Commission. The Company is not including the information contained on or available through its website as a part of, or incorporating such information by reference into, this Annual Report on Form 10-K.

Item 1A. Risk Factors

You should carefully consider the following risk factors, together with all of the other information included in this Annual Report on Form 10-K. The risks described below are those which we believe are the material risks that we face. Additional risks not presently known to us or which we currently consider immaterial may also have an adverse effect on us. Any risk described below may have a material adverse impact on our business or financial condition. Under these circumstances, the trading price of our common stock could decline, and you may lose all or part of your investment.

Risks Related to Our Business

Maintaining, extending and expanding our reputation and brand image are essential to our business success.

We have many iconic brands with long-standing consumer recognition. Our success depends on our ability to maintain our brand image for our existing products, extend our brands to new platforms, and expand our brand image with new product offerings.

We seek to maintain, extend, and expand our brand image through marketing investments, including advertising and consumer promotions, and product innovation. Increasing attention on the role of food marketing could adversely affect our brand image. It could also lead to stricter regulations and greater scrutiny of marketing practices. Existing or increased legal or regulatory restrictions on our advertising, consumer promotions and marketing, or our response to those restrictions, could limit our efforts to maintain, extend and expand our brands. Moreover, adverse publicity about regulatory or legal action against us could damage our reputation and brand image, undermine our customers' confidence and reduce long-term demand for our products, even if the regulatory or legal action is unfounded or not material to our operations.

In addition, our success in maintaining, extending, and expanding our brand image depends on our ability to adapt to a rapidly changing media environment. We increasingly rely on social media and online dissemination of advertising campaigns. Social and digital media increases the speed and extent that information or misinformation and opinions can be shared. Negative posts or comments about us, our brands or our products on social or digital media, whether or not valid, could seriously damage our brands and reputation. If we do not maintain, extend, and expand our brand image, then our product sales, financial condition and operating results could be materially and adversely affected.

Our intellectual property rights are valuable, and our failure to protect them could reduce the value of our products and brands.

We consider our intellectual property rights, including our trademarks, trade names, copyrights, trade secrets and trade dress, to be a significant and valuable part of our business. We attempt to protect our intellectual property rights by taking advantage of a combination of applicable laws, registrations of our intellectual property, third-party agreements (including non-disclosures, assignments, distribution and/or manufacturing, licenses, consents and co-existence) and policing and enforcement of third-party misuse or infringement of our intellectual property. Our failure to obtain or adequately protect our intellectual property rights, or any change in law or other changes that serve to lessen or remove the current legal protections of our intellectual property, may diminish our competitiveness and could materially harm our business. In addition, third-party claims of intellectual property infringement might require us to pay monetary damages or enter into costly license agreements. We also may be subject to injunctions against development and sale of certain of our products.

Any litigation regarding intellectual property (including third-party infringement claims or litigation initiated by us to protect our intellectual property rights) could be costly and time-consuming and could divert management's and other key personnel's attention from our business operations. Any of the occurrences outlined above could materially and adversely affect our reputation, product sales, financial condition and operating results.

We may be unable to leverage our brand value to compete against lower-priced alternative brands.

In most of our product categories, we compete with lower-priced alternative products. Our products must provide higher value and/or quality to our consumers than alternatives, particularly during periods of economic uncertainty. Consumers may not buy our products if relative differences in value and/or quality between our products and retailer or other economy brands change in favor of competitors' products or if consumers perceive this type of change. If consumers choose the lower-priced brands, then we could lose market share or sales volumes, which could materially and adversely affect our product sales, financial condition, and operating results.

We may be unable to correctly predict, identify and interpret changes in consumer preferences and demand and offer new products or methods of distribution to meet those changes.

Consumer preferences for food and snacking products change continually. Our success will depend on our ability to predict, identify and interpret the tastes, dietary habits, purchasing behavior and other preferences of consumers and to offer products that appeal to these preferences. Moreover, weak economic conditions, recession or other factors could affect consumer preferences and demand. If we do not offer products that appeal to consumers or if we misjudge consumer demand for our products, our sales and market share will decrease and our profitability could suffer.

We continually introduce new products or product extensions and our operating results and growth will depend upon the market reception of such new products. There can be no assurance that new products will find widespread acceptance among consumers, and unsuccessful product launches may decrease our profitability and damage our brands' reputation.

The continued prevalence of e-commerce and other methods of distribution outside of traditional retail shopping could also impact our sales and profitability if we are unable to adequately modify the marketing and distribution of our products in response.

In addition, prolonged negative perceptions concerning the health implications of certain food products could influence consumer preferences and acceptance of some of our products and marketing programs. For example, consumers are increasingly focused on health and wellness, and aware of product ingredients such as added sugar and artificial flavors or colors. We might be unsuccessful in our efforts to effectively respond to changing consumer preferences and social expectations. Continued negative perceptions and failure to satisfy consumer preferences could materially and adversely affect our reputation, product sales, financial condition and operating results.

We operate in a highly competitive industry.

The SBG industry is highly competitive. Numerous brands and products compete for shelf space and sales, with competition based primarily on product quality, brand recognition and loyalty, price, trade promotion, consumer promotion, customer service, and the ability to identify and satisfy emerging consumer preferences. We face competition from other large national bakeries, smaller regional operators, supermarket chains with their own private labeled brands, grocery stores with their own in-store bakery departments and diversified food companies. Our competitors include a significant number of companies of varying sizes, including divisions, subdivisions, or subsidiaries of larger companies. Many of these competitors have multiple product lines, substantially greater financial and other resources available to them, and may be substantially less leveraged than us. We may not be able to compete successfully with these companies. Competitive pressures or other factors could cause us to lose market share, which may require us to lower prices, increase marketing and advertising expenditures, or increase the use of discounting or promotional campaigns, each of which could materially and adversely affect our margins and could result in a decrease in our operating results and profitability.

Our growth may be limited by our inability to maintain or add additional shelf or retail space for our products.

Our results will depend on our ability to drive revenue growth, in part, by expanding the distribution channels for our products. However, our ability to do so may be limited by our inability to secure additional shelf, display, or other retail space for our products. Retail space for sweet baked goods is limited and subject to competitive and other pressures, and there can be no assurance that retail operators will provide us sufficient space for our products to enable us to meet our growth objectives. If we are unable to maintain or increase our retail space we could experience an adverse impact on our product sales, financial condition and operating results.

Our success will depend on our continued ability to produce and successfully market products with extended shelf life.

We have invested to extend our product shelf life, while maintaining our products' taste, texture and quality. Extended shelf life, or ESL, is an important component of our DTW model. Our ability to produce and successfully market existing and new products with ESL, while maintaining taste, texture and quality, is essential to our success. If we are unable to continue to produce products with ESL or if the products are not accepted by consumers, we could be forced to make changes to our distribution model and that could have an adverse effect on our product sales, financial condition and operating results.

If we do not successfully integrate and manage our acquired businesses or brands, our operating results may be adversely affected.

From time to time, we acquire businesses or brands to expand our product portfolio and distribution, including Voortman, which was acquired in January of 2020. We may incur unforeseen liabilities and obligations in connection with the acquisition, integration, or management of the acquired businesses or brands and may encounter unexpected difficulties and costs in integrating them into our operating and internal control structures. We may also experience delays in extending our internal control over financial reporting to a newly acquired business, which may increase the risk of failure to prevent misstatements in their financial records and in our consolidated financial statements. Our financial performance depends in large part on how well we can manage and improve the performance of acquired businesses or brands. We cannot assure you, however, that we will be able to achieve our strategic and financial objectives for such acquisitions. If we are unable to achieve such objectives, our financial condition and operating results could be negatively affected.

We may be unable to drive revenue growth in our key products or add products that are faster-growing and more profitable.

The SBG industry's overall growth is linked to population growth. Our future results will depend on our ability to drive revenue growth in our key products. Because our operations are concentrated in North America where growth in the SBG industry has been moderate, our success also depends in part on our ability to enhance our portfolio by adding innovative new products. There can be no assurance that new products will find widespread acceptance among consumers. Our failure to drive revenue growth in our key products or develop innovative new products could materially and adversely affect our profitability, financial condition and operating results.

The cost to manufacture our products is subject to pricing volatility.

We purchase and use large quantities of commodities, including flour, sweeteners, edible oils and compound coating to manufacture our products. In addition, we purchase and use significant quantities of corrugate and films to package our products.

Prices for commodities, energy, transportation and other inputs are volatile and can fluctuate due to conditions that are difficult to predict, including global competition for resources, currency fluctuations, severe weather, the potential effects of climate change, consumer, industrial or investment demand, and changes in regulatory, trade, alternative energy, or agricultural policies. Rising commodity, energy, transportation and other input costs could materially and adversely affect our cost of operations, which could materially and adversely affect our financial condition and operating results.

We monitor our exposure to commodity prices as an integral part of our overall risk management program, and seek to utilize forward buying strategies through short-term and long-term advance purchase contracts, to lock in prices for certain high-volume raw materials, packaging components and fuel inputs. These strategies, however, may not protect us from increases in specific raw materials costs.

Continued volatility or sustained increases in the prices of commodities, transportation and other supplies we purchase could increase the costs of our products, and our profitability could suffer. Moreover, increases in the prices of our products to cover these increased costs may result in lower sales volumes. If we are not successful in our buying strategies, or if we are unable to price our products to cover increased costs, then commodity and other input price volatility or increases could materially and adversely affect our financial condition and operating results.

We may be limited in our ability to pass cost increases on to our customers in the form of price increases or may realize a decrease in sales volume in the event price increases are implemented.

We may not be able to pass some or all of any increases in the price of raw materials, energy, and other input costs to our customers by raising prices. In the event we increase our prices, customers and consumers may choose to purchase competing products or may shift purchases to private label or other lower-priced offerings, which may adversely affect our operating results.

Consumers may be less willing or able to pay a price differential for our branded products, and may increasingly purchase lower-priced offerings and may forego some purchases altogether, especially during economic downturns. Retailers may also increase levels of promotional activity for lower-priced offerings as they seek to maintain sales volumes during times of economic uncertainty. Accordingly, sales volumes of our branded products could be reduced or lead to a shift in sales mix toward our lower-margin offerings. As a result, decreased demand for our products may adversely affect our operating results.

The ability to distribute our products is subject to significant changes in the availability and pricing of transportation.

We utilize third-party carriers to ship our products to customers. The availability of timely and reliable transportation and the associated costs are subject to market demand, carrier capacity, fuel prices and regulatory oversight. Our procurement of transportation services from a diversified group of carriers and continuous monitoring of carrier usage and pricing could be insufficient to protect us from changes in market demand or carrier capacity.

If we lose one or more of our major customers, or if any of our major customers experience significant business interruption, our operating results could be adversely affected.

We have several large customers that account for a significant portion of our sales. Wal-Mart together with its affiliates is our largest customer and represented approximately 23.6% of our net revenue for the year ended December 31, 2019. Cumulatively, including Wal-Mart, our top ten customers accounted for 62.3% of total net revenue for the year ended December 31, 2019.

We do not have long-term supply contracts with any of our major customers. The loss of one or more major customers, a material reduction in sales to these customers for any reason, including but not limited to a significant business interruption of our customers' operations or our inability to forecast demand and plan production to fulfill customer orders would result in a decrease in our product sales, financial condition and operating results.

Our geographic focus makes us particularly vulnerable to economic and other events and trends in the United States.

We operate in North America and are particularly susceptible to adverse United States regulations, trade policies, economic climate, consumer trends, market fluctuations, including commodity price fluctuations or supply shortages of our key ingredients, and other adverse events. The concentration of our businesses in North America could present challenges and may increase the likelihood that an adverse event in the United States would materially and adversely affect our product sales, financial condition and operating results.

The consolidation of retail customers could adversely affect us.

Retail customers may continue to consolidate, resulting in fewer customers for our business. Consolidation also produces larger retail customers that may seek to leverage their position to improve their profitability by demanding improved efficiency, lower pricing, increased promotional programs, or specifically tailored products. In addition, larger retailers have the scale to develop supply chains that permit them to operate with reduced inventories or to develop and market their own retailer brands. Retail consolidation and increased retailer power could materially and adversely affect our product sales, financial condition, and operating results.

Retail consolidation also increases the risk that adverse changes in our customers' business operations or financial performance will have a corresponding material and adverse effect on us. For example, if our customers cannot access sufficient funds or financing, then they may delay, decrease, or cancel purchases of our products, or delay or fail to pay us for previous purchases, which could materially and adversely affect our product sales, financial condition, and operating results.

Our results could be adversely impacted as a result of increased labor and employee-related expenses.

Inflationary pressures and any shortages in the labor market could increase labor costs, which could have a material adverse effect on our consolidated operating results or financial condition. Our labor costs include the cost of providing employee benefits, including health and welfare, and severance benefits. The annual costs of benefits vary with increased costs of health care and the outcome of collectively-bargained wage and benefit agreements.

Various federal and state labor laws govern our relationships with our employees and affect operating costs. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, unemployment tax rates, workers' compensation rates, overtime, family leave, safety standards, payroll taxes, citizenship requirements and other wage and benefit requirements for employees classified as non-exempt. As our employees are paid at rates set above, but related to, the applicable minimum wage, further increases in the minimum wage could increase our labor costs. Significant additional government regulations could materially and adversely affect our business, financial condition and operating results.

Higher health care costs and labor costs due to statutory and regulatory changes could adversely affect our business.

Under the United States Patient Protection and Affordable Care Act (the "ACA"), we are required to provide affordable coverage, as defined in the ACA, to all employees, or otherwise be subject to a payment per employee based on the affordability criteria in the ACA. Additionally, some states and localities have passed state and local laws mandating the provision of certain levels of health benefits by some employers. Increased health care and insurance costs could have a material adverse effect on our business, financial condition and operating results. In addition, changes in federal or state workplace regulations could adversely affect our business, financial condition and operating results.

A portion of our workforce belongs to unions. Failure to successfully negotiate collective bargaining agreements, or strikes or work stoppages could cause our business to suffer.

Approximately 44% of our employees, as of December 31, 2019, are covered by collective bargaining agreements and other employees may seek to be covered by collective bargaining agreements. Strikes or work stoppages or other business interruptions could occur if we are unable to renew these agreements on satisfactory terms or enter into new agreements on satisfactory terms, which could impair manufacturing and distribution of our products or result in a loss of sales, which could adversely impact our business, financial condition or operating results. The terms and conditions of existing, renegotiated or new collective bargaining agreements could also increase our costs or otherwise affect our ability to fully implement future operational changes to enhance our efficiency or to adapt to changing business needs or strategy.

We may be subject to product liability claims should the consumption of any of our products cause injury, illness or death.

We sell food products for human consumption, which involves risks such as product contamination or spoilage, mislabeling, product tampering and other adulteration of food products. Consumption of a mislabeled, adulterated, contaminated or spoiled product may result in personal illness or injury. We could be subject to claims or lawsuits relating to an actual or alleged illness or injury, and we could incur liabilities that are not insured or exceed our insurance coverage. Even if product liability claims against us are not successful or fully pursued, these claims could be costly and time consuming and may require our management to spend time defending the claims rather than operating the business. In addition, publicity regarding these claims could adversely affect our reputation and brands.

Product recalls may increase our costs, negatively impact our brands' reputation, and adversely affect our business.

A product that has been actually or allegedly misbranded or becomes adulterated could result in product withdrawals or recalls, destruction of product inventory, negative publicity, temporary plant closings, substantial cost of compliance or remediation, and potentially significant product liability judgments against us. Any of these events could result in a loss of demand for our products, which would have a material adverse effect on our financial condition, operating results or cash flows. We could also be adversely affected if consumers lose confidence in our product quality, safety and integrity generally.

Unanticipated business disruptions could adversely affect our ability to provide our products to our customers.

Factors that are hard to predict or beyond our control, like weather, natural disasters, the potential effects of climate change, fire, explosions, terrorism, political unrest, generalized labor unrest or health pandemics could damage or disrupt our operations. In addition, our operations could be disrupted by one or more material equipment failures. We do not have significant redundant operating equipment to allow for such disruptions. Accordingly, if we do not effectively respond to disruptions in our operations, for example, by replacing capacity at our manufacturing locations, or cannot quickly repair damage to our information, production or supply systems, we may be late in delivering or unable to deliver products to our customers. If that occurs, we may lose our customers' confidence, and long-term consumer demand for our products could decline. These events could materially and adversely affect our product sales, financial condition and operating results.

We rely on third parties for services related to sales, marketing and distribution.

We utilize third-party sales and marketing services and common carriers to execute order fulfillment for the majority of our products. While these services have increased our market penetration and expanded our distribution reach, we are dependent upon these third parties to effectively market, sell and distribute our products. We do not have long-term contracts with any of these third-party service providers. Accordingly, any termination by a third-party provider of their services to us, or any failure by these third parties to perform their obligations to us, would have a material adverse impact on our business and operating results.

We may not successfully identify or complete strategic acquisitions, alliances, divestitures or joint ventures.

From time to time, we may evaluate acquisition candidates, alliances or joint ventures that may strategically fit our business objectives, or we may consider divesting businesses that do not meet our strategic objectives, growth or profitability targets. These activities may present financial, managerial, and operational risks, including, but not limited to, diversion of management's attention from existing core businesses. In addition, to the extent we undertake acquisitions, alliances or joint ventures or other developments outside our core geography or in new categories, we may face additional risks related to such developments. For example, the acquisition of Voortman in January 2020 creates new exposure to Canadian regulatory, market and currency exchange risks. Any of these factors could materially and adversely affect our product sales, financial condition, and operating results.

Unsuccessful implementation of business strategies to reduce costs may adversely affect our business, financial conditions, results of operations and cash flows.

Many of our costs, such as freight, raw materials and energy, are subject to factors outstide of our control. Therefore, we must seek to reduce costs in other areas, such as through operating efficiency. If we are not able to complete projects designed to reduce costs and increase operating efficiency on time or within budget, our business, financial condition, results of operations and cash flows may be adversely impacted. In addition, if the cost-saving initiatives we have implemented, or any future cost-saving initiatives, do not generate the expected cost savings and synergies, our business, financial condition, results of operations and cash flows may be adversely affected.

Legal claims or other regulatory enforcement actions could subject us to civil and criminal penalties.

As a large food company, we operate in a highly regulated environment with constantly evolving legal and regulatory frameworks. Various laws and regulations govern food production, storage, distribution, sales, advertising and marketing, as well as licensing, trade, labor, tax and environmental matters, and health and safety practices. Government authorities regularly change laws and regulations and their interpretations. Consequently, we are subject to heightened risk of legal claims or other regulatory enforcement actions. Although we have implemented policies and procedures designed to ensure compliance with existing laws and regulations, there can be no assurance that our employees, contractors, or agents will not violate our policies and procedures. Moreover, a failure to maintain effective control processes could lead to violations, unintentional or otherwise, of laws and regulations. Legal claims or regulatory enforcement actions arising out of our failure or alleged failure to comply with applicable laws and regulations could subject us to civil and criminal penalties that could materially and adversely affect our product sales, reputation, financial condition, and operating results.

Our insurance may not provide adequate levels of coverage against claims.

We believe that we maintain insurance customary for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Such losses could have a material adverse effect on our business and operating results.

We are subject to laws and regulations relating to protection of the environment, worker health, and workplace safety. Costs to comply with these laws and regulations, or claims with respect to environmental, health and safety matters, could have a significant negative impact on our business.

Our operations are subject to various federal, state and local laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants into the air and water, the management and disposal of solid and hazardous materials and wastes, employee exposure to hazards in the workplace and the cleanup of contaminated sites. We are required to obtain and comply with environmental permits for many of our operations, and sometimes we are required to install pollution control equipment or to implement operational changes to limit air emissions or wastewater discharges and/or decrease the likelihood of accidental releases of hazardous materials. We could incur substantial costs, including cleanup costs, civil or criminal fines or penalties, and third-party claims for property damage or personal injury as a result of any violations of environmental laws and regulations, noncompliance with environmental permit conditions or contamination for which we may be responsible that is identified or that may occur in the future. Such costs may be material.

Under federal and state environmental laws, we may be liable for the costs of investigation, removal or remediation of certain hazardous or toxic substances, as well as related costs of investigation and damage to natural resources, at various properties, including our current and former properties and the former properties of our predecessors, as well as off-site waste handling or disposal sites that we or our predecessors have used. Liability may be imposed upon us without regard to whether we knew of or caused the presence of such hazardous or toxic substances. Any such locations we currently own or occupy, or locations that we may acquire in the future, may result in liability to us under such laws or expose us to third-party actions such as tort suits based on alleged conduct or environmental conditions. In addition, we may be liable if hazardous or toxic substances migrate from properties for which we may be responsible to other properties.

In addition to regulations applicable to our operations, failure by any of our suppliers to comply with regulations, or allegations of compliance failure, may disrupt their operations and could result in potential liability. Even if we were able to obtain insurance coverage or compensation for any losses or damages resulting from the noncompliance of a supplier with applicable regulations, our brands and reputation may be adversely affected by negative perceptions of our brands stemming from such compliance failures.

We cannot predict what environmental or health and safety legislation or regulations will be enacted in the future or how existing or future laws or regulations will be enforced, administered or interpreted. We also cannot predict the amount of future expenditures that may be required in order to comply with such environmental or health and safety laws or regulations or to respond to environmental claims.

Our operations are subject to regulation by the FDA, FTC and other governmental entities, and such regulations are subject to change from time to time which could impact how we manage our production and sale of products.

Our operations are subject to extensive regulation by the FDA, the FTC and other national, state, and local authorities. For example, we are subject to the Food, Drug and Cosmetics Act ("FDCA") and regulations promulgated thereunder by the FDA. This comprehensive regulatory program governs, among other things, the manufacturing, processing composition and ingredients, packaging, holding and safety of food. Under this program, the FDA regulates manufacturing practices for foods through, among other things, its current "good manufacturing practices" regulations, or CGMPs, and specifies the ingredients for certain foods. Our processing facilities and products are subject to periodic inspection by federal, state, and local authorities. The Food Safety Modernization Act increased the number of inspections at food facilities in the United States in an effort to enhance the detection of food-borne illness outbreaks and order recalls of tainted food products. It also imposes greater responsibility upon factors throughout the food chain to design and implement effective preventive controls in food safety programs throughout the supply chain. The FTC and other authorities regulate how we market and advertise our products, and we could be the target of claims relating to alleged false or deceptive advertising under federal, state, and foreign laws and regulations. Changes in these laws or regulations or the introduction of new laws or regulations could

increase the costs of doing business for us or our customers or suppliers or restrict our actions, causing our operating results to be adversely affected.

We seek to comply with applicable regulations through a combination of employing internal personnel to ensure quality-assurance compliance and contracting with third-party laboratories that conduct analysis of products for the nutritional-labeling requirements. Compliance with regulations is costly and time-consuming. Failure to comply with applicable laws and regulations or maintain permits and licenses relating to our operations could subject us to civil remedies, including fines, injunctions, recalls or seizures, as well as potential criminal sanctions or suspensions or revocations of our registration, permits or licenses, which could result in increased operating costs resulting in a material adverse effect on our business, financial condition, and operating results.

Significant additional labeling or warning requirements or limitations on the marketing or sale of our products may reduce demand for such products and could adversely affect our business or operating results.

Certain jurisdictions in which our products are made, manufactured, distributed or sold have either imposed, or are considering imposing, product labeling or warning requirements or limitations on the marketing or sale of certain of our products as a result of ingredients or substances contained in such products. These types of provisions have required that we provide a label that highlights perceived concerns about a product or warns consumers to avoid consumption of certain ingredients or substances present in our products. For example, in California, Proposition 65 requires a specific warning on any product that contains a substance listed by the State of California as having been found to cause cancer or birth defects, unless the level of such substance in the product is below a safe harbor level.

In addition, the United States has imposed new nutrition labeling regulations that require food manufacturers to declare the quantity of added sugar, as well as update serving sizes and labeling requirements for certain package sizes. As we continue to transition our packaging to comply with the new requirements by July 1, 2020, our new product labeling may impact the consumption and public perception of our products.

The imposition or proposed imposition of additional product labeling or warning requirements could reduce overall consumption of our products, lead to negative publicity (whether based in scientific fact or not) or leave consumers with the perception (whether or not valid) that our products do not meet their health and wellness needs. Such factors could adversely affect our business and operating results.

Changes in laws, regulations or rules, or a failure to comply with any laws, regulations or rules, may adversely affect our business, investments and results of operations.

We are subject to laws, regulations and rules enacted by national, regional and local governments and NASDAQ. In particular, we are required to comply with certain SEC, NASDAQ and other legal or regulatory requirements. Compliance with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations or rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business and operating results. A failure to comply with applicable laws, regulations or rules, as interpreted and applied, could have a material adverse effect on our business and operating results.

Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our financial condition and results of operations.

We are subject to income taxes in the United States and Canada, and our tax liabilities will be subject to the allocation of expenses in differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany restructurings;
- changes in tax laws, regulations or interpretations thereof; and
- lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other transaction taxes by taxing authorities. Outcomes from these audits could have an adverse effect on our financial condition and results of operations.

A material impairment in the carrying value of acquired goodwill or other intangible assets could negatively affect our consolidated operating results and net worth.

A significant portion of our assets is goodwill and other intangible assets, the majority of which are not amortized but are reviewed for impairment at least annually and more often if indicators of impairment exist. If the carrying value of these assets exceeds the current estimated fair value, the asset is considered impaired, and this would result in a noncash charge to earnings, which could be material. Events and conditions that could result in impairment include a sustained drop in the market price of our Class A common stock, increased competition or loss of market share, obsolescence, product claims that result in a significant loss of sales or profitability over the product life, deterioration in macroeconomic conditions, or declining financial performance in comparison to projected results.

Our business operations could be disrupted if our information technology systems fail to perform adequately.

The efficient operation of our business depends on our information technology systems, most of which are managed by third-party service providers. We rely on our information technology systems to effectively manage our business data, communications, supply chain, order entry and fulfillment, and other business processes. The failure of our information technology systems to perform as we anticipate could disrupt our business and could result in transaction errors, processing inefficiencies, and the loss of sales and customers, causing our business and operating results to suffer. In addition, our information technology systems may be vulnerable to damage or interruption from circumstances beyond our control, including fire, natural disasters, the potential effects of climate change, power outages, systems failures, security breaches, cyber-attacks and viruses. Any such damage or interruption could have a material adverse effect on our business.

We continuously monitor and update our information technology networks and infrastructure to prevent, detect, address and mitigate the risk of unauthorized access, misuse, and other events that could have a security impact. We invest to protect our data and business processes against risk of data security breach and cyber-attacks. We believe our security processes provide adequate measures of protection against security breaches. Nevertheless, despite continued vigilance in these areas, disruptions in information technology systems, including unauthorized use of data, are possible and could have a negative impact on our operations or business reputation. Failure of our systems, including failures due to cyber-attacks that would prevent the ability of systems to function as intended, could cause transaction errors, loss of customers and sales, and could have negative consequences to our operations, our employees and those with whom we do business. This in turn could have a negative impact on our financial condition and results or operations.

We may be unable to hire or retain and develop key personnel or a highly skilled and diverse workforce or manage changes in our workforce.

We must hire, retain and develop a highly skilled and diverse workforce. We compete to hire new personnel in the many regions in which we manufacture and market our products and then to develop and retain their skills and competencies. Unplanned turnover or failure to develop adequate succession plans for leadership positions or hire and retain a diverse workforce with the skills and in the locations we need to operate and grow our business could deplete our institutional knowledge base and erode our competitiveness.

We also face increased personnel-related risks. These risks could lead to operational challenges, including increased competition for employees with the skills we require to achieve our business goals, and higher employee turnover, including employees with key capabilities. Furthermore, we might be unable to manage changes in, or that affect, our workforce appropriately or satisfy the legal requirements associated with how we manage and compensate our employees. These risks could materially and adversely affect our reputation, ability to meet the needs of our customers, product sales, financial condition and operating results.

Risks Related to Our Capital Structure

Our substantial leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, expose us to interest rate risk to the extent of our variable rate debt, and prevent us from meeting our obligations under our indebtedness.

We are highly leveraged. As of December 31, 2019, our total balance on long term debt, excluding deferred financing charges, discount, premium, and lease obligations, was approximately $973.9 million. Our high degree of leverage could have important consequences, including:

- requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund our operations, capital expenditures, and future business opportunities or to pay dividends;
- exposing us to the risk of increased interest rates because the portion of our borrowings not hedged by swap agreements are subject to variable rates;
- making it more difficult for us to make payments on our indebtedness;
- increasing our vulnerability to general economic and industry conditions;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
- subjecting us to restrictive covenants that may limit our flexibility in operating our business;
- limiting our ability to obtain additional financing for working capital, capital expenditures, product development, debt service requirements, acquisitions, and general corporate or other purposes; and
- placing us at a competitive disadvantage compared to our competitors who are less highly leveraged.

Despite our significant leverage, we may be able to incur significant additional amounts of debt, which could further exacerbate the risks associated with our significant leverage.

Changes in interest rates may adversely affect our earnings and/or cash flows.

Our term loan and revolving line of credit bear interest at variable interest rates that use the London Inter-Bank Offered Rate (“LIBOR”) as a benchmark rate. On July 27, 2017, the United Kingdom’s Financial Conduct Authority (“FCA”), which regulates LIBOR, announced that it intends to stop persuading or compelling banks to submit LIBOR quotations after 2021 (the “FCA Announcement”). The FCA Announcement indicates that the continuation of LIBOR on the current basis cannot and will not be assured after 2021, and LIBOR may cease to exist or otherwise be unsuitable for use as a benchmark. Recent proposals for LIBOR reforms may result in the establishment of new methods of calculating LIBOR or the establishment of one or more alternative benchmark rates. Although our credit agreement provides for successor base rates, the successor base rates may be related to LIBOR, and the consequences of any potential cessation, modification or other reform of LIBOR cannot be predicted at this time. We work to reduce our exposure to LIBOR through swap contracts which effectively fix a portion of our variable-rate interest payments. If LIBOR ceases to exist, we may need to amend our credit agreement and swap contracts. As a result, our interest expense may increase, and our available cash flow may be adversely affected.

We may be unable to obtain additional financing to fund our operations and growth.

We may require additional financing to fund our operations or growth. The failure to secure additional financing could have a material adverse effect on our continued development or growth. None of our officers, directors or stockholders are required to provide any financing to us.

We are required to pay the Tax Receivable Agreement counterparties for a significant portion of the tax benefit relating to any additional tax depreciation or amortization deductions we claim as a result of any step up in the tax basis of the assets of our operating subsidiaries resulting from the Metropoulos Entities' exchange of shares of Class B common stock and Class B units of Hostess Holdings for shares of our Class A common stock.

Class B units in Hostess Holdings may be exchanged (together with the cancellation of shares of our Class B common stock) by the holders thereof for, at the Company's election, shares of Class A common stock, on a one-for-one basis (subject to customary anti-dilution adjustments), or the cash equivalent of such shares. The exchanges may result in increases to our share of the tax basis of the tangible and intangible assets of our operating subsidiaries that otherwise would not have been available, although the United States Internal Revenue Service may challenge all or part of that tax basis increase, and a court could sustain such a challenge by the United States Internal Revenue Service. These increases in tax basis, if sustained, may reduce the amount of tax that we would otherwise be required to pay in the future.

We are party to a Tax Receivable Agreement that provides for the payment by us of approximately 85% of the net cash savings, if any, in United States federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) as a result of: (i) certain increases in tax basis resulting from the Hostess Business Combination; (ii) certain tax attributes of Hostess Holdings and its subsidiaries existing prior to the Hostess Business Combination and prior to subsequent exchanges of Class B units; (iii) certain increases in tax basis resulting from exchanges of Class B units; (iv) imputed interest deemed to be paid by the Company as a result of payments that it makes under the Tax Receivable Agreement; and (v) certain increases in tax basis resulting from payments that the Company makes under the Tax Receivable Agreement.

In January 2018, we entered into an agreement to terminate all future payment obligations to one of the counterparties in exchange for a payment of $34.0 million. Subsequent to the agreement, we will now retain a greater portion of the net cash tax savings related to tax attributes subject to the Tax Receivable Agreement.

If our dividend policy is materially different than the distribution policy of Hostess Holdings, upon the exchange of any Class B units, the limited partners of Hostess Holdings could receive a disproportionate interest in the aggregate distributions by our operating subsidiaries that have not been distributed by us.

We and the Metropoulos Entities are limited partners of Hostess Holdings. To the extent Hostess Holdings distributes to its limited partners a greater share of income received from our operating subsidiaries than we distribute to our stockholders, then any of the Metropoulos Entities who participate in such distribution by Hostess Holdings and subsequently exercise their rights to exchange limited partnership units in Hostess Holdings for Class A common stock may receive a disproportionate interest in the aggregate distributions by our operating subsidiaries that have not been distributed by us. The reason is that such Metropoulos Entity could receive both (i) the benefit of a distribution by Hostess Holdings to its limited partners, including such Metropoulos Entity, and (ii) the benefit of a distribution by the Company to the holders of Class A common stock, including such Metropoulos Entity. Consequently, if our dividend policy does not match the distribution policy of Hostess Holdings, other holders of Class A common stock as of the date of an exchange could experience a reduction in their interest in the profits previously distributed by our operating subsidiaries that have not been distributed by us. Our current dividend policy could result in distributions to our common stockholders that are different from the distributions made by Hostess Holdings to its limited partners.

Our only significant asset is our ownership interest in our operating subsidiaries and such ownership may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on our common stock or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement.

We have no direct operations and no significant assets other than our ownership interest in our operating subsidiaries. We depend on our operating subsidiaries for distributions, loans and other payments to generate the funds necessary to meet our financial obligations, including our expenses as a publicly traded company, to pay any dividends with respect to our common stock, and to satisfy our obligations under the Tax Receivable Agreement. The financial condition and operating requirements of our operating subsidiaries may limit our ability to obtain cash from our operating subsidiaries. The earnings from, or other available assets of, our operating subsidiaries may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on our common stock or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement.

The ability of our operating subsidiaries (other than subsidiaries which have been designated as unrestricted pursuant to our ability to do so in certain limited circumstances) to make distributions, loans and other payments to us for the purposes described above and for any other purpose are governed by the terms of our credit facilities and will be subject to the negative covenants set forth therein. Any loans or other extensions of credit will be subject to the investment covenants contained therein, which provide for several exceptions including, among others (i) a general investment basket equal to the greater of a fixed dollar amount and a percentage of EBITDA and (ii) an unlimited investment basket based on satisfying a total net leverage ratio on a pro forma basis. Similarly, any dividends, distributions or similar payments will be subject to the dividends and distributions covenant under such credit facilities, which also provide for several exceptions including, among others (i) for payment of overhead and certain fees and expenses of parent companies, (ii) for tax distributions, subject to certain limitations, (iii) a general dividend and distribution basket equal to the greater of a fixed dollar amount and a percentage of EBITDA and (iv) an unlimited dividend and distribution basket based on satisfying a total net leverage ratio on a pro forma basis.

Risks Related to Our Class A Common Stock

Resales of the shares of Class A common stock could depress the market price of our Class A common stock.

There may be a large number of shares of Class A common stock sold in the market in the near future. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our Class A common stock. As of February 21, 2020, the Metropoulos Entities held approximately 6% of our common stock, including 100% of our Class B common stock. All such shares of Class A common stock held by or obtainable in exchange for Class B common stock and Class B units held by the Metropoulos Entities have been registered for resale under the Securities Act pursuant to a shelf registration statement filed in 2016.

We have approximately 123,186,308 shares of Class A common stock outstanding as of February 21, 2020. There are also remaining registered shares of Class A common stock that we may issue under the Hostess Brands, Inc. 2016 Equity Incentive Plan, which shares may be freely sold in the public market upon issuance, subject to compliance with stock ownership guidelines and volume limitations applicable to affiliates.

In addition, as of December 31, 2019, there were 48,453,154 public warrants and 8,046,636 private warrants outstanding. Each warrant entitles its holder to purchase one half of one share of our Class A common stock at an exercise price of $5.75 per half share, to be exercised only for a whole number of shares of our Class A common stock.

Such sales of shares of Class A common stock or the perception of such sales may depress the market price of our Class A common stock.

A market for our securities may not continue, which would adversely affect the liquidity and price of our securities.

The price of our securities may fluctuate significantly due to general market and economic conditions. An active trading market for our securities may not be sustained. In addition, the price of our securities can vary due to general economic conditions and forecasts, our general business condition and the release of our financial reports. Additionally, if our securities become delisted from NASDAQ for any reason, and are quoted on the OTC Bulletin Board, an inter-dealer automated quotation system for equity securities that is not a national securities exchange, the liquidity and price of our securities may be more limited than if we were quoted or listed on NASDAQ or another national securities exchange. You may be unable to sell your securities unless a market can be established or sustained.

If securities or industry analysts cease publishing research or reports about us, our business, or our market, or if they change their recommendations regarding our Class A common stock adversely, then the price and trading volume of our Class A common stock could decline.

The trading market for our Class A common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market, or our competitors. Securities and industry analysts may cease to publish research on us. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, the price of our Class A common stock would likely decline. If any analyst who may cover us were to cease coverage of us or fail to regularly publish reports on it, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results.

We are required to comply with Section 404 of the Sarbanes Oxley Act, which requires, among other things, that companies maintain disclosure controls and procedures to ensure timely disclosure of material information, and that management review the effectiveness of those controls on a quarterly basis. Effective internal controls are necessary for us to provide reliable financial reports and to help prevent fraud, and our management and other personnel devote a substantial amount of time to these compliance requirements. Moreover, these rules and regulations increased our legal and financial compliance costs and make some activities more time-consuming and costly. We cannot be certain that we will be able to maintain adequate controls over our financial processes and reporting in the future or that we will be able to comply with our obligations under Section 404 of the Sarbanes Oxley Act. Section 404 of the Sarbanes Oxley Act also requires us to evaluate annually the effectiveness of our internal controls over financial reporting as of the end of each fiscal year and to include a management report assessing the effectiveness of our internal control over financial reporting in our Annual Report on Form 10-K. If we fail to maintain the adequacy of our internal controls, we cannot assure you that we will be able to conclude in the future that we have effective internal control over financial reporting and/or we may encounter difficulties in implementing or improving our internal controls, which could harm our operating results or cause us to fail to meet our reporting obligations. If we fail to maintain effective internal controls, we might be subject to sanctions or investigation by regulatory authorities, such as the SEC. Any such action could adversely affect our financial results and may also result in delayed filings with the SEC.

Our quarterly operating results may fluctuate significantly and could fall below the expectations of securities analysts and investors due to seasonality and other factors, some of which are beyond our control, resulting in a decline in our stock price.

Our quarterly operating results may fluctuate significantly because of seasonality and several other factors, including:

- labor availability and costs for hourly and management personnel;
- profitability of our products, especially in new markets and due to seasonal fluctuations;
- changes in interest rates;
- impairment of long-lived assets;
- macroeconomic conditions, both nationally and locally;
- disruption in production by us or a co-manufacturer;
- negative publicity relating to products we sell;
- changes in consumer preferences and competitive conditions;
- expansion to new markets;
- fluctuations in commodity prices; and
- actions by our competitors (e.g., pricing promotions).

Fluctuations in our operating results due to the foregoing or other factors could cause our results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price.

Anti-takeover provisions contained in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Our certificate of incorporation contains provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. We are also subject to anti-takeover provisions under Delaware law, which could delay or prevent a change of control. Together, these provisions may make more difficult the removal of management and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities. These provisions include:

- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the right of our board to elect a director to fill a vacancy created by the expansion of our board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our board;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- a prohibition on stockholders calling a special meeting and the requirement that a meeting of stockholders may only be called by members of our board, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to obtain control of us.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

As of December 31, 2019, we operated the following facilities, supporting our Sweet Baked Goods reporting segment's operations, as shown in the chart below.

Type	Location	Owned/Leased	Size (Sq. Ft.)
Bakery	Emporia, Kansas	Owned	278,500
Bakery	Columbus, Georgia	Leased[1]	313,700
Bakery	Indianapolis, Indiana	Owned	195,000
Bakery	Chicago, Illinois	Owned	137,000
Distribution Center	Chicago, Illinois	Leased	64,816
Third-Party Warehouse	Chicago, Illinois	Other[2]	—
Distribution Center	Shorewood, Illinois	Leased	507,187
Third-Party Warehouse	Carthage, Missouri	Other[2]	—
Third-Party Warehouse	Hobart, Indiana	Other[2]	—
Distribution Center	Edgerton, Kansas	Leased	765,000
Distribution Center	Emporia, Kansas	Leased	24,112
Commercial Office Space	Chicago, Illinois	Leased	9,325
Corporate Headquarters	Lenexa, Kansas	Owned	50,200

[1] The Columbus, GA facility is available for the purchase amount of $100.
[2] Variable usage fees are charged on a per-pallet basis.

Item 3. Legal Proceedings

We are involved in lawsuits, claims and proceedings arising in the ordinary course of business. These matters may involve personnel and employment issues, personal injury, contract and other proceedings arising in the ordinary course of business. Although we do not expect the outcome of these proceedings to have a material adverse effect on our financial condition or results of operations, litigation is inherently unpredictable. Therefore, we could incur judgments or enter into settlements or claims that could materially impact our results.

The information required to be furnished by us under this Part I, Item 3 (Legal Proceedings) is incorporated by reference to the information contaied in Note 15. Commitments and Contingencies to the consolidated financial statements included in Part II, Item 8 on this Annual Report on Form 10-K.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our Class A common stock and warrants are currently quoted on NASDAQ under the symbols "TWNK" and "TWNKW," respectively.

As of February 21, 2020, there were approximately 6 stockholders of record of our Class A common stock and 9 stockholders of record of our Class B common stock.

We currently do not pay dividends and have not paid any cash dividends on our common stock to date.

Securities Authorized for Issuance Under Equity Compensation Plans

Plan Category	(A) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights		(B) Weighted Average Exercise Price of Outstanding Options, Warrants, and Rights		(C) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plan (excluding securities reflected in column (A))	
Equity Compensation Plans approved by stockholders	2,699,721	(1)	$ 13.35	(2)	3,490,775	(3)
Equity Compensation Plans not approved by stockholders	—		—		—	
Total	2,699,721		$ 13.35		3,490,775	

(1) Consists of shares subject to outstanding stock options, restricted stock units and performance restricted stock units under the Hostess Brands, Inc. 2016 Equity Incentive Plan (the "2016 Plan"), some of which are vested and some of which remain subject to the vesting and/or performance criteria relating to the respective equity award.

(2) Represents the weighted average exercise price of 1,717,671 stock options and excludes the impact of 982,050 shares of restricted stock units for which no exercise price is payable.

(3) Consists of shares available for future issuance under the 2016 Plan.

For additional information, refer to Item 11 of Part III of this Annual Report on Form 10-K.

Unregistered Sales of Equity Securities and Use of Proceeds

The Metropoulos Entities may exchange the Class B units in Hostess Holdings, together with shares of Class B common stock for shares of our Class A common stock on a one-for-one basis. Other than any shares of Class A common stock issued in such exchanges, we did not issue any equity securities without registration during the period covered by this annual report on Form 10-K.

Issuer Purchase of Equity Securities

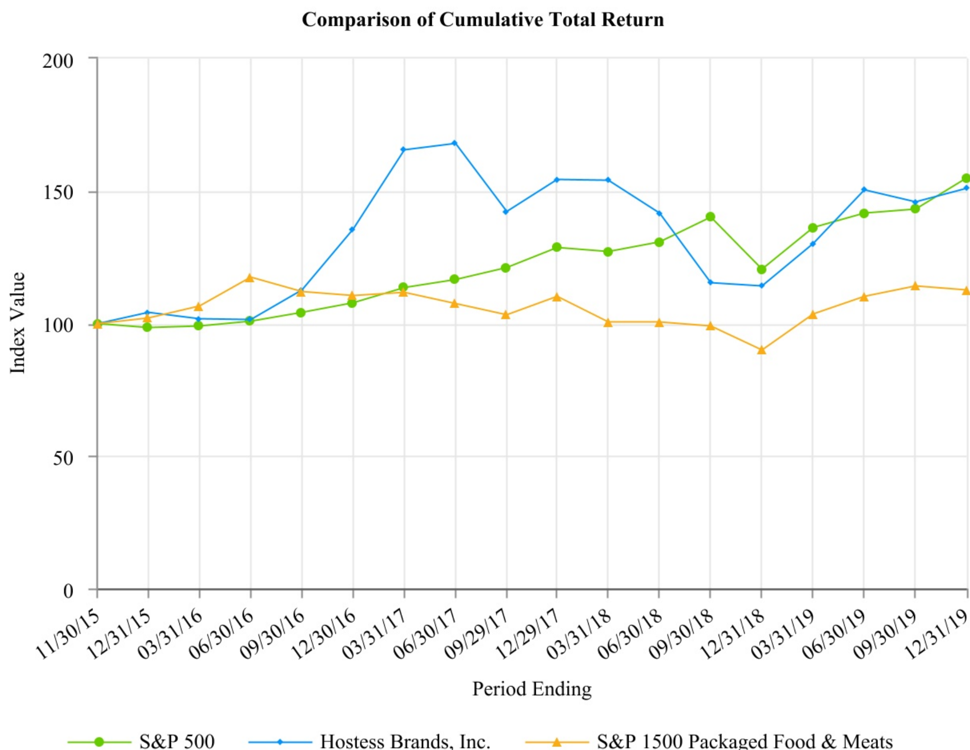
The Company did not have any repurchases of common stock for the year ended December 31, 2019.

Warrants

As of December 31, 2019, there were 48,453,154 public warrants and 8,046,636 private warrants outstanding. Each warrant entitles its holder to purchase one half of one share of our Class A common stock at an exercise price of $5.75 per half share, to be exercised only for a whole number of shares of our Class A common stock. The warrants became exercisable on December 4, 2016 and expire five years after that date or earlier upon redemption or liquidation. The Company may redeem the outstanding public warrants at a price $0.01 per warrant, if the last sale price of the Company's common stock equals or exceeds $24.00 per share for any 20 trading days within a 30 trading day period ending on the third business day before the Company sends the notice of redemption to the warrant holders. The private placement warrants, however, are nonredeemable so long as they are held by Gores Sponsor, LLC or its permitted transferees. The private warrants were registered with the SEC for future potential sales to the public. When sold to the public, the private placement warrants will become public warrants.

Performance Graph

The following graph and related information shall not be deemed "soliciting material" or be deemed to be "filed" with the Commission, nor shall such information be incorporated by reference into any future filing, except to the extent that we specifically incorporate it by reference into such filing. The following stock performance graph compares, for the period November 30, 2015 (the first day our common stock was traded following our initial public offering) through December 31, 2019 (the last trading day of our fiscal year), the cumulative total stockholder return for (1) the Company's common stock, (2) the Standard & Poor's 500 and (3) the Standard & Poor's 1500 Packaged Foods and Meats Index. The graph assumes the value of the investment in our common stock and each index was $100.00 on November 30, 2015 and assumes reinvestment of any dividends. The stock price performance below is not necessarily indicative of future stock price performance.



Item 6. Selected Financial Data

The following table sets forth selected consolidated financial data for the last five years. The selected consolidated financial data should be read in conjunction with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and Item 8. Financial Statements and Supplementary Data.

As a result of the Hostess Business Combination on November 4, 2016, Hostess Brands, Inc. is the acquirer for accounting purposes and Hostess Holdings is the acquiree and accounting predecessor. Our financial statement presentation includes the financial statements of Hostess Holdings as "Predecessor" for periods prior to the Closing Date and, for periods after the Closing Date, includes Hostess Brands, Inc., including the consolidation of Hostess Holdings as "Successor". Our selected financial data below under the headings "2019 (Successor)", "2018 (Successor)", "2017 (Successor)" and "2015 (Predecessor)" are as of December 31 or for the year then ended, as applicable. The selected financial data presented under the heading "2016 (Successor)" are as of December 31, 2016 or for the period November 4, 2016 to December 31, 2016, as applicable, and the "2016 (Predecessor)" data are for the period January 1, 2016 to November 3, 2016.

(In thousands except for per share data)	2019 (1)	2018 (2)	2017 (3)	2016 (4)		2015
	(Successor)	(Successor)	(Successor)	(Successor)	(Predecessor)	(Predecessor)
Statements of operations:						
Net revenue	$ 907,675	$ 850,389	$ 776,188	$ 111,998	$ 615,588	$ 620,815
Gross profit	299,834	267,277	326,898	38,714	266,529	262,203
Net income (loss)	77,565	81,426	258,108	(8,485)	60,425	88,760
Basic earnings (loss) per share (5)	0.57	0.63	2.26	(0.05)		
Diluted earnings (loss) per share (5)	0.55	0.61	2.13	(0.05)		
Balance sheet:						
Total assets (6)	3,097,701	3,010,713	2,966,275	2,847,892		613,871
Long-term debt and lease obligations (6)	987,288	988,004	999,188	1,004,870		1,202,917
Liquidity:						
Capital expenditures (7)	35,536	53,748	36,383	7,627	31,477	27,252

Notes to the selected financial data:

1. During the year ended December 31, 2019, we divested our In-Store Bakery business. Also during the year, we recognized a $7.1 million gain on the valuation of a foreign currency contract purchased in anticipation of the purchase of Voortman in January of 2020.
2. During the year ended December 31, 2018, we entered into an agreement to buyout a counterparty's rights to all current and future tax savings under the tax receivable agreement entered into in connection with the Hostess Business Combination (the "Tax Receivable Agreement") in exchange for a $34.0 million cash payment, resulting in a gain of $12.4 million. We also acquired the Cloverhill Business in February 2018.
3. During the year ended December 31, 2017, we recognized a gain of $161.5 million related to the remeasurement of deferred tax items and the Tax Receivable Agreement primarily due to enacted tax laws referred to as "Tax Reform".
4. 2016 Predecessor and Successor financial results reflect certain transactions related to the Hostess Business Combination, including business combination costs of $31.8 million in the Predecessor Period and stock compensation expense of $26.4 million in the Successor Period. We also completed the acquisition of Superior in May of 2016.
5. Earnings per basic and diluted share is not presented for the Predecessor, which is a partnership.
6. Balance sheet information is not provided for the 2016 Predecessor period.
7. Capital expenditures consists of purchases of property and equipment and acquisition and development of software assets paid in cash or accrued during the period.

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES

Adjusted gross profit, adjusted net income, adjusted EBITDA and adjusted EPS collectively referred to as “Non-GAAP Financial Measures,” are commonly used in the Company's industry and should not be construed as an alternative to gross profit, net income or earnings per share as indicators of operating performance (as determined in accordance with GAAP). These Non-GAAP Financial Measures may not be comparable to similarly titled measures reported by other companies. The Company has included these Non-GAAP Financial Measures because it believes the measures provide management and investors with additional information to measure the Company's performance, estimate the Company's value and evaluate the Company's ability to service debt.

Non-GAAP Financial Measures are adjusted to exclude certain items that affect comparability. The adjustments are itemized in the tables below. You are encouraged to evaluate these adjustments and the reason the Company considers them appropriate for supplemental analysis. In evaluating adjustments, you should be aware that in the future the Company may incur expenses that are the same as or similar to some of the adjustments set forth below. The presentation of Non-GAAP Financial Measures should not be construed as an inference that future results will be unaffected by unusual or recurring items.

The Company defines adjusted EBITDA as net income adjusted to exclude (i) interest expense, net, (ii) depreciation and amortization, (iii) income taxes and (iv) share-based compensation, as further adjusted to eliminate the impact of certain items that the Company does not consider indicative of its ongoing operating performance. Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation, or as a substitute for analysis of the Company's results as reported under GAAP. For example, adjusted EBITDA:

- does not reflect the Company's capital expenditures, future requirements for capital expenditures or contractual commitments;
- does not reflect changes in, or cash requirements for, the Company's working capital needs;
- does not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on the Company's debt; and
- does not reflect payments related to income taxes, the Tax Receivable Agreement or distributions to the non-controlling interest to reimburse its tax liability.

Reconciliation of Adjusted Gross Profit and Adjusted EBITDA

(In thousands)	2019	2018	2017	2016	2016	2015
	(Successor)	(Successor)	(Successor)	(Successor)	(Predecessor)	(Predecessor)
Reconciliation of Adjusted Gross Profit						
Gross profit	$ 299,834	$ 267,277	$ 326,898	$ 38,714	$ 266,529	$ 262,203
Non-GAAP adjustments:						
Acquisition, disposal and integration related costs	1,563	10,137	—	8,914	—	—
Facility transition costs	9,381	—	—	—	—	—
Special employee incentive compensation	33	1,965	—	—	2,195	2,649
Adjusted gross profit	$ 310,811	$ 279,379	$ 326,898	$ 47,628	$ 268,724	$ 264,852
Reconciliation of Adjusted EBITDA						
Net income (loss)	$ 77,565	$ 81,426	$ 258,108	$ (8,485)	$ 60,425	$ 88,760
Non-GAAP adjustments:						
Income tax provision	16,892	12,954	(67,204)	(7,762)	439	—
Interest expense, net	39,870	39,404	39,174	6,649	60,384	50,011
Depreciation and amortization	43,334	41,411	38,170	5,843	10,265	9,836
Share-based compensation	9,231	5,600	7,413	26,748	3,890	1,381
Tax Receivable Agreement remeasurement and gain on buyout	186	(14,237)	(50,222)	—	—	—
Impairment of property and equipment, intangible assets and goodwill	1,976	4,717	1,003	—	7,300	2,700
Special employee incentive compensation	1,910	3,444	—	—	4,698	3,923
Foreign currency contract gain	(7,127)	—	—	—	—	—
Acquisition, disposal and integration related costs	5,484	10,434	—	8,914	31,832	—
Facility transition costs	12,080	—	—	—	—	—
Loss (gain) on debt modification	2,023	—	2,554	(763)	—	25,880
Loss (gain) on sale/abandonment of property and equipment and bakery shutdown costs (recoveries)	—	253	(144)	—	2,551	4,182
Other (i)	1,233	770	1,360	751	1,624	(8,743)
Adjusted EBITDA	$ 204,657	$ 186,176	$ 230,212	$ 31,895	$ 183,408	$ 177,930

i. For the years ended December 31, 2019, 2018, 2017, 2016 and 2015 other included transaction-related and other non-operating professional fees.

Reconciliation of Adjusted Net Income and Adjusted EPS

(In thousands, except share and per share data)	2019	2018	2017	2016 (1)
Reconciliation of Adjusted EPS	**(Successor)**	**(Successor)**	**(Successor)**	**(Successor)**
Net income (loss)	$ 77,565	$ 81,426	$ 258,108	$ (8,485)
Non-GAAP adjustments:				
Tax Receivable Agreement remeasurement and gain on buyout	186	(14,237)	(50,222)	—
Executive chairman agreement termination and execution	—	—	—	26,748
Remeasurement of deferred taxes	(4,564)	(5,375)	(108,621)	—
Impairment of property and equipment, intangible assets and goodwill	1,976	4,717	1,003	—
Special employee incentive compensation	1,910	3,444	—	—
Foreign currency contract gain	(7,127)	—	—	—
Acquisition, disposal and integration related costs	5,484	10,434	—	8,914
Facility transition costs	12,080	—	—	—
Loss (gain) on debt refinancing	2,023	—	2,554	(763)
Loss (gain) on sale/abandonment of property and equipment and bakery shutdown costs (recoveries)	—	253	(144)	—
Other	1,233	—	—	—
Tax impact of adjustments	(3,918)	(2,027)	(717)	(10,470)
Adjusted net income	86,848	78,635	101,961	15,944
Non-controlling interest allocation of net income	(14,450)	(18,531)	(34,211)	4,081
Non-controlling interest allocation of adjustments	(2,192)	(4,343)	(1,077)	(9,772)
Adjusted Net income attributed to Class A stockholders	$ 70,206	$ 55,761	$ 66,673	$ 10,253
Weighted average Class A shares outstanding-diluted	114,699,447	103,098,394	105,307,293	97,791,658
Adjusted EPS	$ 0.61	$ 0.54	$ 0.63	$ 0.10

1. Excludes the Predecessor Period from January 1, 2016 through November 4, 2016.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes included in Item 8 of this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in Item 1A "Risk Factors" of this Annual Report on Form 10-K.

Overview

We are a leading packaged food company focused on developing, manufacturing, marketing, selling and distributing baked goods in North America, providing a wide range of snack cakes, donuts, sweet rolls, breakfast pastries, snack pies and related products. As of December 31, 2019, we operate four baking facilities and utilize distribution centers and third-party warehouses to distribute our products. Our DTW product distribution system allows us to deliver to our customers' warehouses. Our customers in turn distribute to their retail stores and/or distributors. In January 2020, we acquired Voortman which produces a variety of cookies and wafers products, including sugar-free products under the Voortman® brand.

We have two reportable segments: "Sweet Baked Goods" and "In-Store Bakery". Sweet Baked Goods consists of fresh and frozen sweet baked goods and bread products sold under the Hostess®, Dolly Madison®, Cloverhill®, and Big Texas® brands along with private label products. In-Store Bakery consisted primarily of Superior on Main® branded eclairs, madeleines, brownies, and iced cookies sold in the bakery section of grocery and club stores. We divested the In-Store Bakery operations in August 2019.

Hostess® is the second leading brand by market share within the SBG category, according to Nielsen U.S. total universe. For the 52-week period ended December 28, 2019 our branded SBG products (which include Hostess®, Dolly Madison®, Cloverhill®, and Big Texas®) market share was 18.8% per Nielsen's U.S. SBG category data.

Principal Components of Operating Results

Net Revenue

We generate revenue primarily through selling sweet baked goods and other products under the Hostess® group of brands, which includes iconic products such as CupCakes, Twinkies®, Donettes®, Ding Dongs®, and Zingers® in addition to Danishes, Honey Buns and Coffee Cakes. We also sell products under the Dolly Madison®, Cloverhill® and Big Texas® brands along with private label products. Our product assortment is sold to customers' warehouses and distribution centers by the case or in display ready corrugate units. Retailers display and sell our products to the end consumer in single-serve, multi-pack or club-pack formats. We sell our products primarily to supermarket chains, national mass merchandisers and convenience and drug stores, along with a smaller portion of our product sales going to dollar stores, vending, club, and other retail outlets.

Our revenues are driven by average net price and total volume of products sold. Factors that impact unit pricing and sales volume include product mix, the cost of ingredients, the promotional activities implemented by the Company and its competitors, industry capacity, new product initiatives and quality and consumer preferences. We do not keep a significant backlog of finished goods inventory, as our baked products are promptly shipped to our distribution centers after being produced and then distributed to customers.

Cost of Goods Sold

Cost of goods sold consists of ingredients, packaging, labor, energy, other production costs, warehousing and transportation costs including in-bound freight, inter-plant transportation and distribution of our products to customers. The cost of ingredients and packaging represent the majority of our total costs of goods sold. All costs that are incurred at the bakeries, including the depreciation of bakery facilities and equipment, are included in cost of goods sold. We do not allocate any corporate functions into cost of goods sold.

Our cost of ingredients consists principally of flour, sweeteners, edible oils and cocoa, which are subject to substantial price fluctuations, as is the cost of paper, corrugate, films and plastics used to package our products. The prices for raw materials are influenced by a number of factors, including the weather, crop production, transportation and processing costs, government regulation and policies and worldwide market supply and demand. We also rely on fuel products, such as natural gas, diesel, propane and electricity, to operate our bakeries and produce our products. Fluctuations in the prices of the raw materials or fuel products used in the production, packaging or transportation of our products affect the cost of products sold and our product pricing strategy. We utilize forward buying strategies through short-term and long-term advance purchase contracts to lock in prices for certain high-volume raw materials, packaged components and certain fuel inputs. Through these initiatives, we believe we are able to obtain competitive pricing.

Advertising and Marketing

Our advertising and marketing expenses relate to our advertising campaigns, which include social media, print, online advertising, local promotional events, monthly agency fees and payroll costs. We also invest in wire racks and corrugate displays delivered to customers to display our products off shelf, field marketing and merchandising services to reset and check our store inventory on a regular basis.

Selling Expense

Selling expenses primarily include sales management, employment, travel, and related expenses, as well as broker fees. We utilize brokers for sales support, including managing promotional activities and order processing.

General and Administrative

General and administrative expenses primarily include employee and related expenses for the accounting, planning, customer service, legal, human resources, corporate operations, research and development, purchasing, logistics and executive functions. Also included are professional service fees related to audit and tax, legal, outsourced information technology functions, transportation planning, and corporate site and insurance costs, as well as the depreciation and amortization of corporate assets.

Non-Controlling Interest

Mr. Metropoulos and the Metropoulos Entities hold their equity investment in us primarily through Class B limited partnership units in the Company’s subsidiary, Hostess Holdings (“Class B Units”), and an equal number of shares of the Company’s Class B common stock (“Class B Stock”). Our Class B Stock has voting, but no economic rights, while Hostess Holdings’ Class B Units have economic, but no voting rights. Each Class B Unit, together with a share of Class B Stock held by the Metropoulos Entities, is exchangeable for a share of the Company’s Class A common stock (or at the option of the Company, the cash equivalent thereof). The Company holds 100% of the general partnership interest in Hostess Holdings and a majority of the limited partnership interests and consolidates Hostess Holdings in the Company’s consolidated financial statements. The interest of the Metropoulos Entities in Hostess Holdings’ Class B Units is reflected in our consolidated financial statements as a non-controlling interest. Class B Stock ownership in the Company decreased from approximately 23% at December 31, 2018 to approximately 6% at December 31, 2019 through a series exchanges of shares of Class B Stock and Class B Units for an equal number of Class A shares.

Factors Impacting Recent Results

Disposition

On August 30, 2019, the Company sold the In-Store Bakery operations, including relevant trademarks and licensing agreements, to an unrelated party. The In-Store Bakery operations provided products that were primarily sold in the in-store bakery section of the U.S. retail channels under the Superior on Main® brand or store-branded. The Company divested the operations to focus more on future investment in areas of our business that better leverage our core competencies.

Acquisition

On February 1, 2018, we acquired certain U.S. breakfast assets from Aryzta, LLC, which included a bakery, inventory, and the Big Texas® and Cloverhill® brand names (collectively referred to as the "Cloverhill Business"). We acquired these assets to expand our product portfolio and to gain previously outsourced manufacturing capabilities for our existing product portfolio. Our consolidated statements of operations includes the operation of these assets from February 1, 2018 through December 31, 2019.

Tax Receivable Agreement Buyout

On January 26, 2018, we entered into a transaction to terminate all future payments under the Tax Receivable Agreement payable to the Apollo Funds in exchange for a cash payment of $34.0 million, which was recognized as a financing outflow on the consolidated statements of cash flow. This transaction did not affect the portion of the rights under the Tax Receivable Agreement payable to the Metropoulos Entities. We recognized a $12.4 million gain in the non-operating section of our consolidated statements of operations, which represented the difference between the $46.4 million carrying value of the portion of the Tax Receivable Agreement liability which was terminated and the $34.0 million of cash payments.

Tax Reform

During the year ended December 31, 2017, the Tax Cuts and Jobs Act ("Tax Reform") was signed into law. Tax Reform significantly changed U.S. tax law by lowering the corporate income tax rate permanently from a maximum of 35% to a flat 21% rate, effective January 1, 2018. This impacted the valuation of our tax items and the Tax Receivable Agreement.

Results of Operations

(In thousands, except per share data)	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Net revenue	$ 907,675	$ 850,389	$ 776,188
Gross profit	299,834	267,277	326,898
As a % of net revenue	*33.0 %*	*31.4 %*	*42.1 %*
Operating costs and expenses	$ 163,738	$ 145,719	$ 92,906
Operating income	136,096	121,558	233,992
Other expense	41,639	27,178	43,088
Income tax expense (benefit)	16,892	12,954	(67,204)
Net income	77,565	81,426	258,108
Net income attributable to Class A shareholders	63,115	62,895	223,897
Earnings per Class A share:			
Basic	0.57	0.63	2.26
Diluted	0.55	0.61	2.13
Adjusted EBITDA (1)	204,657	186,176	230,212
Adjusted EPS (1)	0.61	0.54	0.63

(1) Adjusted EBITDA and adjusted EPS are non-GAAP measures. See Item 6 of this Annual Report on Form 10-K -Selected Financial Data for definition of these measures and a reconciliation to the related GAAP measures for each period presented.

Results for the Year Ended December 31, 2019 Compared to Results for the Year Ended December 31, 2018

Net Revenue

Net revenue for the year ended December 31, 2019 increased $57.3 million, or 6.7%, compared to the year ended December 31, 2018. Excluding the impact of the In-Store Bakery disposition in 2019, net revenue increased $72.0 million, or 8.6%. The increase in net revenue was attributed to volume growth in our core products across multiple customer channels, the introduction of our breakfast innovation products, including Danishes and Cinnamon Rolls, and the impact of pricing actions implemented in the fourth quarter of 2018.

Gross Profit

Gross profit was 33.0% of net revenue for the year ended December 31, 2019, an increase of 160 basis points from a gross margin of 31.4% for the year ended December 31, 2018. Gross profit in 2019 benefited from pricing actions, higher sales volume and bakery savings initiatives executed across all bakeries, particularly in our Chicago bakery. These benefits were partially offset by higher input costs.

Operating Costs and Expenses

Operating costs and expenses for the year ended December 31, 2019 increased by 12.4% from the year ended December 31, 2018. During 2019, we recognized a $7.1 million gain on the valuation of a foreign currency contract originated to hedge the January 2020 purchase of Voortman in Canadian dollars. During 2018, we recognized a $3.3 million impairment charge related to our In-Store Bakery assets, which were sold in August 2019. Excluding these costs, operating costs and expenses increased due to additional expense related to incentive and stock compensation, additional payroll to execute strategic corporate initiatives, transaction costs related the sale of In-Store Bakery and the acquisition of Voortman, and facility transition costs to relocate our primary distribution center as well an increase from the remeasurement of the Tax Receivable Agreement.

Operating Income

Operating income for the year ended December 31, 2019 was $136.1 million compared to $121.6 million for the year ended December 31, 2018. The increase in operating income was attributed to higher sales volume, the impact of pricing actions and bakery operating efficiencies as well as the gain on the foreign currency contract. These increases to operating income were partially offset by higher incentive and stock compensation, transaction and facility transition costs as well an increase from the remeasurement of the Tax Receivable Agreement.

Other Expense

For the years ended December 31, 2019 and 2018, interest expense related to our term loan was $43.3 million and $41.3 million, respectively. Also, during the year ended December 31, 2019, we recognized a loss of $0.5 million related to the refinancing of our term loan. During the year ended December 31, 2018, we recognized a $12.4 million gain related to the buyout of the Tax Receivable Agreement.

Income Taxes

Our effective tax rate was 17.9% for the year ended December 31, 2019 compared to 13.7% for the year ended December 31, 2018. The increase in the effective tax rate was primarily due to the Class B for Class A share exchanges during 2019. Subsequent to these exchanges, more income from Hostess Holdings, L.P was allocated to Hostess Brands, Inc. The effective tax rate for the year ended December 31, 2018 reflects the tax impact of the gain on the buyout of the Tax Receivable Agreement and the tax benefit related to revaluing our deferred tax liabilities due to a change in our estimated state tax rate.

Net Income

For the year ended December 31, 2019, net income was $77.6 million compared to $81.4 million for the year ended December 31, 2018. The decrease in net income was primarily attributed to the buyout of the tax receivable agreement in 2018, which partially offset by higher operating income in 2019.

Earnings Per Share

Our earnings per class A share was $0.57 (basic) and $0.55 (dilutive) for the year ended December 31, 2019, compared to $0.63 (basic) and $0.61 (dilutive) for the year ended December 31, 2018.

Adjusted earnings per share was $0.61 for the year ended December 31, 2019, compared to $0.54 for the year ended December 31, 2018. The increase was attributed to higher operating income offset by an increase in the dilutive impact of our outstanding warrants.

Adjusted EBITDA

Adjusted EBITDA was $204.7 million for the year ended December 31, 2019, compared to $186.2 million for the year ended December 31, 2018. The improvement in adjusted EBITDA was attributed to higher sales volume, the impact of pricing actions and bakery operating efficiencies, partially offset by a shift in product mix and additional operating costs to execute the relocation of our primary distribution center and in support of revenue growth and marketing initiatives.

Segments

We have two reportable segments: Sweet Baked Goods and In-Store Bakery. Our Sweet Baked Goods segment consists of fresh and frozen baked goods and bread products that are sold under the Hostess®, Dolly Madison®, Cloverhill® and Big Texas® brands. The In-Store Bakery segment consists of Superior on Main® branded and store-branded products sold through the in-store bakery section of grocery and club stores. The operations included within the In-Store Bakery segment were sold on August 30, 2019.

We evaluate performance and allocate resources based on net revenue and gross profit. Information regarding the operations of these reportable segments is as follows:

(In thousands)	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Net revenue:			
Sweet Baked Goods	$ 878,973	$ 808,355	$ 733,827
In-Store Bakery	28,702	42,034	42,361
Net revenue	$ 907,675	$ 850,389	$ 776,188
Gross profit:			
Sweet Baked Goods	$ 293,648	$ 258,995	$ 316,916
In-Store Bakery	6,186	8,282	9,982
Gross profit	$ 299,834	$ 267,277	$ 326,898
Capital expenditures (1):			
Sweet Baked Goods	$ 35,354	$ 53,394	$ 35,609
In-Store Bakery	182	354	774
Capital expenditures	$ 35,536	$ 53,748	$ 36,383

(1) For all periods presented, capital expenditures consists of purchases of property and equipment and acquisition and development of software assets paid in cash or acquired through accounts payable.

Sweet Baked Goods net revenue for the year ended December 31, 2019 increased $70.6 million, or 8.7%, from the year ended December 31, 2018. The increase in net revenue was attributed to sales growth in our core products across multiple customer channels, the introduction of our breakfast innovation products, including Danishes and Cinnamon Rolls, and the impact of pricing actions implemented in the fourth quarter of 2018.

Sweet Baked Goods gross profit for the year ended December 31, 2019 was 33.4% of net revenue, compared to 32.0% of net revenue, for the year ended December 31, 2018. Gross profit in 2019 benefited from pricing actions, higher sales volume and bakery savings initiatives executed across all bakeries, particularly in our Chicago bakery. These benefits were partially offset by a shift in product mix.

In-Store Bakery net revenue for the year ended December 31, 2019 decreased 31.7% from the year ended ended December 31, 2018 as a result of the sale of the In-Store Bakery operations in August of 2019. In-Store Bakery gross profit for the year ended December 31, 2019 was 21.6% of net revenue compared to 19.7% for the year ended December 31, 2018.

Liquidity and Capital Resources

Our primary sources of liquidity are from the cash and cash equivalents on the balance sheet, future cash flow generated from operations, and availability under our revolving credit agreement ("Revolver"). We believe that cash flows from operations and the current cash and cash equivalents on the balance sheet will be sufficient to satisfy the anticipated cash requirements associated with our existing operations for at least the next 12 months. Our ability to generate sufficient cash from our operating activities depends on our future performance, which is subject to general economic, political, financial, competitive and other factors beyond our control. In addition, our future capital expenditures and other cash requirements could be higher than we currently expect as a result of various factors, including any expansion of our business that we undertake, including acquisitions. We consider all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

We had working capital, excluding cash, as of December 31, 2019 and 2018 of $8.1 million and $12.0 million, respectively. We have the ability to borrow under our Revolver to meet obligations as they come due. As of December 31, 2019, we had approximately $95.8 million available for borrowing, net of letters of credit, under our Revolver.

Cash Flows from Operating Activities

Cash flows provided by operating activities for the years ended December 31, 2019 and 2018 were $144.0 million and $143.7 million, respectively. The increase in operating cash flows from 2018 to 2019 was driven by an investment in inventory to support the transition to our new distribution center in the fourth quarter of 2019 partially offset by higher operating income.

Cash Flows provided by and used in Investing Activities

Cash flows provided by investing activities for the year ended December 31, 2019 were $22.9 million while cash flows used in investing activities for the year ended December 31, 2018 was $70.9 million. During 2019, we received proceeds of $63.3 million from the sale of our In-Store Bakery business, while in 2018 we used $23.2 million to purchase the Cloverhill business and had higher capital expenditures to support the integration of the Cloverhill business.

Cash Flows used in Financing Activities

Cash flows used in financing activities were $28.1 million and $62.0 million for the years ended December 31, 2019 and 2018, respectively. During the year ended December 31, 2019, financing cash usage primarily included principal payments on our term loan as well as costs incurred to refinance and extend the maturity of the term loan. During the year ended December 31, 2018 we bought out a portion of the Tax Receivable Agreement for $34.0 million, as well as made the first payment to the remaining

Long-Term Debt

As of December 31, 2019, $973.9 million aggregate principal amount of our term loan and $4.2 million aggregate principal amount of letters of credit, reducing the amount available under the Revolver, were outstanding. See Note 15. Commitments and Contingencies to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for information regarding the letters of credit. We had no outstanding borrowings under our Revolver as of December 31, 2019. As of December 31, 2019, we were in compliance with all covenants under our term loan and the Revolver. The Revolver contains certain restrictive financial covenants. Based on our current and projected financial performance, we believe that we will comply with these covenants for the foreseeable future.

In January 2020, we entered into $140.0 million of incremental term loans through an amendment to our existing credit agreement. The proceeds, together with cash on hand, financed the $320 million purchase of Voortman.

Commitments and Contingencies

As of December 31, 2019, the Company has commitments and contingencies for tax receivable arrangements, debt, operating leases, and advance purchase commitments. Refer to Note 15. Commitments and Contingencies to the consolidated financial statements included in Part II, Item 8 on this Annual Report on Form 10-K.

Contractual Commitments as of December 31, 2019	Total Committed	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
(In thousands)					
Voortman acquisition (1)	$ 320,067	$ 320,067	$ —	$ —	$ —
Tax receivable agreement	138,196	12,100	14,800	15,900	95,396
Term loan	973,931	9,764	19,527	19,528	925,112
Interest payments on term loan	214,404	39,720	78,556	77,104	19,024
Operating leases	18,922	3,541	4,716	9,636	1,029
Ingredient procurement	76,441	75,280	1,161	—	—
Packaging procurement	49,260	49,260	—	—	—
	$ 1,791,221	$ 509,732	$ 118,760	$ 122,168	$ 1,040,561

(1) Represents the US dollar funding needed to settle our outstanding Canadian dollar foreign currency purchase contract, which in turn funded the Canadian dollar denominated purchase of Voortman. This purchase was financed with cash on hand and the proceeds from $140 million of additional term loans on our existing credit agreement borrowed in January 2020.

Tax receivable agreement

The Tax Receivable Agreement generally provides for the payment by the Company to the legacy Hostess Equity Holders of 85% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the closing of the 2016 Hostess Business Combination (which periods may extend, unless the Tax Receivable Agreement is terminated early in accordance with its terms, for more than 15 years following any exchange of Class B units of Hostess Holdings for shares of the Company's Class A common stock or the cash equivalent thereof) as a result of (i) certain increases in tax basis resulting from the 2016 Hostess Business Combination; (ii) certain tax attributes of Hostess Holdings, LP and its subsidiaries existing prior to the Hostess Business Combination and prior to subsequent exchanges of Class B Units; (iii) certain increases in tax basis resulting from exchanges of Class B Units; (iv) imputed interest deemed to be paid by the Company as a result of payments it makes under the Tax Receivable Agreement; and (v) certain increases in tax basis resulting from payments the Company makes under the Tax Receivable Agreement. The Company retained the benefit of the remaining 15% of these cash savings. Certain payments under the Tax Receivable Agreement will be made to the Metropoulos Entities in accordance with specified percentages, regardless of the source of the applicable tax attribute.

In January 2018, we entered into an agreement to terminating all future payment obligations to one of the counterparties in exchange for a payment of $34.0 million. Subsequent to the agreement, we will now retain a greater portion of the net cash tax savings related to tax attributes subject to the Tax Receivable Agreement.

Critical Accounting Policies

The preparation of financial statements in accordance with generally accepted accounting principles in the United States requires the use of judgment, estimates and assumptions. We make such subjective determinations after careful consideration of our historical performance, management's experience, current economic trends and events and information from outside sources. Inherent in this process is the possibility that actual results could differ from these estimates and assumptions for any particular period.

Our significant accounting policies are detailed in Note 1 to our consolidated financial statements within Item 8. The following areas are the most important and require the most difficult, subjective judgments.

Trade and consumer promotion programs

We offer various sales incentive programs to customers and consumers, such as feature price discounts, in-store display incentives, cooperative advertising programs and new product introduction fees. The mix between promotional programs, which are classified as reductions in revenue in the statements of operations, and advertising or other marketing activities, which are classified as marketing and selling expenses in the statements of operations, fluctuates between periods based on our overall marketing plans, and such fluctuations have an impact on revenues. These trade programs also require management to make estimates about the expected total cost of the programs and related allocations amongst participants (who might have different levels of incentives based on various program requirements). These estimates are inherently uncertain and are generally based on historical experience, adjusted for any new facts or circumstances that might impact the ultimate cost estimate for a particular program or programs.

Goodwill and Indefinite-lived trade names

When evaluating goodwill and indefinite-lived intangible assets for impairment under U.S. GAAP, we may first perform an assessment of qualitative factors to determine if the fair value of the reporting unit or the intangible asset is more-likely-than-not greater than the carrying amount. Such qualitative factors include, but are not limited to, macro-economic conditions, market and industry conditions, cost considerations, competitive environment, share price fluctuations, overall financial performance and results of past impairment tests. Based on a review of the qualitative factors, if we determine it is not more-likely-than-not that the fair value is less than the carrying value, we may bypass the quantitative impairment test. We also may elect not to perform the qualitative assessment for some or all reporting units and perform a quantitative impairment test. For our 2019 annual impairment testing, we elected to perform a qualitative assessment for our reporting units. No indicators of impairment were noted. For our 2018 annual impairment testing, we elected to perform a quantitative assessment for our reporting units. This test estimated the fair value of each of the reporting units and compared it to the carrying value. To the extent the fair value was in excess of the carrying value, no impairment existed. Otherwise, an impairment loss was recognized for the amount that the carrying value of a reporting unit, including goodwill, exceeded its fair value.

In performing the quantitative test of goodwill, fair value was determined based on a calculation which gave consideration to an income approach utilizing the discounted cash flow method and the market approach using the market comparable and market transaction methods.

Significant assumptions used to determine fair value under the discounted cash flow method included future trends in sales, operating expenses, capital expenditures and changes in working capital. When forecasting these future trends, we utilized historical financial performance, expected terminal growth rates, known industry-specific trends as well internal forecasts and planned initiatives including expected innovation which would impact financial performance. In addition to projected financial information, we also developed an appropriate discount rate for each reporting unit reflecting the reporting unit’s estimated cost of equity capital and after-tax cost of debt, which we estimated by considering the reporting unit’s current borrowing rate, required return on invested capital and future economic and market conditions.

Significant assumptions used to determine the fair value under the market comparable and market transaction methods utilized for the market approach included the identification of publicly-traded companies and transactions involving a purchase or sale. When identifying such companies or transactions, we considered size, industry, product and geographic diversification and cost structure.

During the year ended December 31, 2019, we recognized an additional impairment charge to the In-Store Bakery reporting unit goodwill of $1.0 million reflecting a change in certain market assumptions (level 1 inputs). Based on the results of the 2018 impairment testing, the fair value of the Sweet Baked Goods reporting unit exceeded its carrying value by 3.1%. The fair value of the In-Store Bakery reporting unit was less than its carrying value and we recognized an impairment charge of $2.7 million to goodwill during the year ended December 31, 2018.

Our indefinite-lived intangible assets consist of trademarks and trade names. The $1,408.6 million and $1,409.9 million balances at December 31, 2019 and 2018, respectively, were recognized as part of the Hostess Business Combination and the acquisition of the Cloverhill Business. The trademarks and trade names are integral to the Company’s identity and are expected to contribute indefinitely to our corporate cash flows. Fair value for trademarks and tradenames was determined using the income approach. The application of the income approach was premised on a royalty savings method, whereby the trademark and tradenames are valued by reference to the amount of royalty income they could generate if they were licensed, in an arm’s-length transaction, to a third party. These assets have been assigned an indefinite life and therefore are not amortized but rather evaluated for impairment annually using the qualitative or quantitative methods similar to goodwill. During 2019, we performed a qualitative test. No indicators of impairment were noted. During 2018, we performed a quantitative assessment. For this assessment, the valuation of trademarks and trade names are determined using the relief from royalty method. Significant assumptions used in this method include future trends in sales, a royalty rate and a discount rate to be applied to the forecast revenue stream. As a result of the 2018 quantitative tests, we recognized impairment charges of $0.6 million to the In-Store Bakery intangibles assets during the year ended December 31, 2018.

Changes in certain significant assumptions could have a significant impact on the estimated fair value, and therefore, a future impairment or additional impairments could result for a portion of goodwill, long-lived assets or intangible assets.

Business Combinations

We account for business acquisitions using the purchase method of accounting. Assets acquired, liabilities assumed, and non-controlling interests are recorded at their estimated fair values at the acquisition date. The excess of purchase price over fair value of the net assets acquired, including the amount assigned to identifiable intangible assets, is recorded as goodwill. Given the time it takes to obtain pertinent information to finalize the acquired company’s balance sheet, it may be multiple quarters

before we are able to finalize those initial fair value estimates. Accordingly, it is not uncommon for the initial estimates to be subsequently revised.

Tax Receivable Agreement

We recognize a liability on the consolidated balance sheet based on the undiscounted estimated future payments under the Tax Receivable Agreement. The most significant estimates utilized by management to calculate the corresponding liability is the Company's increase in tax basis related to exchanges, future cash tax savings rates, which are projected based on current tax laws and the Company's historical and future tax profile, and the allocation of the liability between short-term and long-term based on when the Company realizes certain tax attributes.

New Accounting Pronouncements

Refer to Note 1. Summary of Significant Accounting Policies of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K for further information regarding recently issued accounting standards.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks related to interest rates, commodity pricing and foreign currency exchange rates.

Market risk on variable-rate financial instruments

Our term loan and Revolver each bear interest on outstanding borrowings thereunder at variable interest rates. The rate in effect at December 31, 2019 for the outstanding term loan was a LIBOR-based rate of 4.14% per annum. At December 31, 2019, we had an aggregate principal balance of $973.9 million outstanding under the term loan and $95.8 million available for borrowing, net of letters of credit of $4.2 million, under the Revolver. Increases in market interest rates would cause interest expense to increase and earnings before income taxes to decrease.

To manage the risk related to our variable rate debt, we have entered into an interest rate swap contract with a counter party to make a series of payments based on a fixed interest rate of 1.78% and receive a series of payments based on the greater of LIBOR or 0.75%. Both the fixed and floating payment streams are based on a notional amount of $500 million at the inception of the contract and are reduced by $100 million each year of the five year contract. At December 31, 2019, a notional amount of $300.0 million remained outstanding on the swap contract.

The change in interest expense and earnings before income taxes resulting from a change in market interest rates would be dependent upon the weighted average outstanding borrowings and the portion of those borrowings that are hedged by our swap contract during the reporting period following an increase in market interest rates. An increase in applicable interest rates of 1% for the year ended December 31, 2019 would result in an increase in interest expense of approximately $9.8 million, or approximately $6.5 million after accounting for the impact of our swap contract.

Commodity Price Risk

In the ordinary course of business, we are exposed to commodity price risks relating to the purchases of raw materials and other manufacturing inputs. We regularly use vendor purchase commitments to lock-in pricing to manage certain of these exposures. For the year ended December 31, 2019, a hypothetical 1% adverse change in the market price of our principal commodities, including sugars, oils and corrugate, would increase our costs of goods sold by approximately $3.0 million, before considering the impact of our outstanding purchase commitments.

Foreign Currency Risk

In November 2019, we entered into a contract to purchase Voortman for $425.0 million Canadian dollars ("CAD"). The transaction closed in January 2020. To reduce our exposure, we entered into a contract to purchase CADs at a defined exchange rate sufficient to cover the purchase price and expected short-term cash outflows related to the conversion and integration of Voortman's operations. At December 31, 2019, a hypothetical 1% adverse change in the US dollar ("USD") to CAD exchange rate would increase the USD cash outflow to purchase Voortman by approximately $3.3 million. Our CAD purchase contract eliminates this exposure. Subsequent to close we will continue to be exposed to fluctuations in foreign currency exchange rates related to the operation of Voortman's Canadian production facility, sales and related operating expenses.

Item 8. Financial Statements and Supplementary Data

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

Hostess Brands, Inc.:

Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting

We have audited the accompanying consolidated balance sheets of Hostess Brands, Inc. and subsidiaries (the Company) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes (collectively, the consolidated financial statements). We also have audited the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019 based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control Over Financial Reporting*. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Evaluation of customer trade allowances

As discussed in Note 1 to the consolidated financial statements, the Company has recorded a liability for customer trade allowances, consisting primarily of pricing allowances and merchandising programs associated with sales to customers. The estimated liability for these programs is dependent on factors such as the ultimate purchase volume activity, the mix of customers and retailers participating in the programs, and redemption rates on retail incentives. The Company's liability for customer trade allowances as of December 31, 2019 was $45.7 million.

We have identified the evaluation of the customer trade allowance as a critical audit matter because of the degree of auditor judgment required to evaluate the Company's estimates. This is due to uncertainty around the amount of settlements, which typically occurs in a period subsequent to the related sales transaction, and in particular, the estimate of purchase volumes made by retailers from distributors.

The primary procedures we performed to address this critical audit matter included the following. We tested certain internal controls over the determination and monitoring of this liability within the Company's trade process at disaggregated levels, including controls over the Company's trade spend trending and lookback analyses based on final settlement. We analyzed the liability by trade allowance type to identify unusual trends. We assessed the Company's historical ability to accurately estimate its customer trade allowances by comparing historical estimates to final settlements. We also tested a sample of settlements recognized subsequent to period end.

Evaluation of the Tax Receivable Agreement Liability

As discussed in Note 9 to the consolidated financial statements, the Company's future expected payments under the Tax Receivable Agreement (TRA) related to Hostess Holdings, LP Class B unit exchanges made through December 31, 2019 are $12.1 million for 2020 and $126.1 million for 2021 and all years thereafter. These payments are the result of the application of the TRA to certain increases in tax basis and delivery of certain other tax attributes to the Company. The Company's estimated future expected payments utilize inputs that include the Company's cash tax savings rate.

We identified the evaluation of the TRA liability as a critical audit matter. There was a higher degree of auditor judgment required to evaluate the liability primarily due to the increased complexity in determining the increase in tax basis resulting from the volume of Hostess Holdings, LP Class B unit exchanges by Metropoulos Entities throughout 2019. In addition, the classification of the liability between short-term and long-term future expected payments resulting from these exchanges required specialized skills and knowledge of the TRA and newly enacted tax rules.

The primary procedures we performed to address this critical audit matter included the following. We tested certain internal controls over the Company's process to estimate the TRA liability, including controls related to the calculation of tax basis related to the exchanges. Further, we tested certain internal controls related to the allocation of the liability between short-term and long-term future expected payments. We, with the assistance of tax professionals with specialized skills and knowledge, evaluated the Company's TRA liability calculation through inspection and assessment of internal documentation and consideration of publicly available information about the Company. The evaluation included the increase in tax basis and the classification of the TRA liability between short-term and long-term future expected payments. In addition, our tax professionals compared their interpretation of the tax laws and regulations to the Company's application of those laws and regulations found in the Company's calculations.

/s/ KPMG LLP

We have served as the Company's auditor since 2013.

Kansas City, Missouri

February 26, 2020

HOSTESS BRANDS, INC.

CONSOLIDATED BALANCE SHEETS

(Amounts in thousands, except shares)

ASSETS	December 31, 2019	December 31, 2018
Current assets:		
Cash and cash equivalents	$ 285,087	$ 146,377
Accounts receivable, net	104,892	105,679
Inventories	47,608	38,580
Prepaids and other current assets	15,569	8,806
Total current assets	453,156	299,442
Property and equipment, net	242,384	220,349
Intangible assets, net	1,853,315	1,901,215
Goodwill	535,853	575,645
Other assets, net	12,993	14,062
Total assets	$ 3,097,701	$ 3,010,713
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Long-term debt and lease obligations payable within one year	$ 11,883	$ 11,268
Tax receivable agreement obligations payable within one year	12,100	4,400
Accounts payable	68,566	65,288
Customer trade allowances	45,715	42,010
Accrued expenses and other current liabilities	21,661	18,137
Total current liabilities	159,925	141,103
Long-term debt and lease obligations	975,405	976,736
Tax receivable agreement obligations	126,096	64,663
Deferred tax liability	256,051	277,954
Total liabilities	1,517,477	1,460,456
Commitments and Contingencies (Note 15)		
Class A common stock, $0.0001 par value, 200,000,000 shares authorized, 122,108,086 and 100,046,392 issued and outstanding at December 31, 2019 and 2018, respectively	12	10
Class B common stock, $0.0001 par value, 50,000,000 shares authorized, 8,409,834 and 30,255,184 shares issued and outstanding at December 31, 2019 and 2018, respectively	1	3
Additional paid in capital	1,152,055	925,902
Accumulated other comprehensive income (loss)	(756)	2,523
Retained earnings	334,480	271,365
Stockholders' equity	1,485,792	1,199,803
Non-controlling interest	94,432	350,454
Total liabilities, stockholders' equity and non-controlling interest	$ 3,097,701	$ 3,010,713

See accompanying notes to the consolidated financial statements.

HOSTESS BRANDS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in thousands, except shares and per share data)

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Net revenue	$ 907,675	$ 850,389	$ 776,188
Cost of goods sold	607,841	583,112	449,290
Gross profit	299,834	267,277	326,898
Operating costs and expenses:			
Advertising and marketing	39,775	35,069	33,004
Selling expense	30,719	30,071	32,086
General and administrative	69,423	52,760	52,943
Amortization of customer relationships	23,377	24,057	23,855
Business combination transaction costs	1,914	297	—
Tax receivable agreement liability remeasurement	186	(1,866)	(50,222)
Gain on foreign currency contract	(7,128)	—	—
Other operating expense	5,472	5,331	1,240
Total operating costs and expenses	163,738	145,719	92,906
Operating income	136,096	121,558	233,992
Other (income) expense:			
Interest expense, net	39,870	39,404	39,174
Gain on buyout of tax receivable agreement	—	(12,372)	—
Other expense	1,769	146	3,914
Total other expense	41,639	27,178	43,088
Income before income taxes	94,457	94,380	190,904
Income tax expense (benefit)	16,892	12,954	(67,204)
Net income	77,565	81,426	258,108
Less: Net income attributable to the non-controlling interest	14,450	18,531	34,211
Net income attributable to Class A stockholders	$ 63,115	$ 62,895	$ 223,897
Earnings per Class A share:			
Basic	0.57	0.63	2.26
Diluted	0.55	0.61	2.13
Weighted-average shares outstanding:			
Basic	110,540,264	99,957,049	99,109,629
Diluted	114,699,447	103,098,394	105,307,293

See accompanying notes to the consolidated financial statements.

HOSTESS BRANDS, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(Amounts in thousands)

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Net income	$ 77,565	$ 81,426	$ 258,108
Other comprehensive income:			
Unrealized gain (loss) on interest rate swap designated as a cash flow hedge	(5,768)	2,187	2,878
Income tax benefit (expense)	1,222	(470)	(890)
Comprehensive income	73,019	83,143	260,096
Less: Comprehensive income attributed to non-controlling interest	13,292	19,050	34,881
Comprehensive income attributed to Class A shareholders	$ 59,727	$ 64,093	$ 225,215

See accompanying notes to the consolidated financial statements.

HOSTESS BRANDS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(Amounts in thousands, except shares data)

	Class A Voting Common Stock		Class B Voting Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Losses / Retained Earnings	Total Stockholders' Equity	Non-controlling Interest
	Shares	Amount	Shares	Amount					
Balance–December 31, 2016	98,250,917	$ 10	31,704,988	$ 3	$ 912,824	$ —	$ (15,618)	$ 897,219	$ 334,192
Comprehensive income	—	—	—	—	—	1,318	223,897	225,215	34,881
Share-based compensation, net of income taxes of $2,610	154,849	—	—	—	4,803	—	—	4,803	—
Exchanges	1,385,424	—	(1,385,424)	—	13,848	—	—	13,848	(13,848)
Distributions	—	—	—	—	—	—	—	—	(12,985)
Payment of taxes for employee stock awards	—	—	—	—	(436)	—	—	(436)	—
Exercise of public warrants	55	—	—	—	1	—	—	1	—
Tax receivable agreement arising from exchanges, net of income taxes of $1,898	—	—	—	—	(10,317)	—	—	(10,317)	—
Balance–December 31, 2017	99,791,245	$ 10	30,319,564	$ 3	$ 920,723	$ 1,318	$ 208,279	$ 1,130,333	$ 342,240
Adoption of new accounting standards net of income taxes of $83	—	—	—	—	—	7	191	198	85
Comprehensive income	—	—	—	—	—	1,198	62,895	64,093	19,050
Share-based compensation, net of income taxes of $505	190,767	—	—	—	5,095	—	—	5,095	—
Exchanges	64,380	—	(64,380)	—	1,370	—		1,370	(1,370)
Distributions	—	—	—	—	—	—	—	—	(9,551)
Payment of taxes for employee stock awards	—	—	—	—	(1,025)	—	—	(1,025)	—
Tax receivable agreement arising from exchanges, net of income taxes of $33	—	—	—	—	(261)	—	—	(261)	—
Balance–December 31, 2018	100,046,392	$ 10	30,255,184	$ 3	$ 925,902	$ 2,523	$ 271,365	$ 1,199,803	$ 350,454
Comprehensive income	—	—	—	—	—	(3,388)	63,115	59,727	13,292
Share-based compensation, net of income taxes of $1,354	208,831	—	—	—	7,877	—	—	7,877	—
Exchanges	21,845,350	2	(21,845,350)	(2)	262,547	109	—	262,656	(262,656)
Distributions	—	—	—	—	—	—	—	—	(6,658)
Exercise of employee stock options	7,463	—	—	—	23	—	—	23	—
Payment of taxes for employee stock awards	—	—	—	—	(1,431)	—	—	(1,431)	—
Exercise of public warrants	50	—	—	—	—	—	—	—	—
Tax receivable agreement arising from exchanges, net of income taxes of $28,817	—	—	—	—	(42,863)	—	—	(42,863)	—
Balance–December 31, 2019	122,108,086	$ 12	8,409,834	$ 1	1,152,055	$ (756)	$ 334,480	$ 1,485,792	$ 94,432

See accompanying notes to the consolidated financial statements.

HOSTESS BRANDS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands)

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Operating activities			
Net income	$ 77,565	$ 81,426	$ 258,108
Depreciation and amortization	43,334	41,411	38,170
Impairment of property, goodwill and intangibles	1,505	4,717	1,003
Non-cash loss on debt modification	531	—	1,453
Debt premium amortization	(747)	(1,079)	(925)
Tax receivable agreement remeasurement and gain on buyout	185	(14,237)	(50,222)
Non-cash fees on sale of business	1,414	—	—
Gain on foreign currency contract	(7,128)	—	—
Share-based compensation	9,231	5,600	7,413
Loss on sale/abandonment of property and equipment	471	253	11
Deferred taxes	14,121	10,255	(81,270)
Change in operating assets and liabilities, net of acquisitions and dispositions:			
Accounts receivable	(2,570)	(3,667)	(11,775)
Inventories	(12,477)	3,569	(3,901)
Prepaids and other current assets	265	(510)	(3,039)
Accounts payable and accrued expenses	14,072	14,418	4,839
Customer trade allowances	4,202	1,499	3,820
Net cash provided by operating activities	143,974	143,655	163,685
Investing activities			
Purchases of property and equipment	(34,875)	(44,585)	(32,913)
Acquisition of business, net of cash	—	(23,160)	—
Proceeds from sale of business, net of cash	63,345	—	—
Proceeds from sale of assets	—	639	85
Acquisition and development of software assets	(5,609)	(3,839)	(2,381)
Net cash provided by (used in) investing activities	22,861	(70,945)	(35,209)
Financing activities			
Repayments of long-term debt and capital lease obligations	(9,894)	(10,105)	(5,144)
Debt refinancing costs	(7,433)	—	(1,066)
Distributions to non-controlling interest	(6,658)	(9,551)	(12,985)
Payment of taxes related to the net issuance of employee stock awards	(1,431)	(1,025)	(436)
Payments on tax receivable agreement	(2,732)	(41,353)	—
Proceeds from the exercise of warrants	23	—	1
Net cash used in financing activities	(28,125)	(62,034)	(19,630)
Net increase in cash and cash equivalents	138,710	10,676	108,846
Cash and cash equivalents at beginning of period	146,377	135,701	26,855
Cash and cash equivalents at end of period	$ 285,087	$ 146,377	$ 135,701
Supplemental Disclosures of Cash Flow Information			
Interest paid	$ 43,986	$ 37,617	$ 45,431
Taxes paid	$ 1,840	$ 3,422	$ 16,617
Supplemental disclosure of non-cash investing			
Accrued capital expenditures	$ 2,910	$ 7,858	$ 1,089

See accompanying notes to the consolidated financial statements.

HOSTESS BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Summary of Significant Accounting Policies

Description of Business

Hostess Brands, Inc. is a Delaware corporation headquartered in Lenexa, Kansas. The consolidated financial statements include the accounts of Hostess Brands, Inc. and its wholly owned subsidiaries, including Hostess Holdings, L.P. (“Hostess Holdings”) (collectively, the “Company”). The Company is a leading packaged food company primarily focused on developing, manufacturing, marketing, selling and distributing baked goods in North America. The Hostess® brand dates to 1919 when the Hostess® CupCake was introduced to the public, followed by Twinkies® in 1930. In 2013, the Legacy Hostess Equityholders (as defined below) acquired the Hostess® brand and other assets out of the bankruptcy liquidation proceedings of its prior owners, free and clear of all past liabilities. After a brief hiatus in production, the Company began providing Hostess® products to consumers and retailers across the nation in July 2013. Today, the Company produces a variety of new and classic treats primarily under the Hostess®, Dolly Madison®, Cloverhill®, and Big Texas® brands, including Donettes®, Twinkies®, CupCakes, Ding Dongs®, Zingers®, Danishes, Honey Buns and Coffee Cakes. In January 2020, the Company acquired Voortman Cookies, Limited (“Voortman”), which produces a variety of cookies and creme wafers under the Voortman® brand. The Company's trading symbols on NASDAQ are “TWNK” and “TWNKW”.

Basis of Presentation

The consolidated financial statements included herein have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”). The accompanying consolidated financial statements include the accounts of the Company and its majority-owned or controlled subsidiaries, collectively referred to as the Company. All intercompany balances and transactions have been eliminated in consolidation.

The Company has determined that Hostess Holdings, a limited partnership, is a variable interest entity (“VIE”) and that the Company is the primary beneficiary of the VIE. The Company determined that, due to its ownership of Hostess Holdings’ general partnership units, the Company has the power to direct all of the activities of Hostess Holdings, with no substantive kick-out rights or participating rights by the limited partners individually or as a group. Hostess Holdings constitutes the majority of the assets of the Company.

C. Dean Metropoulos and entities under his control (the “Metropoulos Entities”) hold their equity investment in the Company primarily through Class B limited partnership units in Hostess Holdings (“Class B Units”) and an equal number of shares of the Company’s Class B common stock (“Class B Stock”). The Company’s Class B Stock has voting, but no economic rights, while Hostess Holdings’ Class B Units have economic, but no voting rights. Each Class B Unit, together with a share of Class B Stock held by the Metropoulos Entities, is exchangeable for a share of the Company’s Class A common stock (or at the option of the Company, the cash equivalent thereof). The interest of the Metropoulos Entities in Hostess Holdings’ Class B Units is reflected in the consolidated financial statements as a non-controlling interest.

The Company has two reportable segments: Sweet Baked Goods and In-Store Bakery. The Company sold its In-Store Bakery operations on August 30, 2019.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned or controlled subsidiaries (including those for which the Company is the primary beneficiary of a VIE), collectively referred to as the Company. All intercompany balances and transactions have been eliminated in consolidation.

Adoption of New Accounting Standards

On January 1, 2019, the Company adopted Accounting Standards Update (“ASU”) No. 2016-02, Leases, along with the related ASUs 2018-01, 2018-10 and 2018-11 (collectively, “Topic 842”). Topic 842 requires a lessee to record on the balance sheet the assets and liabilities for the rights and obligations created by lease terms of more than 12 months. To adopt this standard, the Company utilized a modified retrospective transition method. Under this approach, the results for reporting periods beginning January 1, 2019 are presented under Topic 842. Prior period

amounts are not adjusted and continue to be reported in accordance with the historic accounting standards. There was no cumulative effect of applying Topic 842 to the opening balance of retained earnings. The Company has elected to apply the practical expedients under Topic 842 which allow entities to not reassess the lease classification for expired or existing leases and to not reassess if expired or existing contracts contain leases under the Topic 842 definition. The Company has also elected to use hindsight when determining the lease term of existing leases. As a result of the adoption, on January 1, 2019, the Company recognized right of use assets of $8.2 million, offset by associated accumulated amortization of $5.2 million and corresponding lease liabilities of $3.0 million. The recognition of leases subsequent to the adoption of Topic 842 is further described in Note 15. Commitments and Contingencies.

On January 1, 2018, the Company adopted ASU No. 2014-09, Revenue from Contracts with Customers ("Topic 606"), using the modified retrospective transition method. Under this method, results for reporting periods beginning January 1, 2018 are presented under Topic 606. Prior period amounts are not adjusted and continue to be reported in accordance with the historic accounting under Topic 605, with the cumulative effect of applying Topic 606 to prior period amounts recognized as an adjustment to opening retained earnings. The Company has elected to apply the new standard to contracts that were not complete as of January 1, 2018. Under this transition method, the Company deemed contracts to be not complete if, as of the date of transition, the Company had not fulfilled its performance obligations.

On January 1, 2018, the Company adopted ASU No. 2017-12, Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities ("ASU 2017-12"). The adoption of this standard did not have a material impact on the consolidated financial statements.

In March 2018, the Company adopted ASU 2018-05, Income Taxes: Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118 ("Topic 740"), which updates the income tax accounting in U.S. GAAP to reflect the SEC's interpretive guidance released on December 22, 2017, when the legislation commonly referred to as the Tax Cuts and Jobs Act ("Tax Reform") was signed into law. Additional information regarding the adoption of this standard is contained in Note 13. Income Taxes.

In September 2018, the Company adopted ASU 2018-15, Intangibles-Goodwill and Other Internal-Use Software: Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract ("Subtopic 350-40"), which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The adoption of this standard did not have a material impact on the consolidated financial statements.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities at the date of the financial statements and for the reported amounts of revenues and expenses during the reporting period. Management utilizes estimates, including, but not limited to, valuation and useful lives of tangible and intangible assets, inputs used to calculate the Tax Receivable Agreement liability including increases in tax basis related to exchanges, future cash tax savings rate, and the allocation of the liability between short-term and long-term based on when the Company realizes certain tax attributes and reserves for trade and promotional allowances. Actual results could differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less when purchased as cash equivalents and are recorded at cost. Under the Company's cash management system, checks that have been issued and are out of the control of the Company, but which have not cleared the bank by the balance sheet date, are reported as a reduction of cash.

Accounts Receivable

Accounts receivable represents amounts invoiced to customers for which the Company's obligation to the customer has been satisfied. As of December 31, 2019 and 2018, the Company's accounts receivable were $104.9 million and $105.7 million, respectively, which have been reduced by allowances for damages occurring during shipment, quality claims and doubtful accounts in the amount of $2.7 million and $2.6 million, respectively.

Inventories

Inventories are stated at the lower of cost or market on a first-in first-out basis. Abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage) are expensed in the period they are incurred.

The components of inventories are as follows:

(In thousands)	December 31, 2019	December 31, 2018
Ingredients and packaging	$ 21,439	$ 18,865
Finished goods	22,513	16,446
Inventory in transit to customers	3,656	3,269
	$ 47,608	$ 38,580

Property and Equipment

Property and equipment acquired in Business Combinations were assigned useful lives for purposes of depreciation that the Company believes to be the remaining useful life of such assets. Additions to property and equipment are recorded at cost and depreciated straight line over estimated useful lives of 15 to 50 years for buildings and land improvements and 3 to 20 years for machinery and equipment. In order to maximize the efficiency of the Company's operations and to operate the acquired equipment, occasionally the Company will remove and relocate equipment between bakeries. Such removal and relocation costs are expensed as incurred. Reinstallation costs are capitalized if the useful life is extended or the equipment is significantly improved. Otherwise, reinstallation costs are expensed as incurred. Expenditures for repairs and maintenance are charged to expense when incurred. Expenditures for major renewals and betterments, which extend the useful lives of existing property and equipment, are capitalized and depreciated. Upon retirement or disposition of property and equipment, the capitalized cost and related accumulated depreciation are removed from the balance sheet and any resulting gain or loss is recognized in the consolidated statements of operations.

The Company assesses property, plant and equipment for impairment when circumstances arise which could change its use or expected life. For the years ended December 31, 2019, 2018 and 2017 the Company recorded impairment losses of $0.5 million, $1.4 million and $1.0 million, respectively, in the Sweet Baked Goods segment.

Software Costs

Costs associated with computer software projects during the preliminary project stage are expensed as incurred. Once management authorizes and commits to funding a project, appropriate application development stage costs are capitalized. Capitalization ceases when the project is substantially complete and the software is ready for its intended use. Upgrades and enhancements to software are capitalized when such enhancements are determined to provide additional functionality. Training and maintenance costs associated with software applications are expensed as incurred.

Included in the caption "Other assets" in the consolidated balance sheets is capitalized software in the amount of approximately $11.9 million and $8.5 million at December 31, 2019 and 2018, respectively. Capitalized software costs are amortized over their estimated useful life of five years commencing when such assets are ready for their intended use. Software amortization expense included in general and administrative expense in the consolidated statements of operations was $2.7 million for both years ended December 31, 2019 and 2018, and $2.5 million for the year ended December 31, 2017.

Goodwill and Intangible Assets

At December 31, 2019 and 2018, the goodwill balances of $535.9 million and $575.6 million, respectively, represent the excess of the amount the Company paid for the acquisition of Hostess Holdings from the Metropoulos Entities

and other former equity holders in a 2016 transaction over the fair value of the assets acquired and liabilities assumed. The resulting goodwill was allocated to the Sweet Baked Goods reporting unit and the In-Store Bakery reporting unit. No goodwill was recorded in connection with the acquisition of the Cloverhill Business during the year ended December 31, 2018 as the fair value of net assets approximated the consideration paid. During the year ended December 31, 2019, the Company divested the In-Store Bakery operations and removed all allocated goodwill.

Goodwill by reporting unit is tested for impairment annually by either performing a qualitative evaluation or a quantitative test. The qualitative evaluation is an assessment of factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. The Company may elect not to perform the qualitative assessment for some or all reporting units and perform a quantitative impairment test. For the 2019 annual impairment test, the Company elected to perform the qualitative test. No indicators of impairment were noted.

For the 2018 annual impairment test, the Company elected to perform a quantitative impairment test. For this test, fair value was determined based on a combination of an income approach utilizing the discounted cash flow method and the market approach using the market comparable method. Significant assumptions used to determine fair value under the discounted cash flow method included future trends in sales, operating expenses, capital expenditures and changes in working capital, along with an appropriate discount rate based on our estimated cost of equity capital, after-tax cost of debt and future economic and market conditions. To the extent the carrying value of the reporting unit exceeds fair value, goodwill is considered impaired and an impairment charge was recorded to reduce the reporting unit to fair value.

The Company's indefinite-lived intangible assets consist of trademarks and trade names. The $1,408.6 million and $1,409.9 million balances at December 31, 2019 and 2018, respectively, were recognized as part of the 2016 acquisition of Hostess Holdings and the 2018 acquisition of the Cloverhill Business. The trademarks and trade names are integral to the Company's identity and are expected to contribute indefinitely to its corporate cash flows. Fair value for trademarks and tradenames was determined using the income approach, which is considered to be Level 3 within the fair value hierarchy. The application of the income approach was premised on a royalty savings method, whereby the trademark and tradenames are valued by reference to the amount of royalty income they could generate if they were licensed, in an arm's-length transaction, to a third party. These assets have been assigned an indefinite life and therefore are not amortized but rather evaluated for impairment annually using the qualitative or quantitative methods similar to goodwill. For the quantitative assessment, the valuation of trademarks and trade names are determined using the relief of royalty method. significant assumptions used in this method include future trends in sales, a royalty rate and a discount rate to be applied to the forecast revenue stream.

During the years ended December 31, 2019 and 2018, the Company recognized impairment charges of $1.0 million and $3.3 million, respectively, to the In-Store Bakery goodwill and intangibles. See Note 7. Goodwill and Intangible Assets for more information on impairment charges.

Also, the Company has finite-lived intangible assets, net of accumulated amortization of $444.7 million and $491.3 million balances on December 31, 2019 and 2018 respectively, that consist of customer relationships that were recognized as part of the Hostess Holdings and Cloverhill acquisitions. For customer relationships, the application of the income approach (Level 3) was premised on an excess earnings method, whereby the customer relationships are valued by the earnings expected to be generated from those customers after other capital charges. Definite-lived intangible assets are being amortized on a straight-line basis over the estimated remaining useful lives of the assets.

Reserves for Self-Insurance Benefits

The Company's employee health plan is self-insured by the Company up to a stop-loss amount of $0.3 million for each participant per plan year. In addition, the Company maintains insurance programs covering its exposure to workers' compensation. Such programs include the retention of certain levels of risks and costs through high deductibles and other risk retention strategies. Included in the accrued expenses in the consolidated balance sheets is a reserve for healthcare claims in the amount of approximately $2.0 million and $1.6 million at December 31, 2019 and 2018, respectively, and a reserve for workers' compensation claims of $2.7 million and $1.9 million at December 31, 2019 and 2018, respectively.

Leases

Subsequent to its adoption of Topic 842 on January 1, 2019, the Company recognizes a right of use asset and corresponding lease liability on the consolidated balance sheet for all lease transactions with terms of more than 12 months. Agreements are determined to contain a lease if they convey the use and control of an underlying physical asset. Based on the nature of the lease transaction, leases are either classified as financing or operating. Under both classifications, the right of use asset and liability are initially valued based on the present value of the future minimum lease payments using an effective borrowing rate at the inception of the lease. The Company determined the effective borrowing rate based on its expected incremental borrowing rate on collateralized debt. At December 31, 2019, 4.4% was the weighted average effective borrowing rates for outstanding operating leases.

Under a financing lease, interest expense related to the lease liability is recognized over the lease term using an effective interest rate method and right of use assets are amortized straight-line over the term of the lease. Under an operating lease, minimum lease payments are expensed straight-line over the lease term. Lease liabilities are amortized using an effective interest rate method and right of use assets are reduced based on the excess of the sum of the straight-line lease expense and the reduction of the lease liability over the actual lease payments. At December 31, 2019, the average remaining terms on operating leases were approximately six years.

Variable lease payments, such as taxes and insurance, are expensed as incurred. Expenses related to leases with original terms less than 12 months (short-term leases) are expensed as incurred. For all leases related to distribution, bakery and corporate facilities, the Company has elected not to separate non-lease components from lease components.

At December 31, 2019, right of use assets related to operating leases are included in property and equipment, net on the consolidated balance sheet (see Note 5. Property and Equipment). Lease liabilities for operating leases are included in the current and non-current portions of long-term debt and lease obligations on the consolidated balance sheet (see Note 10. Debt).

Revenue Recognition

Net revenue consists primarily of sales of packaged food products. The Company recognizes revenue when the obligations under the terms of its agreements with customers have been satisfied. The Company's obligation is satisfied when control of the product is transferred to its customers along with the title, risk of loss and rewards of ownership. Depending on the arrangement with the customer, these criteria are met either at the time the product is shipped or when the product is received by such customer.

Customers are invoiced at the time of shipment or customer pickup based on credit terms established in accordance with industry practice. Invoices generally require payment within 30 days. Net revenue is recognized in an amount that reflects the consideration the Company expects to be entitled to in exchange for that product. Amounts billed to customers related to shipping and handling are classified as net revenue. A provision for payment discounts and other allowances is estimated based on the Company's historical performance or specific terms with the customer. The Company generally does not accept product returns and provides these allowances for anticipated expired or damaged products.

Trade promotions, consisting primarily of customer pricing allowances, merchandising funds and consumer coupons, are offered through various programs to customers and consumers. A provision for estimated trade promotions is recorded as a reduction of revenue in the same period when the sale is recognized.

The Company also offers rebates based on purchase levels, product placement locations in retail stores and advertising placed by customers. The ultimate cost of these programs is dependent on certain factors such as actual purchase volumes or customer activities and is the subject of significant management estimates. The Company accounts for these programs as variable consideration and recognizes a reduction in revenue in the same period as the underlying program.

For product produced by third parties, management evaluates whether the Company is the principal (i.e., report revenue on a gross basis) or agent (i.e., report revenue on a net basis). Management has determined that it is the principal in all cases, since it establishes its own pricing for such product, generally assumes the credit risk for amounts billed to its customers, and often takes physical control of the product before it is shipped to customers.

The Company utilizes a practical expedient approach under Topic 606 and does not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which the Company recognizes revenue at the amount to which the Company has the right to invoice for services performed.

See Note 6. Segment Reporting for a disaggregation of net revenue.

The Company has one customer that accounted for 10% or more of the Company's total net revenue. The percentage of total net revenues for this customer is presented below by segment:

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Sweet Baked Goods	23.3 %	20.4 %	19.7 %
In-Store Bakery	0.3 %	0.6 %	0.7 %
Total	23.6 %	21.0 %	20.4 %

Equity Compensation

The grant date fair values of stock options are valued using the Black-Scholes option-pricing model, including a simplified method to estimate the number of periods to exercise date (i.e., the expected option term). Management has determined that the equity plan has not been in place for a sufficient amount of time to estimate the post vesting exercise behavior. Therefore, it will continue to use this simplified method until such time as it has sufficient history to provide a reasonable basis to estimate the expected term. Forfeitures are recognized as a reduction of expense as incurred.

For awards which have performance and market conditions, compensation expense is calculated based on the number of shares expected to vest after assessing the probability that the performance or market criteria will be met. The equity-based compensation expense, net of forfeitures, is recognized using a straight-line basis over the requisite service period of the awards, which corresponds to the vesting periods of the awards. For performance-based awards, compensation expense is remeasured throughout the vesting period as probability is reassessed. For market-based awards, probability is not reassessed and compensation expense is not remeasured subsequent to the initial assessment on the grant date.

Collective Bargaining Agreements

As of December 31, 2019, approximately 44%, of the Company's employees are covered by collective bargaining agreements. None of these agreements expire before December 31, 2020.

Employee Benefit Plans

The Company provides several benefit plans for employees depending upon employee eligibility. The Company has a health care plan, a defined contribution retirement plan (401(k)), company-sponsored life insurance, and other benefit plans. The Company's contributions to the defined contribution retirement plan were $1.8 million, $1.9 million and $1.1 million for the years ended December 31, 2019, 2018 and 2017, respectively.

The Company offers an annual incentive plan based upon annual operating targets. Final payout is approved by the board of directors. As of December 31, 2019 there was $6.8 million accrued for this plan. No amounts were accrued for this plan at December 31, 2018.

Income Taxes

Hostess Brands, Inc. owns a controlling interest in Hostess Holdings, which is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, Hostess Holdings is not directly subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by Hostess Holdings is passed through to and included in the taxable income or loss of its partners, including the Company. The Company is subject to U.S. federal income taxes, in addition to state and local income taxes with respect to its allocable share of any taxable income of Hostess Holdings.

During the year ended December 31, 2017, the Tax Reform was signed into law. The Company has recognized the tax impacts related to the revaluation of deferred tax assets and liabilities. Further information on the tax impacts of Tax Reform is included in Note 14. Income Taxes

Derivatives

The Company has entered into an interest rate swap contract to mitigate its exposure to changes in the variable interest rate on its long-term debt. This contract was designated as a cash flow hedge. Changes in the fair value of this instrument are recognized in accumulated other comprehensive income in the consolidated balance sheets and reclassified into earnings in the period in which the hedged transaction affects earnings. Hedging ineffectiveness, if any, is recognized as a component of interest expense in the consolidated statements of operations. Payments made under this contract are included in the supplemental disclosure of interest paid in the consolidated statements of cash flows.

During the year ended December 31, 2019, the Company used foreign currency forward contracts to manage the impact of fluctuations in foreign currency exchange rates relative to future commitments denominated in currencies other than the US dollar. The foreign currency contract outstanding as of December 31, 2019 did not qualify as a cash flow hedge.

Fair Value Measurements

The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the best extent possible. The Company determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels:

- Level 1 inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.
- Level 2 inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

New Accounting Pronouncements

In June 2016, ASU 2016-13 Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments *(*“Topic 326”*)* was issued. This ASU requires entities to measure the impairment of certain financial instruments, including trade receivables, based on expected losses rather than incurred losses. This ASU is effective for fiscal years beginning after December 15, 2019, with early adoption permitted for financial statement periods beginning after December 15, 2018. The Company adopted this ASU on January 1, 2020. Based on its assessment, the Company does not expect the adoption will have a material impact on its consolidated financial statements.

In December 2019, ASU 2019-12 Income Taxes: Simplifying the Accounting for Income Taxes (“Topic 740”) was issued. This ASU simplifies the accounting for certain income tax related items, including intraperiod tax allocations, deferred taxes related to foreign subsidiaries and step-up in tax basis of goodwill. The ASU is effective for fiscal years beginning after December 15, 2020 and early adoption is permitted. The Company is still assessing the impact of this update.

2. Divestiture of In-Store Bakery Operations

On August 30, 2019, the Company sold its In-Store Bakery operations, including relevant trademarks and licensing agreements, to an unrelated party. The operations included products that were primarily sold in the in-store bakery section of U.S. retail channels. The Company divested the operations to provide more focus on future investment in areas of its business that better leverage its core competencies.

The Company received proceeds from the divestiture of $65.0 million prior to transaction expenses and subject to certain post-closing adjustments. In connection with the sale, during the year ended December 31, 2019, the Company recognized transaction expenses of $2.1 million and a loss on disposal of $0.3 million within other operating expenses on the consolidated statements of operations.

3. Business Combinations

On February 1, 2018 (the "Purchase Date"), the Company acquired certain U.S. breakfast assets from Aryzta, LLC, including a bakery and the Cloverhill® and Big Texas® brand names (the "Cloverhill Business"). The Company acquired the Cloverhill Business to expand its breakfast product portfolio and to gain previously outsourced manufacturing capabilities for its existing product portfolio. The assets acquired and liabilities assumed constitute a business and were recorded at their fair values as of the Purchase Date under the acquisition method of accounting. Consideration for this acquisition included cash payments of $23.2 million.

The following is a summary of the allocation of the purchase price:

(In thousands)		
Inventory	$	8,335
Other current assets		500
Property and equipment		13,272
Trade name and trademarks		1,648
Customer relationships		1,136
Other current liabilities		(1,731)
Net assets acquired	$	23,160

No goodwill was recognized as part of this acquisition. During the year ended December 31, 2018, the Company incurred $0.3 million of expenses related to this acquisition. These expenses are classified as business combination transaction costs on the consolidated statements of operations.

4. Stock-Based Compensation

Hostess Brands, Inc. 2016 Equity Incentive Plan

The Hostess Brands, Inc. 2016 Equity Incentive Plan (the "2016 Plan") provides for the granting of various equity-based incentive awards to members of the Board of Directors of the Company, employees and service providers to the Company. The types of equity-based awards that may be granted under the 2016 Plan include: stock options, stock appreciation rights (SARs), restricted stock, restricted stock units (RSUs), and other stock-based awards. There are 7,150,000 registered shares of Class A common stock reserved for issuance under the 2016 Plan. All awards issued under the 2016 Plan may only be settled in shares of Class A common stock. As of December 31, 2019, 3,490,775 shares remained available for issuance under the 2016 Plan.

Share-based compensation expense totaled approximately $9.2 million, $5.6 million and $7.4 million for the years ended December 31, 2019, 2018 and 2017, respectively.

Restricted Stock Units (“RSUs”)

The fair value of RSU awards is calculated based on the closing market price of the Company’s Class A Common Stock on the date of grant. Compensation expense is recognized straight-line over the requisite service period of the awards, ranging from one to three years.

The vesting of certain RSU awards is contingent upon the Company attaining positive earnings per share for the fiscal year ending immediately prior to the vesting date. Management has determined it is probable that these performance conditions will be met.

For certain RSU awards, a portion of the granted units are banked at each annual performance period if the Company achieves certain EBITDA targets. Banked shares continue to be subject to the requisite service period under the terms of the awards. Depending on actual performance during each of the three annual performance periods, award recipients have the opportunity to receive up to 225% of the granted units. At December 31, 2019 there were no RSU awards with EBITDA performance conditions outstanding. As of December 31, 2018 there were 0.3 million RSU awards with EBITDA performance conditions outstanding.

The vesting of certain RSU awards is contingent upon the Company’s Class A stock achieving a certain total stockholder return (“TSR”) in relation to a group of its peers, measured over a two or three year period. Depending on the actual performance over the measurement period, an award recipient has the opportunity to receive up to 200% of the granted awards. At December 31, 2019 and 2018 there were 0.3 million and 0.1 million RSU awards with TSR performance conditions outstanding, respectively.

Upon an employee’s termination, certain RSU awards provided that unvested awards will be forfeited and the shares of common stock underlying such award will become available for issuance under the 2016 Plan. Other RSU awards provide for accelerated vesting upon an employee's termination under certain circumstances.

The following table summarizes the activity of the Company’s unvested RSUs:

	Restricted Stock Units	Weighted Average Grant Date Fair Value
Unvested as of December 31, 2017	915,894	$ 15.73
Total Granted	440,883	12.92
Forfeited	(172,257)	15.46
Vested(1)	(288,736)	15.61
Unvested as of December 31, 2018	895,784	$ 14.46
Total Granted	721,985	12.76
Forfeited	(298,601)	14.96
Vested(2)	(415,033)	14.26
Unvested as of December 31, 2019	904,135	$ 12.99

(1) Includes 81,960 shares withheld to satisfy $1.0 million of employee tax obligations upon vesting.
(2) Includes 108,012 shares withheld to satisfy $1.4 million of employee tax obligations upon vesting.

As of December 31, 2019 and 2018, there was $7.6 million and $6.4 million of total unrecognized compensation cost, respectively, related to non-vested RSUs granted under the 2016 Plan that are considered probable to vest; that cost is expected to be recognized over a weighted average remaining period of approximately 1.8 years and 1.5 years, respectively. As of December 31, 2019 there were no awards outstanding for which it was not probable that the performance conditions would be met. As of December 31, 2018 the grant date fair value of such awards was $4.1 million.

For the years ended December 31, 2019 and 2018, $7.2 million and $4.3 million, respectively, of compensation expense related to the RSUs was recognized within general and administrative expenses on the consolidated statements of operations.

Restricted Stock Awards ("RSAs")

During the year ended December 31, 2017, the Company granted0.4 million shares of restricted stock to the Company's Chief Executive Officer under the 2016 Plan. The fair value of the restricted stock was calculated based on the closing market price of the Company's Class A common stock on the grant date. Also during 2017, in connection with the announcement of the Company's Chief Executive Officer's retirement, the grant was reduced so 0.1 million shares would vest on January 1, 2018.

For the year ended December 31, 2017, the Company recognized expense of $1.0 million related to the restricted stock awards within general and administrative expenses on the consolidated statements of operations. No restricted stock awards were issued by the Company during 2019 or 2018. As of December 31, 2019 and 2018, there wereno outstanding shares of restricted stock.

Stock Options

The following table includes the significant inputs used to determine the fair value of options issued under the 2016 plan.

	Year Ended December 31, 2019	Year Ended December 31, 2018
Expected volatility (1)	26.66%	27.13%
Expected dividend yield (2)	—%	—%
Expected option term (3)	6.00 years	6.25 years
Risk-free rate (4)	1.8%	3.0%

(1) The expected volatility assumption was calculated based on a peer group analysis of stock price volatility with a look back period based on the expected term and ending on the grant date.
(2) From its inception through December 31, 2019, the Company has not paid any dividends on its common stock. As of the stock option grant date, the Company does not anticipate paying any dividends on common stock over the term of the stock options. Option holders have no right to dividends prior to the exercise of the options.
(3) The Company utilized the simplified method to determine the expected term of the stock options since the Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term.
(4) The risk-free interest rate was based on the U.S. Treasury yield curve in effect at the time of grant which corresponds to the expected term of the stock options.

The stock options vest in equal annual installments on varying dates through 2022. The maximum term under the grant agreement isten years. As of December 31, 2019, there was $3.7 million of total unrecognized compensation cost related to non-vested stock options outstanding under the 2016 Plan; that cost is expected to be recognized over the vesting periods. For the years ended December 31, 2019 and 2018, there was $2.0 million and $1.3 million, respectively, of expense related to the stock options recognized within general and administrative costs on the consolidated statements of operations.

The following table summarizes the activity of the Company's unvested stock options.

	Number of Options	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2017	827,620	5.54	$ 15.74	$ 4.97
Granted	382,070	0	15.78	5.04
Forfeited	(265,751)	0	14.7	5.24
Outstanding as of December 31, 2018	943,939	5.54	$ 13.54	$ 4.97
Exercisable as of December 31, 2018	273,759	4.53	$ 15.47	$ 5.00
Granted	905,421	—	11.59	3.76
Exercised	(7,463)	—	13.11	4.17
Forfeited	(124,226)	—	12.42	4.13
Outstanding as of December 31, 2019	1,717.671	8.35	$ 13.35	$ 4.15
Exercisable as of December 31, 2019	486,663	7.35	$ 15.43	$ 4.80

Related Party Stock Awards

Under the terms of its employment agreement with C. Dean Metropoulos, the Company was obligated to grant additional equity to Mr. Metropoulos if certain EBITDA thresholds were met for 2017 and 2018. These thresholds were not met and no additional equity was granted to Mr. Metropoulos under these arrangements. The agreements expired by their terms on December 31, 2018.

5. Property and Equipment

Property and equipment consists of the following:

(In thousands)	December 31, 2019	December 31, 2018
Land and buildings	$ 53,683	$ 47,418
Right of use assets - operating	23,771	—
Machinery and equipment	209,382	194,830
Construction in progress	5,878	6,059
	292,714	248,307
Less accumulated depreciation	(50,330)	(27,958)
	$ 242,384	$ 220,349

Depreciation expense was $17.2 million, $14.6 million and $11.8 million for the years ended December 31, 2019, 2018, 2017, respectively.

6. Segment Reporting

The Company has two reportable segments: Sweet Baked Goods and In-Store Bakery. The Company's Sweet Baked Goods segment consists of fresh and frozen baked goods and bread products that are sold under the Hostess®, Dolly Madison®, Cloverhill®, and Big Texas® brands. The In-Store Bakery segment consists primarily of Superior on Main® branded products sold through the in-store bakery section of grocery and club stores. During the year ended December 31, 2019, the Company divested its In-Store Bakery business. As of December 31, 2019, there were no assets related to the In-Store Bakery business.

The Company evaluates performance and allocates resources based on net revenue and gross profit.Information regarding the operations of these reportable segments is as follows:

(In thousands)	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Net revenue:			
Sweet Baked Goods	$ 878,973	$ 808,355	$ 733,827
In-Store Bakery	28,702	42,034	42,361
Net revenue	$ 907,675	$ 850,389	$ 776,188
Depreciation and amortization (1):			
Sweet Baked Goods	$ 41,732	$ 38,607	$ 35,441
In-Store Bakery	1,602	2,804	2,729
Depreciation and amortization	$ 43,334	$ 41,411	$ 38,170
Gross profit:			
Sweet Baked Goods	$ 293,648	$ 258,995	$ 316,916
In-Store Bakery	6,186	8,282	9,982
Gross profit	$ 299,834	$ 267,277	$ 326,898
Capital expenditures (2):			
Sweet Baked Goods	$ 35,354	$ 53,394	$ 35,609
In-Store Bakery	182	354	774
Capital expenditures	$ 35,536	$ 53,748	$ 36,383

(1) Depreciation and amortization include charges to net income classified as costs of goods sold and general and administrative expenses on the consolidated statements of operations.
(2) Capital expenditures consists of purchases of property and equipment and acquisition and development of software assets paid in cash or acquired through accounts payable.

Total assets by reportable segment are as follows:

(In thousands)	December 31, 2019	December 31, 2018
Total segment assets:		
Sweet Baked Goods	$ 3,097,701	$ 2,924,333
In-Store Bakery	—	86,380
Total segment assets	$ 3,097,701	$ 3,010,713

7. Goodwill and Intangible Assets

Goodwill and intangible assets as of December 31, 2019 and 2018 were recognized as part of the 2016 purchase of Hostess Holdings from the Metropoulos Entities and other legacy equity holders, as well as the acquisition of the Cloverhill Business in 2018.

During the years ended December 31, 2019 and 2018, the Company recognized goodwill impairment charges related to its In-Store Bakery reporting unit of $1.0 million and $2.7 million, respectively, within other operating expense on the consolidated statements of operations. During the year ended December 31, 2019, the Company divested its In-Store Bakery segment (see Note 2. Divestiture of In-Store Bakery Operations). Goodwill activity is presented below by reportable segment:

(In thousands)	Sweet Baked Goods	In-Store Bakery	Total
Balance as of December 31, 2017	$ 529,423	$ 50,023	$ 579,446
Impairment	—	(2,700)	(2,700)
Other reclassifications and tax adjustments	6,430	(7,531)	(1,101)
Balance as of December 31, 2018	$ 535,853	$ 39,792	$ 575,645
Impairment	—	(1,000)	(1,000)
Divestiture	—	(38,792)	(38,792)
Balance as of December 31, 2019	$ 535,853	$ —	$ 535,853

Intangible assets consist of the following:

(In thousands)	December 31, 2019	December 31, 2018
Intangible assets with indefinite lives (Trademarks and Trade Names)	$ 1,408,630	$ 1,410,497
Intangible assets with definite lives (Customer Relationships)	515,713	543,120
Less accumulated amortization (Customer Relationships)	(71,028)	(51,802)
Less accumulated impairment charges (Trademarks and Trade Names)	—	(600)
Intangible assets, net	$ 1,853,315	$ 1,901,215

During the year ended December 31, 2019,the Company divested of its In-Store Bakery segment, resulting in a reduction of intangible assets, net of $24.5 million. Amortization expense was $23.4 million, $24.1 million and $23.9 million for the years ended December 31, 2019, 2018 and 2017 respectively. The unamortized portion of customer relationships will be expensed over their remaining useful life, from 19 to 23 years. The weighted-average amortization period as of December 31, 2019 for customer relationships was 19.8 years. Future expected amortization expense is as follows:

(In thousands)	
2020	$ 22,513
2021	22,513
2022	22,513
2023	22,513
2024	22,513
2025 and thereafter	332,120

8. Accrued Expenses

Included in accrued expenses are the following:

(In thousands)	December 31, 2019	December 31, 2018
Incentive compensation	$ 6,840	$ 3,261
Accrued interest	4,870	4,849
Payroll, vacation and other compensation	3,389	6,104
Workers compensation reserve	2,665	1,866
Self-insurance reserves	1,938	1,646
Taxes	1,255	411
Interest rate swap contract	704	—
	$ 21,661	$ 18,137

9. Tax Receivable Agreement

The tax receivable agreement generally provides for the payment by the Company to the legacy Hostess Equity Holders of85% of the net cash savings, if any, in U.S. federal, state and local income taxes that the Company realizes (or is deemed to realize in certain circumstances) in periods after the closing of the 2016 acquisition (which periods may extend, unless the Tax Receivable Agreement is terminated early in accordance with its terms, for more than 15 years following any exchange of Class B Units of Hostess Holdings for shares of the Company's Class A common stock or the cash equivalent thereof) as a result of (i) certain increases in tax basis resulting from the 2016 acquisition; (ii) certain tax attributes of Hostess Holdings and its subsidiaries existing prior to the 2016 acquisition and prior to subsequent exchanges of Class B Units; (iii) certain increases in tax basis resulting from exchanges of Class B Units; (iv) imputed interest deemed to be paid by the Company as a result of payments it makes under the Tax Receivable Agreement; and (v) certain increases in tax basis resulting from payments the Company makes under the Tax Receivable Agreement. The Company will retain the benefit of the remaining 15% of these cash savings. Certain payments under the Tax Receivable Agreement will be made to the Metropoulos Entities in accordance with specified percentages, regardless of the source of the applicable tax attribute. The Company recognizes a liability on the consolidated balance sheet based on the undiscounted estimated future payments under the Tax Receivable Agreement. Significant inputs used to estimate the future expected payments include a 26.4% cash tax savings rate.

The following table summarizes activity related to the Tax Receivable Agreement obligations:

(In thousands)		
Balance December 31, 2017	$	124,360
Exchange of Class B units for Class A shares		294
Reduction of future payments due to Buyout		(46,372)
Remeasurement due to change in estimated state tax rate		(1,866)
Payments		(7,353)
Balance December 31, 2018	$	69,063
Exchange of Class B units for Class A shares		71,679
Remeasurement due to disposal of In-Store Bakery operations		1,779
Remeasurement due to change in estimated state tax rate		(1,593)
Payments		(2,732)
Balance December 31, 2019	$	138,196

The Tax Receivable Agreement obligations increased $71.7 million during the year ended December 31, 2019, due to additional tax basis realized from the exchange of Class B Units.

During the year ended December 31, 2019, the Company remeasured the Tax Receivable Agreement obligations due to changes in state tax rates resulting in a $1.6 million benefit as the Company decreased its estimated cash tax savings rate from 26.9% to 26.4%. Additionally, the disposition of the In-Store Bakery operations resulted in a $1.8 million expense recognized on the consolidated statement of operations.

On January 26, 2018, the Company entered into an agreement to terminate all future payments payable under the Tax Receivable Agreement to the Apollo Funds in exchange for a payment of $34.0 million (the “Buyout”). Subsequent to the Buyout, the Company will retain a greater portion of the future cash tax savings subject to the Tax Receivable Agreement. The Buyout did not affect the portion of the rights under the Tax Receivable Agreement payable to the Metropoulos Entities, including those previously assigned by the Apollo Funds. During the year ended December 31, 2018, the Company also recognized a gain due to a change in the estimated state tax rate which decreased the Company’s estimated cash tax savings rate from approximately 27.5% to 26.9%.

As of December 31, 2019 the future expected payments under the Tax Receivable Agreement are as follows:

(In thousands)		
2020	$	12,100
2021		7,400
2022		7,400
2023		7,800
2024		8,100
Thereafter		95,396

10. Debt

A term loan was originated on October 1, 2019 through the Company's subsidiary, Hostess Brands, LLC (referred to below as the "Fourth Term Loan"). It requires quarterly payments of interest at a rate of the greater of the applicable LIBOR or 0.75% per annum ("New LIBOR Floor") plus a margin of 2.25% per annum and principal at a rate of 0.25% of the aggregate principal balance with the remaining principal amount due upon maturity on August 3, 2025. The Fourth Term Loan is secured by substantially all of Hostess Brands, LLC's present and future assets.

The Fourth Term Loan refinanced the remaining balance of $976.4 million on the Third New First Lien Term Loan ("Third Term Loan") through a non-cash refinancing transaction. The Third Term Loan was originated by Hostess Brands, LLC on November 20, 2017 and required quarterly payments of interest at a rate equal to the the New LIBOR Floor plus a margin of 2.50% per annum and principal at a rate of 0.25% of the aggregate principal balance with the remaining principal amount due upon maturity on August 3, 2022.

A summary of the carrying value of the debt and the lease obligations is as follows:

(In thousands)	December 31, 2019	December 31, 2018
Term Loan (4.14% as of December 31, 2019)		
Principal	$ 973,930	$ 983,825
Unamortized debt premium and issuance costs	(3,094)	3,778
	970,836	987,603
Lease obligations	16,452	401
Total debt and lease obligations	987,288	988,004
Less: Amounts due within one year	(11,883)	(11,268)
Long-term portion	$ 975,405	$ 976,736

At December 31, 2019 and 2018, the approximate fair value of the Company's debt was $977.6 million and $927.3 million, respectively. The fair value is calculated using current interest rates and pricing from financial institutions (Level 2 inputs).

At December 31, 2019, minimum debt repayments under the Fourth Term Loan are due as follows:

(In thousands)	
2020	$ 9,764
2021	9,764
2022	9,764
2023	9,764
2024	9,764
2025 and thereafter	925,110

Revolving Credit Facility

On October 1, 2019, Hostess Brands, LLC amended its Revolving Credit Agreement (the "Revolver"), providing for borrowings up to $100.0 million, a stated maturity date of August 3, 2024 and secured by liens on substantially all of Hostess Brands, LLC's present and future assets, including accounts receivable and inventories, as defined in the Revolver. The Revolver is ranked equally with the Fourth Term Loan in regards to secured liens. The Revolver has an annual commitment fee on the unused portion of between 0.375% and 0.50% annually based upon the unused percentage. Interest on borrowings under the Revolver is, at Hostess Brands, LLC's option, either the applicable LIBOR plus a margin of 2.25% per annum or the base rate plus a margin of 1.25% per annum.

Prior to the amendment the Revolver originated on August 3, 2015 had a stated maturity date of August 3, 2020 and an annual commitment fee on the unused portion of between 0.375% and 0.50% annually based upon the unused percentage. Interest on borrowings under the Revolver was, at Hostess Brands, LLC's option, either the applicable LIBOR plus a margin of between 3.00% and 3.50% per annum or the base rate plus a margin of 2.00% to 2.50% per annum. All other significant terms and provisions were unchanged by the amendment.

The Company had no outstanding borrowings under the Revolver as of December 31, 2019 or 2018. See Note 15. Commitments and Contingencies for information regarding the letters of credit, which reduce the amount available for borrowing under the Revolver. The Revolver contains certain restrictive financial covenants. As of December 31, 2019, the Company was in compliance with these covenants.

11. Derivative Contracts

To reduce the effect of interest rate fluctuations, the Company entered into an interest rate swap contract with a counter party to make a series of payments based on a fixed interest rate of 1.78% and receive a series of payments based on the greater of LIBOR or 0.75%. Both the fixed and floating payment streams are based on a notional amount of $500 million at the inception of the contract and are reduced by $100 million each year of the five-year contract. As of December 31, 2019, the notional amount is $300 million. The Company entered into this transaction to reduce its exposure to changes in cash flows associated with its variable rate debt and has designated this derivative as a cash flow hedge. At December 31, 2019, the effective fixed interest rate on the long-term debt hedged by this contract was 4.03%.

As of December 31, 2019, the fair value of the interest rate swap contract of $0.7 million was reported within accrued expenses and other current liabilities on the consolidated balance sheets. As of 43465, the fair value of the interest rate swap contract of $5.1 million was reported within other assets, net on the consolidated balance sheet. The $0.4 million of unrealized expense recognized in accumulated other comprehensive income as of December 31, 2019 is expected to be reclassified into interest expense through December 31, 2020. The fair value of the interest rate swap contract is measured on a recurring basis by netting the discounted future fixed cash payments and the discounted expected variable cash receipts. The variable cash receipts are based on the expectation of future interest rates (forward curves) derived from observed market interest rate curves (Level 2).

In connection with the agreement to purchase Voortman as described in Note 15. Commitments and Contingencies, the Company entered into a deal-contingent foreign currency contract to hedge the $440 million Canadian Dollars ("CAD") forecasted purchase price and a portion of the subsequent expected conversion costs. The contract was settled in cash following the completion of the purchase on January 3, 2020. At December 31, 2019, the contract had a value of $7.1 million recognized within other current assets on the consolidated balance sheet based on available market information on similar contracts (Level 2) and a corresponding gain of $7.1 million was recognized in gain on foreign currency contract within the consolidated statements of operations.

12. Equity

The Company's authorized common stock consists of three classes: 200,000,000 shares of Class A common stock, 50,000,000 shares of Class B Stock, and 10,000,000 shares of Class F common stock (none of which were issued and outstanding at December 31, 2019 or 2018). As of December 31, 2019 and 2018, there were 122,108,086 and 100,046,392 shares of Class A common stock issued and outstanding, respectively. As of December 31, 2019 and 2018 there were 8,409,834 and 30,255,184 shares of Class B common stock issued and outstanding, respectively.

Shares of Class A common stock and Class B Stock have identical voting rights. However, shares of Class B Stock do not participate in earnings or dividends of the Company. Ownership of shares of Class B Stock is restricted to owners of Class B Units in Hostess Holdings. Class B units in Hostess Holdings may be exchanged (together with the cancellation of an equivalent number of shares of Class B Stock) by the holders thereof for, at the election of the Company, shares of Class A common stock or the cash equivalent of such shares.

As of December 31, 2019 and 2018, there were 48,453,154 and 48,274,307 public warrants, and 8,046,636 and 8,225,583 private placement warrants outstanding, respectively. Each warrant entitles its holder to purchase one-half of one share of Class A common stock at an exercise price of $ 5.75 per half share, to be exercised only for a whole number of shares of Class A common stock. The warrants expire on December 4, 2021, or earlier upon redemption or liquidation. The Company may call the outstanding public warrants for redemption at a price of $0.01 per warrant, if the last sale price of the Company's common stock equals or exceeds $24.00 per share for any 20 trading days within a 30-trading day period ending on the third business day before the Company sends the notice of redemption to the warrant holders. The private placement warrants, however, are nonredeemable so long as they are held by Gores Sponsor, LLC or its permitted transferees. The potential resale of the private placement to the public warrants has been registered with the SEC. When sold to the public, the private placement warrants will become public warrants.

13. Earnings Per Share

Basic earnings per share is calculated by dividing net income attributable to the Company's Class A stockholders for the period by the weighted average number of Class A common shares outstanding for the period excluding non-vested restricted stock awards. In computing dilutive earnings per share, basic earnings per share is adjusted for the assumed issuance of all applicable potentially dilutive share-based awards, including: public and private placement warrants, RSUs, restricted stock awards, and stock options.

Below are basic and diluted earnings per share:

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Numerator:			
Net income attributable to Class A stockholders (in thousands)	$ 63,115	$ 62,895	$ 223,897
Denominator:			
Weighted-average Class A shares outstanding - basic (excluding non-vested restricted stock awards)	110,540,264	99,957,049	99,109,629
Dilutive effect of warrants	3,693,758	3,021,239	6,113,053
Dilutive effect of RSAs and RSUs	465,425	120,106	84,611
Weighted-average shares outstanding - diluted	114,699,447	103,098,394	105,307,293
Earnings per Class A share - basic	$ 0.57	$ 0.63	$ 2.26
Earnings per Class A share - dilutive	$ 0.55	$ 0.61	$ 2.13

For all years presented, the dilutive effect of stock options were excluded from the computation of diluted earnings per share because the assumed proceeds from the awards' exercise were greater than the average market price of the common shares.

14. Income Taxes

The Company accounts for income taxes under the asset and liability method. Under this method, deferred tax liabilities and assets are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the difference is expected to reverse. Additionally, the impact of changes in the enacted tax rates and laws on deferred taxes, if any, is reflected in the financial statements in the period of enactment.

The income tax expense (benefit) consisted of the following:

(In thousands)	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
Current tax expense (benefit)			
Federal	$ 1,724	$ 622	$ 11,163
State and local	1,047	2,077	2,903
Total Current	2,771	2,699	14,066
Deferred tax expense (benefit)			
Federal	14,859	14,476	(93,457)
State and local	(738)	(4,221)	12,187
Total Deferred	14,121	10,255	(81,270)
Income tax expense (benefit), net	$ 16,892	$ 12,954	$ (67,204)

The Company owns a controlling interest in Hostess Holdings, which is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, Hostess Holdings is not itself subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by Hostess Holdings is passed through and included in the taxable income or loss of its partners. The Company is subject to U.S. federal income taxes, in addition to state and local income taxes with respect to its allocable share of any taxable income of Hostess Holdings.

The operations of Hostess Holdings include those of its C corporation subsidiaries. These C corporation subsidiaries are subject to U.S. federal, state and local income taxes. The Company's tax provision includes income taxes for the share of Hostess Holdings income or loss passed through to the Company, the income or loss of the Company's C corporation subsidiaries and the deferred tax impact of outside basis differences in its investments in subsidiaries.

For the years ended December 31, 2019, 2018, and 2017, the effective income tax rate differs from the federal statutory income tax rate as explained below:

	Year Ended December 31, 2019	Year Ended December 31, 2018	Year Ended December 31, 2017
U. S. federal statutory income tax rate	21.0 %	21.0 %	35.0 %
State and local income taxes, net of federal benefit	4.6	4.3	3.8
Income attributable to non-controlling interest	(3.2)	(4.1)	(6.3)
Tax Cuts and Jobs Act	—	—	(66.2)
Change in state tax rate	(4.8)	(6.0)	1.2
Gain on TRA buyout	—	(1.4)	—
Other	0.3	(0.1)	(2.7)
Effective income tax rate	17.9 %	13.7 %	(35.2) %

Deferred income taxes are provided for the effects of temporary differences between the tax basis of an asset or liability and its reported amount in the accompanying consolidated balance sheets. These temporary differences result in taxable or deductible amounts in future years. Details of the Company's deferred tax assets and liabilities are summarized as follows:

(In thousands)	As of December 31, 2019	As of December 31, 2018
Deferred tax assets		
Imputed interest	$ 6,198	$ 3,064
Tax credits	2,599	2,696
Disallowed interest carryforward	—	2,374
Net operating loss carryforwards	249	1,000
Other	1,343	1,252
Total deferred tax assets	10,389	10,386
Deferred tax liabilities		
Investment in partnership	(266,440)	(279,015)
Goodwill and intangible assets	—	(7,023)
Property and equipment	—	(1,261)
Other	—	(1,041)
Total deferred tax liabilities	(266,440)	(288,340)
Total deferred tax assets and liabilities	$ (256,051)	$ (277,954)

The recognition of deferred tax assets is based on management's belief that it is more likely than not that the tax benefits associated with temporary differences, net operating loss carryforwards and tax credits will be utilized. The Company assesses the recoverability of the deferred tax assets on an ongoing basis. In making this assessment, the Company considers all positive and negative evidence, and all potential sources of taxable income including scheduled reversals of deferred tax liabilities, tax-planning strategies, projected future taxable income and recent financial performance.

The Company and its C corporation subsidiaries file income tax returns in the U.S. federal jurisdiction and various state and local jurisdictions. For federal and state tax purposes, the Company and its C corporation subsidiaries are generally subject to examination for three years after the income tax returns are filed. As such, income tax returns filed since 2016 remain open for examination by tax authorities. The Company's C corporation subsidiaries utilized U.S. loss carryforwards which date back to 2005, therefore those carryforwards are subject to examination as well. Hostess Holdings is under IRS examination for the 2017 tax year.

At December 31, 2019, the Company has gross state net operating losses of approximately $4.0 million and state credits of approximately $3.3 million. Unless utilized, the state net operating losses carryforwards expire from 2030 to 2036 and the state credits expire from 2028 to 2035.

The Company does not have any significant uncertain tax positions and therefore has no unrecognized tax benefits as of December 31, 2019 or 2018 that if recognized, would affect the annual effective tax rate. Therefore,the Company has not recorded any penalties and interest during the years ended December 31, 2019 or 2018. Interest and penalties related to income tax liabilities, if incurred, are included in income tax expense in the consolidated statements of operations.

Tax Reform significantly changed U.S. tax law by lowering the corporate income tax rate permanently from a maximum of 35% to a flat 21% rate, effective January 1, 2018. As a result of the reduction in the U.S. corporate income tax rate from 35% to 21% under Tax Reform, the Company revalued its ending net deferred tax liabilities at December 31, 2017 and recognized a non-cash tax benefit of $111.3 million in the Company's consolidated statements of operations for the year ended December 31, 2017.

15. Commitments and Contingencies

Share Purchase Agreement

On November 29, 2019, a subsidiary of the Company entered into a share purchase agreement to acquire all of the shares of the parent company of Voortman, a Canadian manufacturer of premium, branded wafers, as well as sugar-free and specialty cookies for approximately $320 million ($425 million CAD), subject to customary adjustments for net indebtedness of the acquired business and working capital.

This agreement contains customary representations, warranties and covenants of the parties. Subject to certain exceptions and other provisions, the parties have agreed to indemnify each other for breaches of representations and warranties, breaches of covenants and certain other matters. Approximately $10.8 million CAD of the purchase price was deposited into an escrow account to satisfy amounts in respect of purchase price adjustments and to provide for payment of indemnity claims, if any. The transaction closed on January 3, 2020. A preliminary allocation of the purchase price to the net assets acquired in this business combination is expected to be made during the first quarter of 2020.

The transaction was financed with cash on hand and incremental debt. On January 3, 2020, Hostess Brands, LLC entered into $140.0 million of incremental term loans through an amendment to its existing credit agreement. The terms, conditions and covenants applicable to the new term loans were the same as the terms, conditions and covenants applicable to the existing term loans described in Note 10. Debt.

Accruals and the Potential Effect of Litigation

From time to time, the Company is subject to various legal actions, lawsuits, claims and proceedings related to products, employment, environmental regulations, and other matters incidental to its businesses. Based upon information presently known, the Company does not believe that the ultimate resolution of such matters will have a material effect on the Company's financial position, although the final resolution of such matters could have a material effect on its results of operations or cash flows in the period of resolution.

Liabilities related to legal proceedings are recorded when it is probable that a liability has been incurred and the associated amount can be reasonably estimated. Where the estimated amount of loss is within a range of amounts and no amount within the range is a better estimate than any other amount, the low end of the range is accrued. As additional information becomes available, the potential liabilities related to these matters are reassessed and the estimates revised, if necessary. These accrued liabilities are subject to change in the future based on new developments in each matter, or changes in circumstances, which could have a material effect on the Company's financial condition and results of operations.

Lease Commitments

Operating Leases

In 2019, the Company leased facilities for its commercial office and primary distribution centers under noncancelable operating lease arrangements.The future minimum lease payments under these agreements as of December 31, 2019 are shown below.

(In thousands)		
2020	$	3,541
2021	$	2,222
2022	$	2,494
2023	$	2,735
2024	$	3,848
Thereafter	$	4,081

Financing Leases

The Company entered into a bond-lease agreement with the Development Authority of Columbus, Georgia on December 1, 2013, which was amended in December, 2016. The bond-lease transaction required the Company to exchange its property to the taxing jurisdiction for tax-exempt bonds issued in the name of the Company not to exceed $18 million. As the issuer and holder of the bonds, the Company is not required to make lease payments. On December 16, 2013, the Company received an ad valorem tax agreement from the Columbus, Georgia Board of Tax Assessors granting tax abatement for the real and personal property located at the Company's Columbus, Georgia bakery through 2023. The Company has elected to use the right of offset under ASC 210-20 to net the asset and the liability.

The table below shows the composition of lease expenses for the period subsequent to the adoption of Topic 842:

(In thousands)	Year Ended December 31, 2019	
Reduction of right of use asset, financing lease	$	133
Interest, financing lease	$	16
Operating lease expense	$	3,070
Short-term lease expense	$	968
Variable lease expense	$	1,076
	$	5,263

For short-term leases, Hostess records rent expense in its consolidated statements of operations on a straight-line basis over the lease term. Variable lease payments, which primarily include taxes, insurance and common area maintenance, are expensed as incurred. During the year ended December 31, 2019, the Company entered into a lease agreement for its new distribution center in Edgerton, Kansas. The agreement has a base term of six and a half years with two five year extension. The right of use of use asset and lease liability were calculated using the six and a half year term. Rent expense for operating leases prior to the adoption of Topic 842 was $1.9 million and $2.0 million for the years ended December 31, 2018 and 2017, respectively.

Contractual Commitments

The Company is a party to various long-term arrangements through advance purchase contracts to lock in prices for certain high-volume raw materials and packaging components for normal product production requirements. These advance purchase arrangements are contractual agreements and can only be canceled with a termination penalty that is based upon the current market price of the commodity at the time of cancellation. These agreements qualify for the "normal purchase" exception under accounting standards; and the purchases under these contracts are included as a component of cost of goods sold.

Contractual commitments were as follows:

(In thousands)	Total Committed	Commitments within 1 year	Commitments beyond 1 year
Ingredients	$ 76,441	$ 75,280	$ 1,161
Packaging	$ 49,260	$ 49,260	$ —

Letters of Credit
The Company is a party to Letter of Credit arrangements to provide for the issuance of standby letters of credit in the amount of $4.2 million and $3.0 million for the years ended 2019 and 2018, respectively. The arrangements support the collateral requirements for insurance. The Letters of Credit are 100% secured through our Revolver.

16. Unaudited Quarterly Financial Data

Summarized quarterly financial data:

	Three Months Ended			
(In thousands, expect per share data)	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
Net revenue	$ 216,666	$ 227,211	$ 241,060	$ 222,738
Operating income	39,534	23,571	36,881	36,110
Net income	23,555	10,729	16,669	26,612
Net income attributable to Class A stockholders	21,721	8,785	11,483	21,126
Earnings per Class A share:				
Basic	0.18	0.08	0.11	0.21
Diluted	0.17	0.07	0.10	0.21

	Three Months Ended			
(In thousands, except per share data)	December 31, 2018	September 30, 2018	June 30, 2018	March 31, 2018
Net revenue	$ 214,815	$ 210,982	$ 215,849	$ 208,743
Operating income	30,344	23,693	34,649	32,872
Net income	16,352	11,152	24,620	29,302
Net Income attributable to Class A stockholders	11,830	7,941	19,283	23,841
Earnings per Class A share:				
Basic	0.12	0.08	0.19	0.24
Diluted	0.12	0.08	0.18	0.23

17. Subsequent Events

In February 2020 the Company entered into five-year interest rate swap contracts to further reduce the effect of interest rate fluctuations on its variable-rate Term Loan. The total notional value of these contracts was $250 million. Under the terms of the contracts, the Company will make quarterly payments based on a fixed interest rates ranging from 1.53% to 1.64% and receive quarterly payments based on the greater of LIBOR or 0.75%.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

(a) Evaluation Of Disclosure Controls And Procedures

We have established disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that information relating to the Company is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that our current disclosure controls and procedures are effective at a level of reasonable assurance.

(b) Management's Report On Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in *Internal Control - Integrated Framework (2013)* by the Committee of Sponsoring Organization of the Treadway Commission. Based on that evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2019. The effectiveness of the Company's internal control of financial reporting as of December 31, 2019 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which appears herein.

(c) *Changes in Internal Control over Financial Reporting*

Beginning in November 2019, we relocated our primary distribution center to Edgerton, Kansas. As part of this relocation, we implemented a new warehouse management system to handle all warehouse and distribution activity. We implemented changes to our internal controls to incorporate this system into our financial reporting process. Changes arising from this new system represent a material change in internal controls over financial reporting, otherwise there have been no changes in our internal control over financial reporting during the most recent calendar quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item will be contained in our definitive proxy statement to be filed with the SEC in connection with our 2020 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 11. Executive Compensation

The information required by this item will be contained in our definitive proxy statement to be filed with the SEC in connection with our 2020 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item will be contained in our definitive proxy statement to be fied with the SEC in connection with our2020 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item will be contained in our definitive proxy statement to be filed with the SEC in connection with our 2020 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

The information required by this item will be contained in our definitive proxy statement to be filed with the SEC in connection with our2020 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Part IV.

Item 15. Exhibits, Financial Statement Schedules

Financial Statements and Financial Statement Schedules

See “Index to consolidated financial statements” in Part II, Item 8 of this Annual Report on Form 10-K. Financial statement schedules have been omitted because they are not required or are not applicable or because the information required in those schedules either is not material or is included in the consolidated financial statements or the accompanying notes.

Item 6. Exhibits

Exhibit No.	Description
2.1*	Master Transaction Agreement, dated as of July 5, 2016, by and among Gores Holdings, Inc., Homer Merger Sub, Inc., AP Hostess Holdings, L.P., Hostess CDM Co-Invest, LLC, CDM Hostess Class C, LLC, and AP Hostess Holdings, L.P., in its capacity as the Sellers' Representative (1)
2.2*	Share Purchase Agreement, dated as of November 29, 2019, by and among Hostess Brands, LLC, SPE Partners V, LP, Pacific Street Fund III, LP, PPM American Private Equity Fund V, LP, the Manufacturers Life Insurance Company, Roynat Capital Inc., Voortman Enterprises Trust, 2727939 Ontario Inc. and the persons listed on Exhibit A thereto.
3.1	Second Amended and Restated Certificate of Incorporation of Hostess Brands, Inc. (2)
3.2	Amended and Restated Bylaws of Hostess Brands, Inc. (3)
4.1	Specimen Class A Common Stock Certificate (2)
4.2	Specimen Warrant Certificate (2)
4.3	Warrant Agreement, dated August 13, 2015, between Gores Holdings, Inc. and Continental Stock Transfer & Trust Company, as warrant agent (4)
4.4	Description of Capital Stock
10.1	Letter Agreement, dated August 10, 2016, between Gores Holdings, Inc. and Gores Sponsor LLC (5)
10.2	Amended and Restated Insider Letter Agreement, dated August 12, 2016, among Gores Holdings, Inc., its officers and directors, The Gores Group, LLC and Gores Sponsor LLC (5)
10.3	Exchange Agreement, dated as of November 4, 2016 by and among Gores Holdings, Inc., Hostess Holdings, L.P., Hostess CDM Co-Invest, LLC, CDM Hostess Class C, LLC , C. Dean Metropoulos, and such other holders of Class B Units from time to time party thereto (2)
10.4	Tax Receivable Agreement, dated November 4, 2016, by and among Gores Holdings, Inc., Hostess CDM Co-Invest, LLC, CDM Hostess Class C, LLC, AP Hostess Holdings, L.P., and C. Dean Metropoulos (2)
10.5	Buyout and Amendment Agreement, dated as of January 26, 2018, by and among Hostess Brands, Inc., Hostess CDM Co-Invest, LLC, CDM Hostess Class C, LLC, CDM HB Holdings, LLC, AP Hostess Holdings, L.P., and C. Dean Metropoulos (6)
10.6	Amended and Restated Registration Rights and Lock-Up Agreement, dated as of November 4, 2016, by and among Hostess Brands, Inc., AP Hostess Holdings, L.P., Hostess CDM Co-Invest, LLC, CDM Hostess Class C, LLC, C. Dean Metropoulos, Gores Sponsor LLC, Randy Bort, William Patton and Jeffrey Rea (2)
10.7	Form of Indemnification Agreement (2)
10.8	Letter Agreement, dated as of March 1, 2016, by and between Hostess Brands, LLC and Tom Peterson (2)
10.9	Hostess Brands, Inc. 2016 Equity Incentive Plan (2)
10.10	Fourth Amended and Restated First Lien Credit Agreement, dated as of October 1, 2019 (7)
10.11	Incremental Assumption and Amendment Agreement No. 4, dated as of October 1, 2019 (7)
10.12	Letter Agreement, dated as of December 6, 2017, by and between Hostess Brands, LLC and Andrew Jacobs (8)

10.13	Employment Agreement, dated April 12, 2018, by and between Hostess Brands, Inc. and Andrew Callahan (9)
10.13.1	Amendment No. 1, dated August 1, 2018, to the Employment Agreement, dated April 12, 2018, by and between Hostess Brands, Inc. and Andrew Callahan (11)
10.14	Hostess Brands Incentive Compensation Plan (10)
10.15	Form of Restricted Stock Unit Agreement (12)
10.16	Form of Performance Share Unit Award Agreement (12)
10.17	Form of Stock Option Award Agreement (12)
10.18	Form of Chief Executive Officer Restricted Stock Unit Award Agreement (12)
10.19	Form of Chief Executive Officer Performance Unit Award Agreement (12)
10.20	Form of Chief Executive Officer Stock Option Award Agreement (12)
10.21	Hostess Brands, Inc. Incentive Compensation Plan for Exempt Non-Sales Employees (13)
21.1	Subsidiaries of the Company
23.1	Consent of KPMG LLP
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104.1	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

*Schedules and exhibits to this Exhibit omitted pursuant to Regulation S-K Item 601(b)(2). The Company agrees to furnish supplementally a copy of any omitted schedules or exhibits to the SEC upon request.

(1) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on July 5, 2016 and incorporated herein by reference.
(2) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on November 9, 2016 and incorporated herein by reference.
(3) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on January 3, 2019 and incorporated herein by reference.
(4) Filed as an exhibit of the Company's Current Report on Form 8-K filed with the SEC on August 19, 2015 and incorporated herein by reference.
(5) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on August 15, 2016 and incorporated herein by reference.
(6) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on January 29, 2018 and incorporated herein by reference.

(7) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on October 3, 2019 and incorporated herein by reference.
(8) Filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2017 filed with the SEC on February 28, 2018 and incorporated herein by reference.
(9) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on April 13, 2018 and incorporated herein by reference.
(10) Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 filed with the SEC on May 9, 2018 and incorporated herein by reference.
(11) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on August 6, 2018 and incorporated herein by reference.
(12) Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2019 filed with the SEC on May 8, 2019 and incorporated herein by reference.
(13) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the SEC on February 26, 2019 and incorporated herein by reference.

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in Kansas City, Missouri on February 26, 2020.

HOSTESS BRANDS, INC.

By /s/ Brian T. Purcell

Brian T. Purcell
Executive Vice President, Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Andrew P. Callahan Andrew P. Callahan	President, Chief Executive Officer (principal executive officer) and Director	February 26, 2020
/s/ Brian T. Purcell Brian T. Purcell	Executive Vice President, Chief Financial Officer (principal financial officer and principal accounting officer)	February 26, 2020
/s/ C. Dean Metropoulos C. Dean Metropoulos	Chairman and Director	February 26, 2020
/s/ Craig D. Steeneck Craig D. Steeneck	Director	February 26, 2020
/s/ Gretchen R. Crist Gretchen R. Crist	Director	February 26, 2020
/s/ Ioannis Skoufalos Ioannis Skoufalos	Director	February 26, 2020
/s/ Jerry D. Kaminski Jerry D. Kaminski	Director	February 26, 2020
/s/ Laurence Bodner Laurence Bodner	Director	February 26, 2020

*Schedules and exhibits omitted pursuant to Regulation S-K Item 601(b)(2). The Company agrees to furnish supplementally a copy of any omitted schedules or exhibits to the SEC upon request.

SPC PARTNERS V, LP
AND
PACIFIC STREET FUND III, LP
AND
PPM AMERICA PRIVATE EQUITY FUND V, LP
AND
THE MANUFACTURERS LIFE INSURANCE COMPANY
AND
ROYNAT CAPITAL INC.
AND
VOORTMAN ENTERPRISES TRUST
AND
OPTIONHOLDERS
collectively, as Sellers

AND
2727939 ONTARIO INC.

as Purchaser

AND

HOSTESS BRANDS, LLC
as Purchaser Parent

SHARE PURCHASE AGREEMENT

Dated as of November 29, 2019

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SHARE PURCHASE AGREEMENT

Share Purchase Agreement dated November 29, 2019 among SPC Partners V, LP (" **SPC**"), a Delaware limited partnership, Pacific Street Fund III, LP ("**Pacific**"), a Delaware limited partnership, PPM America Private Equity Fund V, LP (" **PPM**"), a Delaware limited partnership, The Manufacturers Life Insurance Company ("**Manulife**"), a corporation governed by the Laws of Canada, Roynat Capital Inc. (" **Roynat**"), a corporation governed by the Laws of Canada, Voortman Enterprises Trust (" **Voortman Trust** ", together with SPC, Pacific, PPM, Manulife and Roynat, the " **Principal Sellers**"), a trust constituted under the Laws of the Province of Ontario, the Persons listed on Exhibit A hereto (the "**Optionholders**", and together with the Principal Sellers, the "**Sellers**"), SPC, in its capacity as Agent, and 2727939 Ontario Inc., a corporation governed by the Laws of the Province of Ontario ("**Purchaser**") and Hostess Brands, LLC, a corporation governed by the Laws of the State of Delaware (" **Purchaser Parent**").

WHEREAS, the Principal Sellers are the registered and beneficial owners of the Class A common shares, Class B common shares and Class C common shares in the capital of Corporation (the "**Purchased Shares**") as set out in Schedule 3.1(e) of the Disclosure Letter; and

WHEREAS, Sellers wish to sell to Purchaser, and Purchaser wishes to purchase from Sellers, the Purchased Shares upon the terms and subject to the conditions set forth herein.

WHEREAS Purchaser Parent has agreed to guarantee the obligations hereunder of Purchaser in accordance with Section 5.8 and, solely for that purpose, to become a party to this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, Sellers and Purchaser hereby agree as follows:

Article 1

INTERPRETATION
1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

(a) "**Acquired Companies**" means Corporation and the Subsidiaries.

(b) "**Adjustment Escrow Amount**" means $2,000,000, which such amount shall be held and released by the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement.

(c) "**Affiliate**" has the following meaning: an entity (the "first entity") is the Affiliate of another entity (the "second entity") where the second entity controls the first entity, or the first entity controls the second entity or both entities are controlled by the same Person or entity. For purposes of this definition, "control" is the power whether by contract or ownership of equity interests to select a majority of the board of directors or other supervisory management authority of an entity, whether directly or indirectly through a chain of entities that are "controlled" within the foregoing meaning.

(d) "**Agreement**" means this Share Purchase Agreement and all exhibits, schedules and instruments in amendment or confirmation of it.

(e) "**Allocable Portion**" means, in respect of a Seller, the percentage set forth beside such Seller's name in Part A of Schedule 1.1(e) of the Disclosure Letter.

(f) "**Appleby**" means Appleby Transportation Ltd., a corporation governed by the Laws of the province of Ontario.

(g) "**ASPE**" means accounting principles generally accepted in Canada for private enterprises as issued by the Canadian Accounting Standards Board, in force at the relevant time.

(h) "**Authorization**" means, with respect to any Person, any order, permit, approval, consent, notification, waiver, license, certificate, registration or similar authorization of any Governmental Entity having jurisdiction over such Person.

(i) "**Books and Records**" means all statements, budgets, books of account, Tax and financial records, sales and purchase records and customer and supplier lists relating to each of the Acquired Companies, whether in writing or electronic form and in the possession of each of the Acquired Companies.

(j) "**Business**" means the business of manufacturing cookie, wafer and turnover products and distributing, marketing and selling these products into the food service and retail channels and Appleby is in the business of transporting product manufactured by Voortman to Voortman customers and distributors.

(k) "**Business Day**" means any day other than a Saturday, Sunday or other day on which the principal commercial banks in Toronto, Ontario are not open for business during normal business hours.

(l) "**Canada-US Treaty**" means the Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital (as amended by the five subsequent protocols);

(m) "**Cash**" means with respect to the Acquired Companies, on a consolidated basis, all cash and cash equivalents determined in accordance with ASPE (as applied on a basis consistent with the Financial Statements), plus, without duplication, (i) deposits in transit and cash resulting from the clearance of cheques deposited prior to the Effective Time to the extent there has been a reduction of accounts receivable used in determining Working Capital on account thereof, and (ii) petty cash, minus, without duplication, (i) any security deposits, (ii) any amounts held for the benefit of another Person and (iii) any outstanding but uncashed or uncleared cheques.

(n) "**Class Action Suit**" means the class action lawsuit against SPC Management Co., Inc. ("**Defendant**") in connection with the manufacture, distribution, importation, marketing, labelling and selling of wafers and cookies in the United States through its Canadian subsidiary, Voortman Cookies Limited, where it is alleged Defendant made representations on its product labels that were false and misleading by describing certain ingredients as "real" (e.g., "baked with real vanilla") when they do not contain these ingredients in the amount, type and/or form which a reasonable consumer would expect based on these statements.

(o) "**Closing**" means the completion, on the Closing Date at the Effective Time, of the transactions of purchase and sale contemplated in this Agreement.

(p) "**Closing Date**" means Friday, January 3, 2020, provided all of the conditions to Closing set out in Article 6 have been met or waived by such date (other than those conditions which by their nature are to be satisfied by actions taken at Closing), or such other date as the Parties may agree to in writing.

(q) "**Closing Indebtedness and Cash Statement**" means a statement to be delivered to Purchaser setting out (i) the Indebtedness of each Acquired Company that is to be repaid at Closing to be set out in Part A of such statement, less the Cash of the Acquired Companies, in each case on a consolidated basis as of the Effective Time (the "**Net Indebtedness Payable at Closing**") and (i) the Indebtedness of the Acquired Companies that is not to be repaid at Closing (as at the Effective Time) to be set out in Part B of such statement (the "**Indebtedness Not Payable at Closing**"), ignoring any payments on the Closing Date pursuant to Section 2.5, which statement shall be based, with respect to Indebtedness owed to third party creditors that is to be repaid on the Closing Date, on signed pay-out letters obtained from such third party creditors.

(r) "**Code**" means the Internal Revenue Code of 1986, as amended.

(s) "**Competition Act**" means the Competition Act (Canada), as amended.

(t) "**Contracts**" means, in respect of the Acquired Companies, all written and oral contracts, agreements, bonds, leases of personal property, licenses, commitments, orders and other legally enforceable written instruments made by or in favour of the Acquired Companies, as the case may be, including the Material Contracts.

(u) "**Corporation**" means SPCVC Co-Investment Inc., a corporation governed by the Laws of the province of Ontario.

(v) "**Corporation Fundamental Representations**" means the representations and warranties contained in Sections 3.2(a) (Incorporation and Qualification of Acquired Companies), 3.2(b) (Holding Companies Conduct No Business), 3.2(g) (Authorized and Issued Capital), 3.2(i) (Title to the Subsidiaries' Shares) and 3.2(ff) (No Brokers).

(w) "**Damages**" means in respect of any matter, all losses, liabilities, claims, damages, penalties, fines, demands, proceedings, deficiencies, Taxes, costs and expenses (including all reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) and judgments arising directly or indirectly as a consequence of such matter (whether or not involving a third-party claim).

(x) "**Disclosure Letter**" means the letter of disclosure dated the date hereof and signed by Sellers and delivered to Purchaser.

(y) "**Effective Time**" means 5:00 p.m. on the close of business on the Closing Date or such other time as the Parties may agree to in writing.

(z) "**Environmental Laws**" means all applicable Laws and agreements with Governmental Entities and all other statutory or regulatory requirements relating to public health or the

protection of the environment or Hazardous Materials and all Authorizations issued pursuant to such Laws, agreements or statutory or regulatory requirements.

(aa) "**Escrow Agent**" means Computershare Trust Company of Canada, or such other Person as may be appointed in replacement thereof pursuant to the terms of the Escrow Agreement.

(bb) "**Escrow Agreement**" means the escrow agreement dated the Closing Date among Purchaser, Sellers, and the Escrow Agent substantially in the form of Exhibit 1.1(bb) hereto.

(cc) "**Escrow Indemnity Amount**" means $6,910,000, which such amount shall be held and released by the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement which, among other things, will provide for release of $4,250,000 on the 18-month anniversary of Closing (subject to any escrow claims) and for the release of the remaining escrow funds on the 36-month anniversary of Closing (subject to any escrow claims).

(dd) "**Excluded Employees Severance Cost**" means any and all liabilities relating to the termination of employment of the Excluded Employees, including outstanding salary, wages, bonuses, commissions, vacation pay, entitlements under Benefit Plans, severance payments, payments in lieu of notice of termination, wrongful dismissal damages, equity award settlements and other compensation (regardless of whether they are claimed before or after the Rationalization Date or the Closing Date and regardless of whether they arose prior to or on or in respect of the Rationalization Date), provided for certainty that the applicable Excluded Employees will cease to participate in the Benefit Plans as of the later of (i) the Rationalization Date; and (ii) the earliest date on which participation in such Benefit Plans is permitted to cease under applicable Laws.

(ee) "**Financial Statements**" means (i) with respect to Voortman, the consolidated audited financial statements thereof for the years ending on December 30, 2017 and December 29, 2018, as well as the unaudited consolidated financial statements of Voortman for the 9 periods ending September 7, 2019, (ii) with respect to Corporation, the unaudited financial statements thereof for the years ending on December 30, 2017 and December 29, 2018, (iii) with respect to SPC Investment, the unaudited financial statements thereof for the years ending on December 30, 2017 and December 29, 2018, and (iv) with respect to SPC Holdings, the unaudited financial statements thereof for the years ending on December 30, 2017 and December 29, 2018, copies of which are provided in Schedule 1.1(dd) of the Disclosure Letter.

(ff) "**Food Safety Claim**" means any action, suit, claim, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, response to a Governmental Entity, removal or remediation, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence, release of, or exposure to, any food contaminants or adulterants, pests, mold, or microbial agents in or related to food or food packaging; (ii) any actual or alleged non-compliance with or liability or obligation under any Food Safety Law or term or condition of any Authorization required pursuant to

Food Safety Laws; (iii) any food product recall, seizure, or investigation or food processing facility shut down; or (iv) any "form 483" notices, warning letters or citations issued by the U.S. Food and Drug Administration ("**FDA**"), the U.S. Department of Agriculture ("**USDA**"), Health Canada, the Canadian Food Inspection Agency (" **CFIA**"), or any state, provincial, municipal or local public health agencies.

(gg) "**Food Safety Laws**" means (i) all Laws and agreements with Governmental Entities relating to or imposing liability or standards of conduct with respect to food safety or quality, industrial hygiene, or the manufacture, production, handling, packaging, label, labeling, transportation, distribution, importing, exporting, storage, sale or marketing of food and related products, including all Laws and regulations administered by the FDA, USDA, the Federal Trade Commission, Health Canada, CFIA and any state, provincial, municipal or local agricultural, public health or consumer protection authorities, including but not limited to the U.S. Federal Food, Drug, and Cosmetic Act ("**FFDCA**"), as amended and its associated regulations, the Food Safety Modernization Act (Pub. L. 111-353), the Public Health Security Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107-188, as amended), the Perishable Agricultural Commodities Act and its associated regulations (Pub. L. 71-325, as amended), the Food and Drugs Act and its associated regulations, the Consumer Packaging and Labelling Act and its associated regulations, the Safe Food for Canadians Act and its associated regulations (and, as applicable, the Canada Agricultural Products Act and its associated regulations prior to their repeal), and all rules, notices, practices, policies, guidance and guidelines issued by the FDA, USDA, CFIA and any state, provincial, municipal or local agricultural, public health or consumer protection authorities, as it relates to organic standards, product certifications and all facility hazard analysis plans and programs, and (ii) all Authorizations issued pursuant to such Laws and agreements.

(hh) "**Governmental Entity**" means any domestic or foreign (i) federal or central, state, regional, provincial, municipal, local or other governmental or public department, central bank, court, commission, commissioner, board, bureau, agency, tribunal or instrumentality, (ii) any applicable stock exchange, or (iii) any body exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power of any nature.

(ii) "**Hazardous Materials**" means any substance, material or waste that is prohibited, listed, defined, designated or classified as, or otherwise determined to be, dangerous, hazardous, radioactive, explosive or toxic or a pollutant or a contaminant under or pursuant to any applicable Environmental Laws, including pollutants, contaminants, chemicals, deleterious substances, dangerous goods, hazardous or industrial toxic wastes or substances, radioactive materials, flammable substances, explosives, petroleum and petroleum products, polychlorinated biphenyls ("**PCBs**"), chlorinated solvents and asbestos.

(jj) "**HST**" means harmonized sales tax.

(kk) "**HST Act**" means Part IX of the *Excise Tax Act* (Canada).

(ll) "**Indebtedness**" means, collectively (and without duplication) with respect to the Acquired Companies, on a consolidated basis:

(i) indebtedness for borrowed money, including any related prepayment fees, penalties or expenses (including overdraft facilities) (whether short term or long term);

(ii) indebtedness for the deferred purchase price of property or services;

(iii) indebtedness evidenced by notes, bonds, debentures, mortgages or other similar instruments;

(iv) obligations or commitments to repay deposits or other amounts advanced by and owing to third Persons to the extent there has also been a reduction to the corresponding line item in Working Capital or Cash, as applicable;

(v) indebtedness arising under any interest rate or currency swap or other interest rate or currency protection or hedging agreement or other similar interest rate or currency agreement;

(vi) indebtedness under loans due to any related party (within the meaning of the Tax Act), including any shareholder;

(vii) any declared dividend not paid by an Acquired Company;

(viii) any change of control payment or unpaid bonus that is payable in connection with the transaction contemplated by this Agreement;

(ix) indebtedness arising under capitalized leases, conditional sales contracts and other similar title retention instruments (including, for greater certainty, the leasing contracts listed in section 3.2(y)(i)(N) of Schedule 2.3(y) of the Disclosure Schedules);

(x) any liabilities under any letter of credit (to the extent drawn) or any other than instruments supporting or guaranteeing any obligations of any Acquired Company;

(xi) any interest, fees, prepayment obligations, premiums or penalties relating to any of the indebtedness referred to in paragraphs (i) through (x);

(xii) all indebtedness of others referred to in paragraphs (i) through (xi) above guaranteed by, or secured by any Lien upon any property or asset owned by any Acquired Company;

(xiii) all Excluded Employees Severance Cost; and

(xiv) income Tax liabilities (net of any income Tax assets) of any Acquired Company accruing up to the Closing Date.

reduced by the sum of all assets or benefits arising under any interest rate or currency swap or other interest rate or currency protection agreement or other similar interest rate or currency agreement, on a consolidated basis, provided, however, that any liability included in Working Capital for purposes of this Agreement, any portion of the Optionee

Withholding Amount and indebtedness evidenced by the Net Settlement Notes shall be excluded from the calculation of Indebtedness for purposes of this Agreement.

(mm) "**Independent Contractor**" means each Person under a contract for services with an Acquired Company, including, for greater certainty, each distributor of the products of the Business, that is not, and is not intended by any Acquired Company to be, an employee or agent of an Acquired Company.

(nn) "**Independent Distributor**" means a Person (other than an Acquired Company) who is party to an Independent Distributor Agreement.

(oo) "**Independent Distributor Agreement**" means an agreement (including, for greater certainty, a signed acknowledgment to be bound by the terms of any policy or manual) with an Acquired Company pursuant to which an Independent Distributor has rights to sell and distribute products of the Business to third parties, and specifically includes, without limitation, all such agreements executed with respect to (i) the Canadian Policy Manual and Information Handbook dated January 2014, (ii) the American Policy Manual and Information Handbook dated January 2014, (iii) the form of Independent Distributor Agreement [Canada] dated February 2018, (iv) the form of Independent Distributor Agreement [Quebec - Canada] dated February 2018, and (v) the form of Independent Distributor Agreement [USA] dated January 2018.

(pp) "**Individual Fundamental Representations**" means the representations and warranties contained in Sections 3.1(a) (Incorporation and Status of Sellers), 3.1(b) (Validity of Agreement), 3.1(c) (Execution and Binding Obligation), 3.1(e) (Title to Purchased Shares), and 3.1(g) (No Brokers).

(qq) "**Intellectual Property**" means, all intellectual property of the Acquired Companies including any trademarks, trade names, business names, brand names, service marks, logos, domain names, computer software and computer programs (other than standard off-the-shelf software), copyrights, designs, inventions and patents, formulae, processes, know-how and technology and trade secrets, whether domestic or foreign, registered or unregistered, as well as any applications, continuations, continuations in part, divisional applications or analogous rights therefor and goodwill associated with any of the foregoing, together with all rights under licences, registered user agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing and all like rights used by or granted to the Acquired Companies in connection with the Business.

(rr) "**Interim Period**" means the period from the date hereof and the Closing.

(ss) "**Internet Web Sites**" means all of the Acquired Companies' web sites used in the conduct of the Business that are accessible by the public over the internet.

(tt) "**Investment Canada Act**" means the *Investment Canada Act*, as amended.

(uu) "**Laws**" means all current constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, orders-in-council, rules, regulations, directives, notices, judgments, notifications, circulars and by-laws or any provisions of the foregoing, including general principles of common and civil law and equity.

(vv) "**Lien**" means any mortgage, charge, pledge, hypothec, option, prior claim, power of sale, security interest, security agreement, debenture, trust deed, conditional sales contract, assignment, lien (statutory or otherwise), equity, right of pre-emption, right of first refusal, non-disposal undertaking, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment, performance of an obligation or claim against a proprietary right or an agreement to create any of the foregoing.

(ww) "**Material Adverse Effect**" means a development, change, event or occurrence that, when taken individually or in the aggregate, has had or resulted, or would reasonably likely result in, a material adverse effect on the Business, operations, assets, liabilities or condition (financial or otherwise) of the Acquired Companies, taken as a whole; except to the extent that the material adverse effect results from or is caused by:

(i) worldwide, national, provincial or local conditions or circumstances, whether they are economic, political, regulatory (including any change in Law or ASPE) or otherwise, including war, armed hostilities, acts of terrorism, emergencies, crises and natural disasters, but only if such conditions or circumstances have not had a materially disproportionate impact on the Acquired Companies taken as a whole relative to other participants in the markets or industry in which the Acquired Companies operate;

(ii) changes in the markets or industry in which the Acquired Companies operate, but only if such changes have not had a materially disproportionate impact on the Acquired Companies taken as a whole relative to other participants in the markets or industry in which the Acquired Companies operate;

(iii) the announcement of this Agreement and the transactions contemplated hereby, including the loss of any customer, supplier or distributor following the announcement of this Agreement and the transactions contemplated hereby;

(iv) any act or omission of Purchaser or its Affiliates;

(v) any act or omission of the Acquired Companies, as the case may be, occurring after the date hereof and prior to the Closing Date that is taken or omitted to be taken with the prior written consent or at the prior written request of Purchaser;

(vi) any matter which has been disclosed by Sellers in the Disclosure Letter; or

(vii) the failure of any of the Acquired Companies to meet any internal, published or public projections, forecasts, guidance or estimates, including of production, revenues, earnings or cash flows (it being understood that the causes underlying such failure may be taken into account in determining whether a Material Adverse Effect has occurred).

(xx) "**Multi-Employer Plans**" means plans, arrangements, agreements, programs, policies, practices or undertakings whether funded or unfunded, insured or uninsured, registered or unregistered, to which an Acquired Company is a party or bound or in which Employees participate or under which an Acquired Company has, or will have, any liability or contingent liability, or pursuant to which payments are made, or benefits are provided to,

or an entitlement to payments or benefits may arise with respect to any of its Employees or former employees (or any spouses, dependants, survivors or beneficiaries of any such persons) and to which an Acquired Company is required to contribute and which are not maintained or administered by an Acquired Company or any of its Affiliates.

(yy) "**Net Indebtedness**" means an amount equal to the amount of Indebtedness minus the amount of Cash, in each case as of the Effective Time.

(zz) "**Net Settlement Notes**" means the promissory notes issued by SPC Investment to Optionholders, in consideration for the surrender of their Options as described in Section 2.6, the principal amount of which shall, for each Optionholder, be equal to the "in-the-money" value of his/her Options less said Optionholder's pro-rata share of the Optionee Withholding Amount.

([[) "**Option Plan**" means the Stock Option Plan of SPC Investment dated October 9, 2015.

(aaa) "**Option Reimbursement Note**" means a non-interest bearing demand promissory note issued by Voortman to SPC Investment pursuant to the terms of the Reimbursement Agreement to compensate SPC Investment for payments made in connection with the surrender of Options by the Optionholders to SPC Investment as described in Section 2.6.

(bbb) "**Optionee Additional Withholding Amount**" means an amount set forth in the Final Statements to be withheld or otherwise remitted to a Governmental Entity on account of Taxes by SPC Investment (or the relevant Acquired Company) in respect of the Optionholders Proportionate Adjustment Amount (to the extent positive).

(ccc) "**Optionee Withholding Amount**" means an amount set forth in a statement to be delivered by Sellers to Purchaser within two days prior to the Closing Date setting out the amount required to be withheld or otherwise remitted to a Governmental Entity on account of Taxes by SPC Investment (or the relevant Acquired Company) in respect of the surrender of the Options by the Optionholders to SPC Investment as described in Section 2.6.

(ddd) "**Optionholders Proportionate Adjustment Amount**" means a positive or negative amount set forth in the Final Statements to which the Optionholders would have been entitled or that they would have owed on account of adjustment pursuant to Sections 2.4(h)(iv) to 2.4(h)(vi) (disregarding, for these purposes, any reference therein to Optionholders Proportionate Adjustment Amount and Optionee Additional Withholding Amount) in accordance with the proportions set out in Part C of Schedule 1.1(e) of the Disclosure Letter, net of the Optionee Additional Withholding Amount (if any).

(eee) "**Options**" means each outstanding, unexpired, unexercised option to purchase one or more shares in the capital of SPC Investment, whether or not then vested or exercisable, granted on or prior to the date hereof to any current or former employee, officer or director of Voortman pursuant to the Option Plan.

(fff) "**Ordinary Course**" means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.

(ggg) "**Parties**" means Sellers and Purchaser.

(hhh) "**Payoff Creditors**" means the creditors of Indebtedness listed in Part A of the Closing Indebtedness and Cash Statement;

(iii) "**Payoff Letter**" means, with respect to any Payoff Creditor, a letter or other instrument addressed by such Payoff Creditor to one or more Acquired Companies setting out the Indebtedness as at the Effective Time owed to such Payoff Creditor and containing an irrevocable undertaking from such Payoff Creditor to terminate all financial instruments relating to such Indebtedness and to take all required actions in order to discharge all Liens on the assets of the Acquired Companies that exist for its benefit or granting Purchaser or the Acquired Companies the authority to file any Lien discharge documents, subject only to receipt of payment of the amount specified in such Payoff Letter, and, if applicable, providing wire transfer instructions for payment to such Payoff Creditor.

(jjj) "**Permitted Lien**" means the following Liens:

(i) minor encroachment by the Leased Properties over neighbouring lands and any fences or concrete curbs, which individually and/or in the aggregate (A) do not materially affect the occupation, use of enjoyment of the Leased Properties and (B) do not materially affect the value or the marketability of any of the Leased Properties;

(ii) in respect of real property, any subsisting restrictions, exceptions, reservations, limitations, provisions and conditions (including royalties, reservation of mines, mineral rights (including coal, oil and natural gas) and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown, under applicable law or from any predecessor in title;

(iii) in respect of real property, zoning, land use and building restrictions, by-laws, regulations and ordinances of federal or central, state, regional, provincial, municipal or other governmental bodies or regulatory authorities, including municipal by-laws and regulations, airport zoning regulations, other land use limitations, pre-emption rights regulations and rights to repurchase in favour of or imposed or reserved by any federal or central, state, regional, provincial, municipal or other governmental bodies or regulatory authorities provided none of the foregoing have a Material Adverse Effect on, or reduce the current use of, any of the Leased Properties;

(iv) all immovable property leases, whether registered or not, but only to the extent that true, correct and complete copies of which have been made available to Purchaser and are expressly identified in Schedule 3.2(aa) of the Disclosure Letter;

(v) Liens for Taxes not yet due and delinquent or, if due, the validity of which is being contested diligently;

(vi) Liens arising by operation of Law or securing, carriers', warehousemen's, mechanics', workers', suppliers', contractors', builders', architects', engineers', materialmen's and other such similar liens incurred in the Ordinary Course which

have not at such time been filed pursuant to Law or which relate to obligations not due and payable or, if overdue, are being contested in good faith by appropriate proceedings and in respect of which adequate reserves are maintained in accordance with ASPE (applied on a basis consistent with the Financial Statements);

(vii) deposits to secure the performance of obligations in respect of Liens contemplated in paragraph above;

(viii) in respect of real property, any immaterial disagreement between the title deeds, the cadastre, the plan of renovation and/or the measurements and which, individually and/or in the aggregate (A) do not materially affect the occupation, use or enjoyment of the Leased Properties and (B) do not materially affect the value or marketability of any of the Leased Properties;

(ix) in respect of real property, the right reserved to or vested in any Governmental Entity by statute or common law;

(x) in respect of real property, security given to a public utility or any Governmental Entity by statute or common law;

(xi) in respect of real property, subdivision agreements, site plan control agreements, servicing agreements and other similar agreements with municipalities and restrictions, easements, restrictive covenants, licenses, servitudes, watercourse, rights-of-way, right of access or user or other similar rights in land (including rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other Persons to the extent they are in good standing and which do not, either individually or in the aggregate, materially affect the value, marketability, use, occupation or enjoyment of the Leased Properties subject thereto;

(xii) Liens arising solely by operation of Law over any credit balance or cash held in an account with a financial institution;

(xiii) Liens which will continue to encumber the assets following the Closing as set out in Schedule 1.1(iii) of the Disclosure Letter; and

(xiv) Liens which are being discharged prior to or concurrently with Closing as set out in Schedule 1.1(iii) of the Disclosure Letter.

(kkk) "**Person**" means a natural person, partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning**.**

(lll) "**Pre-Closing Tax Period**" means any taxable period (or portion thereof) ending on or before the Closing, and with respect to any Straddle Period, the portion of such taxable period ending on the Closing Date;

(mmm) "**Pre-Closing Taxes**" means all Taxes payable in respect of any Pre-Closing Tax Period. For these purposes, in the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Period, the portion of such Tax related to the portion of such Straddle Period ending on the Closing Date shall (a) in the case of any Taxes other than gross receipts, sales or use taxes and Taxes based upon or related to income, be deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of calendar days in the taxable period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire taxable period, and (b) in the case of any Tax based upon or related to income and gross receipts, sales or use taxes, be deemed equal to the amount which would be payable if the relevant taxable period ended on or immediately before the Closing;

(nnn) "**Reimbursement Agreement**" means an agreement entered into between Voortman and SPC Investment dated as of the date hereof pursuant to which Voortman agrees to reimburse SPC Investment by the issuance of the Option Reimbursement Note for amounts paid by SPC Investment to the Optionholders in connection with the surrender of the Options as described in Section 2.6 and adjusted pursuant to Sections 2.4(h)(iv) to 2.4(h)(vi).

(ooo) "**Representation and Warranty Policy**" means the buyer side representation and warranty insurance policy obtained by Purchaser, in form and substance satisfactory to Sellers, acting reasonably, and which shall provide for an aggregate coverage in an amount equal to $42,500,000, and of which the premium (excluding any related fees and expenses) payable to the underwriter and the broker with respect to the Representation and Warranty Policy shall be paid for by Purchaser as to 50% and Sellers as to 50% (as set out in Section 1.1(aaaa)), and which Representation and Warranty Policy shall be bound and become effective as of the date hereof.

(ppp) "**Settlement**" means the Confidential Settlement Agreement between SPC Management Co., Inc. and Oscar Lopez and the terms and conditions specified therein relating to the Class Action Suit.

(qqq) "**Statutory Plans**" means statutory benefit plans that an Acquired Company is required to participate in or comply with, including the Canada and Québec Pension Plans and plans administered pursuant to applicable health Tax, workers' compensation and employment insurance legislation.

(rrr) "**Straddle Period**" means any taxable period which begins before the Closing Date and ends after the Closing Date;

(sss) "**Subsidiaries**" means SPCVC Investment Inc. ("**SPC Investment**"), a corporation governed by the Laws of the province of Ontario, SPCVC Holdings Inc. ("**SPC Holdings**"), a corporation governed by the Laws of the province of Ontario, Voortman and Appleby.

(ttt) "**Subsidiaries' Shares**" means the shares set out in Schedule 1.1(uuu) of the Disclosure Letter.

(uuu) "**Target Working Capital**" means $40,000,000.

(vvv) "**Tax**" or, collectively, "**Taxes**" means any and all federal or central, state, regional, provincial, municipal, local and foreign taxes, assessments, reassessment and other governmental charges, duties, impositions and liabilities, including Canada Pension Plan and provincial pension plan contributions and unemployment insurance contributions and employment insurance contributions and including taxes based upon or measured by gross receipts, income, profits, sales, capital use and occupation, good and services, and value added, ad valorem, transfer, franchise, withholding, customs duties, payroll, employment, employer health, HST, excise and property taxes, including estimated taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts.

(www) "**Tax Act**" means the *Income Tax Act* (Canada), as amended.

(xxx) "**Tax Return**" or, collectively "**Tax Returns**" means all returns, declarations, reports, statements, schedules, notices, elections, forms or other documents or information required to be filed in respect of the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of any legal requirement relating to any Tax**.**

(yyy) "**Termination Date**" means Monday, February 3, 2020.

(zzz) "**Transaction Expenses**" means (i) all of the fees, expenses and other payments incurred by Sellers or the Acquired Companies in connection with the transactions contemplated by this Agreement (on their own behalf and/or on behalf of the Corporation), (ii) all fees and expenses of legal, accounting and financial advisors, data room providers, and other advisors of Sellers or the Acquired Companies, (iii) one-half of the fees and expenses of the Escrow Agent under the Escrow Agreement, (iv) one-half of the Representation and Warranty Policy premium (as such premium is described in Section 1.1(mmm) and provided that, for purposes of calculating Sellers' one-half portion of such premium, the aggregate amount of such premium shall not exceed $1,000,000) and (v) all fees, expenses and other payments of Sellers or the Acquired Companies including change of control sale bonuses or payments, phantom equity, deferred compensation, severance payments to any current or former employee, director or independent contractor (plus the employer portion of any employment, payroll, and/or any other Taxes thereon), in each case not paid in full prior to the Closing, provided, however, that any liability included in Indebtedness for purposes of this Agreement shall be excluded from the calculation of Transaction Expenses for purposes of this Agreement.

([[[) "**U.S.-Based Employee**" means any employee of an Acquired Company that performed services for such Acquired Company within the United States on at least fifty (50) days during any twelve-month period.

(aaaa) "**Voortman**" means Voortman Cookies Limited, a corporation governed by the Laws of the province of Ontario.

(bbbb) "**Working Capital**" means the current assets and current liabilities that are specifically listed in the sample calculation set forth in Exhibit 1.1(dddd) in respect of the Acquired Companies, on a consolidated basis, as of the Effective Time, each calculated in

accordance with ASPE (applied on a basis consistent with the Financial Statements) except as otherwise set forth under the heading "Adjustments" in Exhibit 1.1(dddd).

1.2 Other Defined Terms.

In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Sections:

Term	Section
Agent	10.8(a)
Benefit Plan	3.2(k)(vii)
Closing Net Working Capital Adjustment	2.4(a)
Confidentiality Agreement	5.3
Defendant	1.1(n)
Draft Statements	2.4(c)
Excluded Employees	5.10
Indebtedness Not Payable At Closing	1.1(q)(i)
Indemnified Party	9.7
Indemnifying Party	9.7
Industrial Designs	3.2(s)(i)
Insurance Policies	3.2(cc)
Key Customer	3.2(ff)
Key Supplier	3.2(ff)
Lease Documents	3.2(aa)(i)
Leased Properties	3.2(aa)(i)
Manulife	Preamble
Material Contracts	3.2(y)(i)
Materiality Scrape	9.6
Net Downward Adjustment	2.4(h)(v)
Net Indebtedness Payable at Closing	1.1(q)(i)
Net Upward Adjustment	2.4(h)(iv)
Optionholders	Preamble
Pacific	Preamble
Parachute Payment Waiver	5.13(a)
PPM	Preamble
Pre-Acquisition Reorganization Activity	5.9(a)
Preliminary Closing Date Net Working Capital Amount	2.4(a)
Preliminary Closing Date Net Working Capital Statement	2.4(a)
Principal Sellers	Preamble
Purchased Shares	Recitals
Purchase Price	2.2
Purchaser	Preamble
Purchaser's Closing Certificate	6.5(a)
Rationalization Date	5.10

Term	Section
Roynat	Preamble
SE	10.1
Sellers	Preamble
Sellers' Closing Certificate	6.2(a)
SPC	Preamble
SPC Holdings	1.1(ttt)
SPC Investment	1.1(ttt)
Third Party Claim	9.8(a)
Trademarks	3.2(s)(i)
Voortman Trust	Preamble

1.3 Headings, etc.

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

1.4 Currency and Payment Obligations.

(a) All references in this Agreement to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

(b) Except as provided in Article 9, any payment to or by Sellers contemplated by this Agreement shall be made to or by Sellers in accordance with each Seller's Allocable Portion.

1.5 Time Reference.

All references in this Agreement to times of the day are to local time in the relevant jurisdiction, unless otherwise indicated.

1.6 Certain Expressions, Etc.

In this Agreement, (a) the words "includes", "including" and similar expressions mean "includes (or including) without limitation", (b) the phrases the "aggregate of", the "total of", the "sum of" and similar expressions mean the "aggregate (or total or sum), without duplication, of", (c) the phrase "made available", when used in reference to a document and unless otherwise specified, means that the document was made available for viewing in the "Project Victoria" electronic data room hosted by Donnelley Financial Solutions (the "**Data Room**"), as that site existed as of 6:00 p.m. (Eastern Daylight Time) on the date prior to the date of this Agreement, (d) pronouns in one gender include the other gender, unless the context clearly indicates otherwise, (e) definitions in the singular include the plural, and vice versa, (f) the words "hereof", "herein", "hereunder", "hereto" and similar expressions refer to this Agreement as a whole and the words "Article", "Section", "Exhibit" or "Schedule" refer to an Article of, Section of, Exhibit to or Schedule to, this Agreement, unless specified otherwise.

1.7 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of Sellers, it shall be deemed to refer to the actual knowledge (assuming they had made reasonable inquiry of the appropriate individuals) of Douglas MacFarlane, Diana Fife, Chester Czerny, Ken Cross and David Darch as of the date of this Agreement.

1.8 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with ASPE (applied on a basis consistent with the Financial Statements), unless otherwise provided.

1.9 Incorporation of Exhibits and Schedules.

The exhibits and schedules to the Disclosure Letter attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

ARTICLE 2

PURCHASED SHARES AND PURCHASE PRICE

2.1 Purchase and Sale.

Subject to the terms and conditions of this Agreement, on the Closing Date, each Principal Seller shall sell to Purchaser, and Purchaser shall purchase from each Principal Seller, all (but not less than all) of the Purchased Shares held thereby. The Purchased Shares will constitute at Closing, in the aggregate, all (but not less than all) of the issued and outstanding shares in the capital of Corporation.

2.2 Purchase Price.

Subject to adjustment, if any, in accordance with Section 2.4, the aggregate purchase price payable by Purchaser for the Purchased Shares shall be an amount equal to (a) $425,000,000, plus, if a negative amount, or minus, if a positive amount, as the case may be, (b) the aggregate Net Indebtedness as set forth on the Closing Indebtedness and Cash Statement, plus or minus, as the case may be, (c) the amount of the Closing Net Working Capital Adjustment, minus (d) the Optionee Withholding Amount, and minus (e) the aggregate principal amount of the Net Settlement Notes (the "**Purchase Price**").

2.3 Payments at Closing.

At Closing, Purchaser shall pay the Purchase Price by paying:

(a) to Principal Sellers an amount equal to the Purchase Price, minus the Principal Sellers' Allocable Portion of any unpaid Transaction Expenses, minus the Principal Sellers' Allocable Portion of the Adjustment Escrow Amount, and minus the Principal Sellers' Allocable Portion of the Escrow Indemnity Amount, by way of wire transfer of immediately available funds to accounts designated in writing by Agent prior to the Closing Date, in the proportions set forth in Part B of Schedule 1.1(e) of the Disclosure Letter; and

(b) the Principal Sellers' Allocable Portion of the Adjustment Escrow Amount and the Principal Sellers' Allocable Portion of Escrow Indemnity Amount to the Escrow Agent.

2.4 Adjustment of Purchase Price

(a) **Preliminary Statements.** Within three days prior to the Closing Date, Agent shall cause Corporation to prepare and shall deliver to Purchaser (i) a statement (the "**Preliminary Closing Date Net Working Capital Statement**") setting forth Corporation's good faith estimate of the Working Capital as of the Effective Time (the "**Preliminary Closing Date Net Working Capital Amount**"), which Preliminary Closing Date Net Working Capital Statement shall be adjusted to include the Inventory Count conducted immediately prior to Closing, and (ii) the Closing Indebtedness and Cash Statement, which shall set forth Corporation's good faith estimate of the Net Indebtedness of the Acquired Companies as of Effective Time. If the Preliminary Closing Date Net Working Capital Amount is greater than the Target Working Capital, the Purchase Price will be increased dollar-for-dollar by the amount of such excess, and if the Preliminary Closing Date Net Working Capital Amount is less than the Target Working Capital, the Purchase Price will be decreased dollar-for-dollar by the amount of such shortfall (the "**Closing Net Working Capital Adjustment**"), provided that if the Closing Net Working Capital Adjustment is less than $150,000 (positive or negative), no adjustment will be made. Within two days prior to the Closing Date, Agent shall also cause Corporation to prepare and shall deliver to Purchaser a statement setting forth the amount of the Net Settlement Notes and the Optionee Withholding Amount.

(b) **Inventory Count**. Purchaser and Agent each agree to, and to cause their respective agents and representatives to, cooperate with the other and their respective agents and representatives to conduct a joint count of inventories, including raw materials, work-in-progress and finished products immediately preceding the Closing Date (the "**Inventory Count**"). The Inventory Count shall be jointly overseen by Purchaser and the Agent, including costing of inventory at the lower of cost and net realizable value less a mutually agreed allowance for aged and non-useable items.

(c) **Draft Statements.** Within 120 days following the Closing Date, Purchaser shall prepare and shall deliver to Agent (i) a statement with the determination of the Working Capital, prepared as of the Effective Time, provided that Purchaser shall normalize and adjust the Working Capital calculation to reflect that all inventory shipped shall be recognized as revenue on the date such inventory is deemed by the Acquired Companies' internal systems to be received by Independent Distributors and direct shipments to the U.S. and Canada (excluding Foodservice and Global) and not on the date such inventory was actually shipped, and (ii) a statement of Net Indebtedness, the Optionholders Proportionate Adjustment Amount and the Optionee Additional Withholding Amount, prepared as of the Effective Time (collectively, the "**Draft Statements**").

(d) **Cooperation.** Upon reasonable request, at any time after the delivery of the Draft Statements, Purchaser shall provide to Agent and its auditors access to relevant supporting documentation as they relate to the Draft Statements relating to the Acquired Companies and reasonable access during ordinary business hours to appropriate personnel to verify the accuracy, presentation and other matters relating to the preparation of the Draft Statements.

(e) **Objection Period.** Within 45 days following delivery of the Draft Statements, Agent (for and on behalf of Sellers) shall notify Purchaser in writing if they have any objections to

the Draft Statements. The notice of objection must state in reasonable detail the basis of each objection and the amounts in dispute (on an item-by-item basis if there is more than one amount in dispute) together with Sellers' alternative proposed calculation with respect to each component of the Draft Statements it disputes. Any item or amount of the Draft Statements not so identified on the notice of objection as an item or amount in dispute shall be deemed as final and binding. Sellers shall be deemed to have accepted the Draft Statements in their entirety if Agent (for and on behalf of Sellers) does not notify Purchaser of any objection within such period of 45 days.

(f) **Settlement of Dispute.** If Agent (for and on behalf of Sellers) disputes the Draft Statements in accordance with Section 2.4(e), then Purchaser and Agent (for and on behalf of Sellers) will work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 30 days after the date of the notification of such dispute, failing which the items remaining in dispute may be submitted by Agent (for and on behalf of Sellers) or Purchaser for final determination to BDO Canada LLP, or if such firm is unwilling or unable to act, Grant Thornton LLP (in any such case, the "**Third Party Auditors**"). Purchaser and Agent shall use commercially reasonable efforts to cause the Third Party Auditors to complete their work within 30 days of their engagement. The Third Party Auditors shall allow each of Purchaser and Agent (for and on behalf of Sellers) to present their respective positions regarding the items in dispute in the Draft Statements and the determination of Working Capital and Net Indebtedness as of the Effective Time, and each of Purchaser and Agent (for and on behalf of Sellers) shall have the right to present additional documents, materials and other written information to the Third Party Auditors regarding the items in dispute. The Third Party Auditors shall consider such additional documents, materials and other written information. Any such other documents, materials or other written information shall be copied to each of Purchaser and Agent and each of Purchaser and Agent shall be entitled to reply thereto. The Third Party Auditors shall make their determination in accordance with the terms of this Agreement. The Third Party Auditors may not assign a dollar value to any disputed item greater than the highest amount or less than the lowest amount claimed by Purchaser or Agent, as applicable.

(g) **Final Determination.** Promptly following the 30-day period referred to in Section 2.4(e) during which no notice of objection was given or the resolution of any dispute in accordance with Section 2.4(f), as the case may be, Purchaser shall deliver to Agent (for and on behalf of Sellers) the final closing date balance sheet, a statement of final Working Capital and a final statement of Net Indebtedness, Optionholders Proportionate Adjustment Amount and Optionee Additional Withholding Amount (the " **Final Statements**"). The Final Statements shall reflect the resolution of any dispute in accordance with Section 2.4(f) or, if Corporation's auditors are unable or unwilling to reflect such resolution, then the Final Statements shall be deemed to be amended to reflect such resolution. The Final Statements shall be final and binding upon the Parties upon delivery thereof and shall not be subject to appeal, absent manifest error.

(h) **Payment of Adjustment to Purchase Price**.

(i) If (A) the Working Capital set forth in the Final Statements is equal to, or is no more than $150,000 more or less than, the Preliminary Closing Date Net Working Capital Amount set forth on the Preliminary Closing Date Net Working

Capital Statement, and (B) the Net Indebtedness set forth in the Final Statements is equal to the Net Indebtedness set forth in the Closing Indebtedness and Cash Statement, then no further adjustment will be made to the Purchase Price and, with respect to the Adjustment Escrow Amount, the Escrow Agent shall release same as follows:

(A) to Principal Sellers, the Principal Sellers' Allocable Portion thereof, by wire transfer of immediately available funds to the accounts designated by Agent pursuant to Section 2.3; and

(B) to Agent for remittance to Optionholders, the Optionholders' Allocable Portion thereof, by wire transfer of immediately available funds to the accounts designated by Agent pursuant to Section 2.3.

(ii) If the Working Capital set forth in the Final Statements is greater than the Preliminary Closing Date Net Working Capital Amount set forth in the Preliminary Closing Date Net Working Capital Statement, then Purchaser (or SPC Investment in respect of any portion of such excess included in the calculation of the Optionholders Proportionate Adjustment Amount) shall owe an amount equal to such excess to Sellers (provided such excess is greater than $150,000). If the Working Capital set forth in the Final Statements is less than the Preliminary Closing Date Net Working Capital Amount set forth on the Preliminary Closing Date Net Working Capital Statement, then Sellers shall owe an amount equal to such shortfall to Purchaser (or SPC Investment in respect of any portion of such shortfall included in the calculation of the Optionholders Proportionate Adjustment Amount) (provided such shortfall is greater than $150,000).

(iii) If the Net Indebtedness set forth in the Closing Indebtedness and Cash Statement is greater than the Net Indebtedness set forth in the Final Statements, then Purchaser (or SPC Investment in respect of any portion of such excess included in the calculation of the Optionholders Proportionate Adjustment Amount) shall owe an amount equal to such excess to Sellers. If the Net Indebtedness set forth in the Final Statements is greater than the Net Indebtedness set forth in the Closing Indebtedness and Cash Statement, then Sellers shall owe an amount equal to such excess to Purchaser (or SPC Investment in respect of any portion of such excess included in the calculation of the Optionholders Proportionate Adjustment Amount).

(iv) If the sum of the amounts calculated pursuant to Sections 2.4(h)(ii) and 2.4(h)(iii) is owed by Purchaser (and SPC Investment in respect of any portion of such sum included in the calculation of the Optionholders Proportionate Adjustment Amount) to Sellers (the "**Net Upward Adjustment**"), then within five Business Days of the final determination of the Final Statements,

(A) the Purchase Price shall be increased by the Net Upward Adjustment (excluding the sum of any portion thereof relating to the Optionholders Proportionate Adjustment Amount (positive) and the Optionee Additional Withholding Amount);

(B) the Adjustment Escrow Amount shall be released by the Escrow Agent to Principal Sellers to the accounts designated by Agent pursuant to Section 2.3 and to Agent to the account(s) designated thereby for remittance to Optionholders, in each case by way of wire transfer of immediately available funds;

(C) Purchaser shall pay the Net Upward Adjustment, reduced by the sum of the Optionholders Proportionate Adjustment Amount (positive) and the Optionee Additional Withholding Amount, to Principal Sellers, by way of wire transfer of immediately available funds to accounts designated by Agent pursuant to Section 2.3;

(D) Purchaser shall cause SPC Investment to:

i. pay the Optionholders Proportionate Adjustment Amount (positive) to Agent for remittance to Optionholders, by way of wire transfer of immediately available funds to the account(s) designated by Agent; and

ii. remit the Optionee Additional Withholding Amount to the appropriate Governmental Entities at the relevant time.

(v) If the sum of the amounts calculated pursuant to Sections 2.4(h)(ii) and 2.4(h)(iii) is owed by Sellers to Purchaser (and SPC Investment in respect of any portion of such sum included in the calculation of the Optionholders Proportionate Adjustment Amount) (the "**Net Downward Adjustment**") and the Net Downward Adjustment is greater than or equal to the Adjustment Escrow Amount, then within five Business Days of the final determination of the Final Statements,

(A) the Purchase Price shall be decreased by the Net Downward Adjustment (excluding any portion thereof relating to the Optionholders Proportionate Adjustment Amount (negative));

(B) the Escrow Agent shall release, for and on behalf of Sellers:

i. to Purchaser, the Principal Sellers' Allocable Portion of the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account designated by Purchaser;

ii. to SPC Investment, the Optionholders' Allocable Portion of the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account designated by SPC Investment;

(C) with respect to any balance owing to Purchaser and SPC Investment,

i. the Principal Sellers shall pay their Allocable Portion of such balance to Purchaser by wire transfer of immediately available funds to an account designated by Purchaser; and

ii. Agent shall pay, for and on behalf of Optionholders, the Optionholders' Allocable Portion of such balance to SPC Investment by wire transfer of immediately available funds to an account designated by SPC Investment.

(vi) If the Net Downward Adjustment is less than the Adjustment Escrow Amount, then within five Business Days of the final determination of the Final Statements,

(A) the Purchase Price shall be decreased by the Net Downward Adjustment (excluding any portion thereof relating to the Optionholders Proportionate Adjustment Amount (negative));

(B) the Escrow Agent shall release, for and on behalf of Sellers:

i. to Purchaser, the Principal Sellers' Allocable Portion of the Net Downward Adjustment, by wire transfer of immediately available funds to an account designated by Purchaser;

ii. to SPC Investment, the Optionholders' Allocable Portion of the Net Downward Adjustment, by wire transfer of immediately available funds to an account designated by SPC Investment;

(C) with respect to the balance of the Adjustment Escrow Amount, the Escrow Agent shall release same as follows:

i. to Principal Sellers, the Principal Sellers' Allocable Portion thereof, by wire transfer of immediately available funds to the accounts designated by Agent pursuant to Section 2.3; and

ii. to Agent for remittance to Optionholders, the Optionholders' Allocable Portion thereof, by wire transfer of immediately available funds to the accounts designated by Agent pursuant to Section 2.3.

(i) **Fees and Expenses.** Sellers and Purchaser shall bear the fees and expenses of their respective accountants, auditors and other professional advisors in preparing, reviewing or settling, as the case may be, the Draft Statements. In the case of a dispute and the retention of Third Party Auditors to determine such dispute, the fees and expenses of the Third Party Auditors shall be borne by Sellers, on the one hand, and Purchaser, on the other hand, based on the percentage which the portion of the contested amounts not awarded to Sellers, on the one hand, or Purchaser, on the other hand bears to the total amount actually contested by such Party. For example, if closing accounts receivable is the only disputed item, and Sellers claim that closing accounts receivable is $1,000; and Purchaser contest only $500 of the amount claimed by Sellers, and if the Third Party Auditors ultimately resolve the dispute by awarding Sellers $300 of the $500 contested, then the costs and expenses of the Third Party Auditors will be allocated 60% (i.e. 300 / 500) to Purchaser and 40% (i.e. 200 / 500) to Sellers. Sellers and Purchaser will, however, bear their own fees and expenses in presenting their respective cases to the Third Party Auditors.

2.5 Repayment of Indebtedness and Transaction Expenses.

(a) On the Closing Date immediately prior to Closing, Purchaser shall:

(i) lend to the applicable Acquired Companies (pursuant to non-interest bearing, demand promissory notes) an aggregate amount equal to the Net Indebtedness Payable at Closing. The Acquired Companies will direct Purchaser to pay on the Closing Date prior to Closing to the Persons listed on Part A of the Closing Indebtedness and Cash Statement the amounts of Indebtedness set forth beside such Persons' respective names by wire transfer of immediately available funds to accounts designated in writing by Agent prior to the Closing Date. The Indebtedness Not Payable at Closing shall remain outstanding; and

(ii) lend to SPC Investment or the relevant Acquired Company (pursuant to non-interest bearing, demand promissory notes) an amount equal to the sum of (A) the Optionee Withholding Amount, and (B) the aggregate principal amount of the Net Settlement Notes, and (C) minus the Optionholders' Allocable Portion of any unpaid Transaction Expenses. Optionholders hereby direct (and Principal Sellers shall cause SPC Investment to direct) Purchaser to pay at Closing the Optionholders' Allocable Portion of the Adjustment Escrow Amount and the Optionholders' Allocable Portion of the Escrow Indemnity Amount to the Escrow Agent. Purchaser shall cause SPC Investment (or the relevant Acquired Company) to remit the Optionee Withholding Amount (if any) to the appropriate Governmental Entities at the relevant time.

(b) On the Closing Date, Purchaser shall pay, to the Persons listed on Part A of the Closing Indebtedness and Cash Statement the amounts of unpaid Transaction Expenses as designated in writing by Agent, equal in the aggregate to the amount of unpaid Transaction Expenses referenced in Section 2.3(a) and Section 2.5(a)(ii)(C) by wire transfer of immediately available funds to accounts designated in writing by Agent prior to the Closing Date.

2.6 Surrender of Options by Optionholders to SPC Investment.

Immediately prior to Closing,

(a) Sellers shall cause SPC Investment to take all appropriate actions to ensure that all unvested Options become fully vested immediately prior to Closing;

(b) SPC Investment and Voortman shall enter into the Reimbursement Agreement and Voortman shall issue to SPC Investment the Option Reimbursement Note; and

(c) all Optionholders shall surrender to SPC Investment all (but not less than all) of their Options, including the unvested Options which have become fully vested pursuant to Section 2.6(a) above, in consideration for an amount equal to the "in-the-money" value of the surrendered Options, which amount shall be paid by: (i) the issuance by SPC Investment of the Net Settlement Notes, (i) the remittance by the relevant Acquired Company of the Optionee Withholding Amount to the appropriate Governmental Entities, (i) within five Business Days of the final determination of the Final Statements, the payment of the Optionholders Proportionate Adjustment Amount (if positive) by SPC

Investment in accordance with Section 2.4(h)(iv), (i) within five Business Days of the final determination of the Final Statements, the remittance by the relevant Acquired Company of the Optionee Additional Withholding Amount (if any) to the appropriate Governmental Entities, and (i) within five Business Days of the final determination of the Final Statements, the payment of the Optionholders Proportionate Adjustment Amount (if negative) by the Escrow Agent and/or Agent, as the case may be, for and on behalf Optionholders, in accordance with Sections 2.4(h)(v) and 2.4(h)(vi),

provided that if the Closing does not occur for any reason whatsoever, the Optionholders agree to surrender their rights to the consideration referred to in Section 2.6(c)(i) against reinstatement of such Options upon their existing terms immediately prior to the execution of this Agreement, including with respect to the vested or unvested nature of such Options.

2.7 Withholding.

Notwithstanding any provision hereof to the contrary, the parties agree that any party hereto shall be entitled to deduct and withhold from any amounts otherwise payable under the terms of this Agreement such amounts as it is required to deduct and withhold pursuant to any provision of any applicable Law. To the extent that amounts are so withheld under any provision of this Agreement, such withheld amounts (i) shall be timely remitted to the applicable Governmental Entity in accordance with applicable Law and (ii) shall be treated for all purposes of this Agreement as having been paid to the recipients in respect of which such deduction and withholding was made. Prior to making any such deduction or withholding, the withholding party shall inform the other party at least five (5) Business Days in advance of any such deduction or withholding and shall cooperate with such other party to take commercially reasonable steps to reduce or eliminate such deduction or withholding.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLERS

3.1 Representations and Warranties of Sellers as to Sellers.

Each Seller separately represents and warrants, as to itself, but not as to any other Seller, to Purchaser as follows as of the date hereof, and acknowledges and confirms that Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

(a) **Incorporation and Status of Sellers**.

(i) In the case of a Seller that is an individual, such Seller has full legal capacity to enter into and perform his or her obligations under this Agreement.

(ii) In the case of a Seller that is a legal Person, such Seller is a corporation, limited partnership or other legal entity, as applicable, duly incorporated or formed, respectively, and validly existing under the Laws of its jurisdiction of incorporation or formation, respectively, and has all requisite power and authority to enter into and perform its obligations under this Agreement.

(iii) In the case of a Seller that is a trust, such Seller has been constituted as a trust under the laws of its jurisdiction of creation, has not been terminated, and its trustees have the power to own the assets of the trust under the terms of the

constating documents of the trust and to enter into and to perform, in their capacities as trustees of the trust, the obligations of the trust under this Agreement.

(b) **Validity of Agreement.** The execution, delivery and performance by such Seller of this Agreement:

(i) in the case of a Seller that is a corporation or a trust, have been duly authorized by all necessary corporate action on its part and, in the case of a Seller that is a trust, have been duly authorized by all necessary actions of the trustees of such trust;

(ii) in the case of a Seller that is a corporation or a trust, do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of its constating documents, by-laws or other similar documents;

(iii) will not result in the violation of any applicable Law; and

(iv) will not constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of any Acquired Company's constating documents or by-laws.

(c) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by such Seller, and constitutes a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms subject only to any limitation on enforcement under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.

(d) **Required Authorizations.** Except as disclosed in Schedule 3.1(d) of the Disclosure Letter, no filing with, notice to or Authorization of, any Governmental Entity is required by such Seller as a condition to the lawful completion of the transactions contemplated by this Agreement.

(e) **Title to Purchased Shares and Options.** As of the date hereof, such Seller is the registered and beneficial owner of the number and class of shares in the capital of Corporation and the number of Options set out beside its name in Schedule 3.1(e) of the Disclosure Letter, with good and valid title thereto, free and clear of all Liens. There are no limitations or restrictions on Sellers' rights to transfer such shares other than those restrictions on transfer contained in the articles of the Corporation. At Closing**:**

(i) such Seller, if a Principal Seller, will be the registered and beneficial owner of the number and class of Purchased Shares set out beside its name in Schedule 3.1(e) of the Disclosure Letter, with good and valid title thereto, free and clear of all Liens; and

(ii) such Seller, if a Principal Seller, shall transfer to Purchaser good and valid title to the Purchased Shares owned by such Principal Seller, free and clear of all Liens.

(f) **Residence of Sellers.** Except for Douglas MacFarlane and Joseph Nischbach, such Seller is not a non-resident of Canada within the meaning of the Tax Act.

(g) **No Brokers.** Except as disclosed in Schedule 3.1(g) of the Disclosure Letter, no broker, finder or investment banker or other person is directly or indirectly entitled to receive from such Seller any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions contemplated by this Agreement.

(h) **No Other Agreement to Purchase.** Except for Purchaser's rights under this Agreement, no Person has any written or oral agreement, option or warrant or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for the purchase of any of the Purchased Shares or Options, as the case may be, owned by such Seller.

3.2 Representations and Warranties of Sellers as to the Acquired Companies.

Sellers severally and not jointly or jointly and severally represent and warrant to Purchaser as follows as of the date hereof, and acknowledge and confirm that Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement, which such representations and warranties are subject to the limitations in Section 9.1:

(a) **Incorporation and Qualification of Acquired Companies.** Each Acquired Company is an entity constituted and validly subsisting under the Laws of its jurisdiction of incorporation and has the requisite corporate power and authority to own, lease and operate its property and carry on its business as currently conducted. Each Acquired Company is duly registered, licensed or qualified to carry on the Business in each state, territory, province and other jurisdiction in which the Business as now being conducted by it makes such registration, licensing or qualification necessary, except for any failure to be so registered or qualified which would not be material to the Business of the Acquired Companies, taken as a whole.

(b) **Holding Companies Conduct No Business**. Each of the Corporation, SPC Investment and SPC Holdings (each a "**Holding Company**" and together the "**Holding Companies**") has never employed any individuals or conducted any business other than the ownership of the shares it holds in the applicable Acquired Company and activities incidental thereto, and has never owned, leased or used any asset other than the shares it holds in the applicable Acquired Company and cash. The Holding Companies have no liabilities (and there is no basis to assert any liability against the Holding Companies), except for (i) liabilities that shall irrevocably and unconditionally be discharged prior to or concurrently with the Closing and (ii) liabilities set forth in the Financial Statement for such Holding Company (other than such liabilities referred to in (i) above).

(c) **No Other Agreement to Purchase.** Except for Purchaser's rights under this Agreement, and the Optionholders' rights under the Options, no Person has any written or oral agreement, option or warrant or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for (i) the purchase, subscription, allotment or issuance of unissued shares or securities of any Acquired Company, or (ii) the purchase or acquisition of any assets of any Acquired Company, other than in the Ordinary Course.

(d) **Corporate Records.** The corporate records of each Acquired Company are complete and accurate, in all material respects, and include the articles and by-laws, minutes of meetings and resolutions of shareholders and directors, and the share certificate books, securities register, register of transfers and register of directors of each Acquired Company. All such records have been made available prior to the date of this Agreement for review by Purchaser's representatives.

(e) **Required Authorizations.** Except as disclosed in Schedule 3.2(e) of the Disclosure Letter, no filing with, notice to or Authorization of, any Governmental Entity is required by any of the Acquired Companies as a condition to the lawful completion of the transactions contemplated by this Agreement.

(f) **Required Consents**. Except as disclosed in Schedule 3.2(f) of the Disclosure Letter, there is no requirement to obtain any consent, approval or waiver of a party under any Contract to which any Acquired Company is a party, in connection with the completion of the transactions contemplated by this Agreement where the failure to obtain such consent, individually or in the aggregate, would be material to the Business, taken as a whole.

(g) **Authorized and Issued Capital.** The authorized capital of each Acquired Company is as set out in Schedule 3.2(g) of the Disclosure Letter. The Purchased Shares constitute all of the issued and outstanding shares in the capital of Corporation and have been duly issued and are outstanding as fully paid and non-assessable. The Subsidiaries' Shares constitute all of the issued and outstanding shares in the capital of the Subsidiaries and have been duly issued and are outstanding as fully paid and non-assessable. All of the issued and outstanding shares of each of the Acquired Companies have been issued in compliance with all applicable Laws, including applicable securities laws. Except for the Options set forth on Schedule 3.1(e), which will be transferred and cancelled immediately prior to Closing, there are no outstanding options or notes held by any Person convertible or exchangeable for any shares or other securities of any Acquired Company.

(h) **Subsidiaries and Other Interests.** Except for the Subsidiaries' Shares, neither Corporation nor any of the Subsidiaries, directly or indirectly, owns or holds any shares or other ownership, equity or proprietary interest in any Person.

(i) **Title to the Subsidiaries' Shares.** The Acquired Companies are the registered and beneficial owner of the Subsidiaries' Shares as set out in Schedule 3.2(g) of the Disclosure Letter with good title thereto, free and clear of all Liens, other than Permitted Liens.

(j) **Environmental Matters.**

(i) Except as set forth in Schedule 3.2(j)(i), each Acquired Company has conducted in the past and is currently conducting the Business in compliance with all applicable Environmental Laws in each jurisdiction in which it carries on business, except where failure to do so would not be material to the Business, taken as a whole;

(ii) Except as set forth in Schedule 3.2(j)(ii) of the Disclosure Letter, to the knowledge of Sellers, (A) there are no Hazardous Materials located in the ground

or in groundwater under any of the Leased Properties contrary to Environmental Laws or in excess of applicable limits established in Environmental Laws, and (B) there have been no releases of Hazardous Materials by any Acquired Company upon, into, on or from the Leased Properties or any other real property currently or formerly owned, leased or operated by the Acquired Companies, except for, in the case of either (A) or (B), Hazardous Materials in concentrations which would not be material to the Business, taken as a whole;

(iii) Except as set forth in Schedule 3.2(j)(iii) of the Disclosure Letter, none of the Acquired Companies has received any written notice or order from any Governmental Entity to (A) alter any of the Leased Properties in a material way in order to be in compliance with Environmental Laws, or (B) perform any environmental closure, decommissioning, rehabilitation, restoration or post-remedial investigations, on, about, or in connection with any Leased Property;. Except as set forth in Schedule 3.2(j)(iii) of the Disclosure Letter, none of the Acquired Companies has received any written notice or order from any Governmental Entity to or any other Person of any material liability under, or material violation of, any Environmental Law;

(iv) The assets of the Acquired Companies are capable of, and are not restricted by any Authorization or contract from, being operated at maximum daily and annual production capacity while remaining in compliance with Environmental Laws; and

(v) Copies of all material reports prepared by environmental consultants in the last three years relating to the environmental condition of the Leased Properties and in the possession or under the control of Sellers or the Acquired Companies have been made available to Purchaser.

(k) **Employee Matters**.

(i) Except as set forth in Schedule 3.2(k)(i) of the Disclosure Letter, no Acquired Company is a party to any written agreement pursuant to which either: (A) severance or termination payments to any employee may be required to be paid, waived or renounced solely as a result of the completion of the transactions contemplated by this Agreement; or (B) any employee who is bound by confidentiality, non-competition or non-solicitation covenants with an Acquired Company is relieved thereof as a result of the completion of the transactions contemplated by this Agreement. Except as set forth in Schedule 3.2(k)(i) of the Disclosure Letter, the Acquired Companies are not bound by any collective bargaining agreements. To the knowledge of the Sellers, there are no current attempts to organize or establish any labour union with respect to any Employees;

(ii) Except as set forth in Schedule 3.2(k) of the Disclosure Letter, no Acquired Company has entered into any written employment agreement or other written agreement with any officer or employee, other than agreements which do not: (1) specify a fixed or minimum period of employment; or (2) have an agreement as to length of notice or payment in lieu of notice required to terminate the

employment of the officer or employee (except as results by Law from the employment of an employee without an agreement as to notice or severance);

(iii) Schedule 3.2(k)(iii) contains a complete and accurate list of all individuals (without reference to names) who are full-time, part-time or casual employees of, or individuals engaged on contract to provide employment services to, each Acquired Company as of the date of this Agreement (the "**Employees**") specifying which such Acquired Company is the employer, as well as the length of service, title or classification and rate of salary or hourly pay and commission or bonus entitlements (if any) for each such Employee;

(iv) Except as set forth in Schedule 3.2(k)(iv), there is no Employee who is absent from work and in receipt of benefits pursuant to the provisions of a short or long term disability plan provided by an Acquired Company or applicable workers' compensation Laws;

(v) Except as described in Schedule 3.2(k)(v), each Acquired Company has properly classified and characterized each Independent Contractor (including each Independent Distributor) as an independent contractor for purposes of all applicable Laws, including, for greater certainty, employment standards, human rights, workers' compensation, occupational health and safety, pay equity, labour relations and Tax Laws and the Fair Labor Standards Act and state and local wage-and-hour and wage payment laws;

(vi) Except as described in Schedule 3.2(k)(vi), there are no actions, suits, claims, trials, demands, investigations (excluding any investigations not known to Sellers), arbitrations or other proceedings pending or, to the knowledge of Sellers, threatened against any Acquired Company in respect of any Independent Contractor (including any Independent Distributor) asserting a finding, or threatening to assert or find, that such Independent Contractor is or was an employee of an Acquired Company, and there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such action, suit, claim, trial, demand, investigation, arbitration or other proceedings;

(vii) There are no Multi-Employer Plans. Except as set forth in Schedule 3.2(k)(vii) of the Disclosure Letter: (A) there are no material pension, retirement, profit sharing, bonus, savings, deferred compensation, stock option, purchase or appreciation, change of control, health, welfare, medical, dental, life insurance, disability, sick pay, severance pay, group insurance or other employee benefit plans, programs or arrangements maintained or contributed to by an Acquired Company (each such plan, program or arrangement, other than statutory or Multi-Employer Plans, being referred to herein as a "**Benefit Plan**"); (B) each Benefit Plan has been administered in all material respects according to its terms and applicable Laws and there are no material outstanding violations or defaults thereunder nor any actions, claims or other proceedings pending or, to the knowledge of Sellers, threatened with respect to any Benefit Plan; (C) no promise or commitment to increase benefits under any Benefit Plan or to adopt any additional Benefit Plan has been made except as required by law or as may be

required by a collective bargaining agreement; (D) the Acquired Companies have paid all contributions and all premiums in respect of each Benefit Plan in a timely fashion in accordance with the terms of each Benefit Plan and applicable Laws, except as would not be material; (E) no Benefit Plan provides for the payment of post-employment or post-retirement benefits; and (F) the transactions contemplated herein will not increase or accelerate any entitlement under any Benefit Plan, and (G) all Benefit Plans that are required to be registered under the Tax Act for Tax preferred or Tax exempt status have been and have continuously been so registered, and no fact or circumstance exists that could adversely affect the existing Tax preferred or Tax exempt status of such Benefit Plan;

(viii) No Benefit Plan that is a "registered pension plan" (within the meaning of the Tax Act) has or has ever had a "defined benefit provision" (within the meaning of the Tax Act);

(ix) (Intentionally deleted);

(x) Each employee benefit plan of an Acquired Company subject to Section 409A of the Code (if any) is in compliance in all material respects therewith, such that no material Taxes or interest will be due and owing in respect of such plan failing to be in compliance therewith. No Acquired Company has any obligation to "gross-up" or otherwise indemnify any individual for any Tax, including under Sections 409A and 4999 of the Code;

(xi) With respect to each employee benefit plan of an Acquired Company that is intended to be qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended: (A) such employee benefit plan is and has been maintained and operated in material compliance with the terms of such employee benefit plan and with the requirements prescribed (whether as a matter of substantive Law or as necessary to secure favorable Tax treatment or avoid the imposition of any Tax or penalty) by applicable Law, (B) such employee benefit plan is subject to a favorable determination or opinion letter from the IRS, and (C) to the knowledge of Sellers, no event has occurred and no condition exists that could reasonably be expected to result in the revocation of any such determination;

(xii) Except as set forth in Schedule 3.2(k)(ix) of the Disclosure Letter, the Acquired Companies are in compliance with all applicable Laws relating to employment and labour matters, including provisions thereof relating to employment standards, human rights, workers' compensation, occupational health and safety, pay equity, unfair labour practices, collective bargaining, except where such non-compliance would not be material to the Business of the Acquired Companies, taken as a whole; and

(xiii) There has not been, for a period of 36 consecutive months preceding the date hereof, nor is there currently or, to the knowledge of Sellers, threatened any strike, slowdown, picketing or work stoppage with respect to the employees of any of the Acquired Companies.

(l) **Employee Accruals**. All accruals for unpaid bonuses, vacation pay, premiums and contributions for Statutory Plans, accrued wages, salaries and commissions and Benefit Plan payments have been reflected in the books and records of the Acquired Companies.

(m) **Title to Assets.** Except for the Intellectual Property which is dealt with in Section 3.2(s), and except as disclosed in Schedule 3.2(m) of the Disclosure Letter, and except for any Authorizations, licensed Intellectual Property, Leased Properties, and assets otherwise used by the Acquired Companies pursuant to valid leases or licenses, each Acquired Company owns all of the properties and assets (other than inventory sold and raw materials consumed in the Ordinary Course) that it purports to own, with good and valid title thereto, free and clear of any Liens, other than Permitted Liens, except for such properties or assets the absence of which would not be material to the Business of the Acquired Companies, taken as a whole.

(n) **Condition of Tangible Assets.** Except as disclosed in Schedule 3.2(n) of the Disclosure Letter, the vehicles, machinery, equipment and other tangible personal property of the Acquired Companies are, in all material respects, in good operating condition and repair having regard to their use and age, other than preventative maintenance and repairs in the Ordinary Course.

(o) **Inventories**. The inventories of the Acquired Companies consist of items that are current and of good and merchantable quality and not subject to any write-down or write-off other than as provided for in the Financial Statements. The portion of the inventories of the Acquired Companies consisting of finished products is saleable in the Ordinary Course of Business subject to a reasonable allowance for obsolete, expired or damaged inventory consistent with ASPE. The portion of inventories consisting of raw materials and work-in-progress is of quality useable in production and finished products in accordance with the Ordinary Course of Business. The inventory levels of the Corporation have been maintained in all material respects at such amounts as are required for the operation of the Business in the Ordinary Course. The inventories of the Acquired Companies have been valued at the lower of cost and net realizable value on a first-in-first-out basis in accordance with ASPE.

(p) **Accounts Receivable**. All accounts receivable, book debts and other debts due or accruing to the Acquired Companies are valid obligations which arose in the Ordinary Course and are not subject to any set-off, counterclaim, returns, allowances or credits, except to the extent reserved for in the Financial Statements. Any reserves have been determined in accordance with ASPE and the amount of such reserves has been determined consistent with past practice.

(q) **Compliance with Laws.** Each Acquired Company is conducting the Business in compliance with all applicable Laws in each jurisdiction in which it carries on business, except where failure to do so would not be material to the Business, taken as a whole.

(r) **Authorizations.** The Acquired Companies hold all Authorizations required to carry on the Business as now conducted by the Acquired Companies, other than such Authorizations, the absence of which would not be material to the Business of the Acquired Companies, taken as a whole. Such Authorizations are valid, subsisting and in good standing and there are no outstanding defaults or breaches under them on the part of

any Acquired Company, except for such defaults or breaches (if any) which would be material to the Business, taken as a whole.

(s) **Intellectual Property.**

(i) Schedule 3.2(s)(i) of the Disclosure Letter contains an accurate listing of all registered trademarks and trade names (the "**Trademarks**"), and industrial designs (the "**Industrial Designs**"), owned by or licensed to and used by the Acquired Companies in the conduct of their Business. Sellers have also made available to Purchaser a complete and accurate copy of all Contracts (excluding Contracts relating to commercial off-the-shelf software) and amendments thereto which comprise or relate to the Intellectual Property, each such Contract and amendment as listed on Schedule 3.2(s)(i). The Intellectual Property set forth in Schedule 3.2(s)(i) of the Disclosure Letter comprises Trademarks, Industrial Designs and other Intellectual Property necessary to conduct the Business as currently conducted;

(ii) There are no patent applications and patents owned by or licensed to and used by any of the Acquired Companies in the conduct of their Business;

(iii) The Acquired Companies are the owners, free and clear of all Liens of, or where indicated on Schedule 3.2(s)(i) have a valid and subsisting licence to use, the Intellectual Property. Except as set out in Schedule 3.2(s)(i), the Acquired Companies are not limited or impaired in their ability to sell, transfer, assign or convey the Intellectual Property. The Acquired Companies have not granted to any Person any interest in or right to use all or any portion of the Intellectual Property;

(iv) There is no action, suit, proceeding or claim pending or, to the knowledge of Sellers, threatened by others, against any Acquired Company challenging the validity or scope of any Trademarks or Industrial Designs or any Acquired Company's rights thereto;

(v) Except as disclosed in Schedule 3.2(s)(v) of the Disclosure Letter, there is no action, suit, proceeding or claim pending or, to the knowledge of Sellers, threatened by others, against any Acquired Company to the effect that such Acquired Company infringes any Intellectual Property of any third party;

(vi) To the knowledge of Sellers, there is no infringement by third parties of any Intellectual Property owned or licensed by any Acquired Company;

(vii) To the knowledge of Sellers, no Acquired Company is or has been infringing any Intellectual Property owned by third parties; and

(viii) Sellers are not aware of any state of facts which casts doubt on the validity or enforceability of any of the Intellectual Property.

(t) **Internet Web Site and Access to Data.**

(i) Schedule 3.2(t) of the Disclosure Letter sets forth the physical location of the computer server that is currently hosting the Internet Web Sites.

(ii) Information relating to the Business is not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which shall not be available to the Acquired Companies in the ordinary course.

(u) **Financial Statements and Financial Controls.**

(i) The Financial Statements have been prepared in accordance with ASPE applied on a basis consistent with the preceding period subject to the exceptions set forth in Schedule 3.2(u) of the Disclosure Letter and are complete and accurate and present fairly, in all material respects: (i) the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial position of the Acquired Companies, as applicable, as at the respective dates of the relevant statements, and (ii) the results of the operations and the cash flows of the Acquired Companies for the period covered by the Financial Statements, as applicable.

(ii) The books and accounts of the Acquired Companies are complete and correct in all material respects and fully and fairly reflect all of the transactions of the Acquired Companies in all material respects.

(iii) The Financial Statements value inventories and receivables in accordance with ASPE.

(iv) True, correct and complete copies of the Financial Statements are provided in Schedule 1.1(dd) of the Disclosure Letter.

(v) The Acquired Companies maintain as 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 ASPE and to maintain asset accountability, and (iii) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(v) **No Liabilities**. Except as disclosed in Schedule 3.2(v) of the Disclosure Letter, there are no liabilities required by ASPE to be shown or accrued for in the financial statements of the Acquired Companies, except for (i) liabilities reflected or reserved against in the Financial Statements; (ii) current liabilities and liabilities under Contracts incurred since December 29, 2018 in the Ordinary Course of the Business that, individually or in the aggregate, do not have, and are not reasonably likely to have, a Material Adverse Effect; and (iii) as of the Closing Date, liabilities disclosed in the Draft Statements or the Disclosure Letter.

(w) **Material Adverse Change**. Since December 29, 2018, there has not been a Material Adverse Effect.

(x) **Litigation.** Except as disclosed in Schedule 3.2(x) of the Disclosure Letter, there are no claims, actions, proceedings, suits, investigations, inquiries, reviews, judgments, decrees, grievances, arbitrations or alternative dispute resolution processes in progress, pending or, to the knowledge of Sellers, threatened against or involving any Acquired Company, the Business or any material assets of the Acquired Companies which would be material to the Business of the Acquired Companies, taken as a whole, or which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement. No Acquired Company is operating under, or subject to, any judgment, decree, writ, injunction, ruling, award, stipulation, determination or order of any Governmental Entity.

(y) **Contracts.**

(i) Schedule 3.2(y)(i) of the Disclosure Letter contains a complete list of the following Contracts as of the date hereof (the Contracts described in this Section 3.2(y)(i), together with all exhibits and schedules thereto being, the "**Material Contracts**"):

(A) each Contract to which a Holding Company is a party (without regard to materiality);

(B) any distribution, sales or advertising Contract for an amount in excess of $150,000 on an annual basis or any agency Contract;

(C) any Contract with Key Customers (excluding purchase orders entered into in the Ordinary Course of Business);

(D) each Independent Distributor Agreement;

(E) any Contract with Key Suppliers (excluding purchase orders entered into in the Ordinary Course of Business);

(F) any Contract in excess of $150,000 on an annual basis for the purchase of materials, supplies, equipment or services;

(G) any Contract under which any Acquired Company is obliged to make payments or expenditures (including capital expenditures) on an annual basis in excess of $150,000 in the aggregate;

(H) any partnership, joint venture, franchise agreement or other similar agreement relating to the Business;

(I) any Contract (other than between and among the Acquired Companies) under which Indebtedness for borrowed money in excess of $150,000 is outstanding or pursuant to which any property or asset of any Acquired Company is mortgaged, pledged or otherwise subject to a Lien (other than a Permitted Lien) for an amount in excess of $150,000, or any Contract restricting the incurrence of Indebtedness by any Acquired Company or the incurrence of Liens (other than Permitted Liens) on any properties or securities of wholly-owned subsidiaries or restricting the payment of dividends;

(J) any Contract of guarantee, support, assumption or endorsement of, or any similar commitment with respect to, any Indebtedness or other liability of any other Person in excess of $150,000;

(K) any Contract that purports to limit in any material respect the right of any Acquired Company to engage in any line of business or to compete with any person or operate in any location;

(L) any Contract providing for the sale or acquisition of, or option to sell or acquire, any property with a fair market value in excess of $150,000 in respect of which the applicable transaction has not been consummated, in each case other than any such Contract entered into in the Ordinary Course;

(M) any Contract in respect of the Intellectual Property owned by, licensed to or used by the Acquired Companies that is material to the Business;

(N) any Contract pursuant to which an Acquired Company is a lessor or lessee of (i) any material machinery, equipment, motor vehicles, office furniture, fixtures or (ii) other material personal property;

(O) any Contract that is material to the Business of the Acquired Companies to which an Acquired Company is a party made other than in the Ordinary Course of business;

(P) any Contract with any Person with whom an Acquired Company or a Seller does not deal at arm's length within the meaning of the Tax Act;

(ii) True, correct and complete copies of all written Material Contracts have been made available to Purchaser prior to the date of this Agreement. Each of the Material Contracts is in full force and effect and is valid and binding on and enforceable against the applicable Acquired Company party thereto and, to the Sellers' knowledge, the other parties thereto, in accordance with its terms. Except as would not be material to the Business of the Acquired Companies, taken as a whole, no Acquired Company or, to the knowledge of Sellers, any other party thereto, is in breach or violation of, or default (in each case, with or without notice or lapse of time or both) under, any Material Contract, and, to the knowledge of Sellers, no Acquired Company has received or given any written notice of default under any such Material Contract which remains uncured.

(z) **Owned Property.** No Acquired Company owns, or is subject to any agreement or option to own, any real property or any interest in real property.

(aa) **Leased Property.**

(i) Schedule 3.2(aa) of the Disclosure Letter lists each real property and/or premises currently leased (including properties subject to ground leases) or subleased by any Acquired Company from a third party (collectively, the "**Leased Properties**") and sets forth the name of the entity holding such leasehold interest and the date of the lease (collectively, the "**Lease Documents**"). The Corporation

occupies the Leased Properties pursuant to such Lease Documents. True, correct and complete copies of all Lease Documents have been made available to Purchaser. Each of the Lease Documents is in full force and effect without amendment thereto, and no Acquired Company nor, to the knowledge of Sellers, any other party thereto, is in breach or violation of, or default (in each case, with or without notice or lapse of time or both) under any of the Lease Documents. No Acquired Company has received or given any notice of default under any such agreement which remains uncured.

(ii) All buildings, structures, improvements and appurtenances forming part of the Leased Properties are, in all material respects, in good operating condition and in a state of good maintenance and repair and adequate and suitable for the purposes for which they are currently being used by the Acquired Companies, and the Acquired Companies have adequate rights of ingress and egress for the operation of the Business in the Ordinary Course. None of such buildings, structures, improvements or appurtenances (or any equipment therein), nor the operation or maintenance thereof, violates any restrictive covenant or any provision of any Law, or encroaches on any property owned by others. Without limiting the generality of the foregoing:

(A) the Leased Properties, the current uses thereof and the conduct of the Business thereon comply with all Laws, including those dealing with zoning, parking, access, loading facilities, landscaped areas, building constriction, fire and public health and safety;

(B) no material alteration, repair, improvement or other work has been ordered, directed or requested in writing by any municipal, provincial, territorial or other competent authority to be done or performed to or in respect of the Leased Properties or to any of the plumbing, heating, elevating, water, drainage or electrical systems, fixtures or works, which alteration, repair, improvement or other work has not been completed, and Sellers know of no written notification having been given of any such outstanding work being ordered, directed or requested, other than those which have been complied with;

(C) all accounts for work and services performed and materials placed or furnished upon or in respect of the Leased Properties at the request of an Acquired Company have been fully paid and satisfied, other than amounts that are immaterial to the Business, and no Person is entitled to claim a lien under the *Construction Act* (Ontario) or equivalent legislation in other provinces of Canada against the Leased Properties or any part thereof, other than current accounts in respect of which the payment due date has not yet passed or for any amounts that are immaterial to the Business;

(D) there are no material amounts owing in respect of the Leased Properties by any Acquired Company to any municipal corporation or to any other corporation or commission owning or operating a public utility for water, gas, electrical power or energy, steam or hot water, or for the use thereof,

other than current accounts in respect of which the payment due date has not yet passed;

(E) no part of the Leased Properties has been taken or expropriated by any Governmental Entity, nor has any notice or proceeding in respect thereof been given or commenced;

(F) the Permitted Liens constitute all of the Liens, agreements, indentures and other matters which affect the Acquired Companies' leasehold interest in the Leased Properties;

(G) each of the Leased Properties (including all buildings, improvements and fixtures) is fit for its present use by the Acquired Companies, and, except as disclosed in Schedule 3.2(aa) of the Disclosure Letter, there are no material structural repairs or replacements which are necessary to conduct the Business as currently conducted by the Acquired Companies and, without limiting the generality of the foregoing, there are no material repairs to, or replacements of, the roof or the mechanical, electrical, heating, ventilating, air-conditioning, plumbing or drainage equipment or systems which are necessary to conduct the Business as currently conducted by the Acquired Companies; and

(H) the Leased Properties are serviced by public utilities necessary for the current occupation of such property by the Acquired Companies and has access to public roads, and there are no outstanding levies, charges or fees assessed against the Leased Properties by any public authority (including development or improvement levies, charges or fees) other than as reflected on the property tax bills for such properties.

(bb) **Conduct of Business.** Except as disclosed in Schedule 3.2(bb) of the Disclosure Letter, since December 29, 2018, each Acquired Company has:

(i) conducted the Business in the Ordinary Course;

(ii) not made any material change in its accounting principles and practices which are not required by ASPE as theretofore applied including, the basis upon which its assets and liabilities are recorded on its books and its earnings and profits and losses are ascertained;

(iii) not sold, leased, transferred or assigned, in one or more transactions, any assets, tangible or intangible, other than in the Ordinary Course of the Business or in transactions which are not material to the Business of the Acquired Companies, taken as a whole, and other than transactions among one or more of the Acquired Companies;

(iv) not made any loan to, or any other investment in, any other Person other than between and among the Acquired Companies; and

(v) not adopted, amended, modified or terminated any bonus, profit-sharing, incentive, severance, pension or other plan, contract or commitment (or taken any

such action with respect to any other such plan) for the benefit of any of its employees, other than such adoptions, amendments, modifications or terminations which are not material to the Business of the Acquired Companies, taken as a whole or which are required pursuant to applicable Laws.

(cc) **Insurance.** Schedule 3.2(cc) of the Disclosure Letter lists the insurance policies which are maintained by the Acquired Companies (the "**Insurance Policies**") setting out, in respect of each policy, the type of policy, the name of the insurer, the policy number and the Acquired Company insured thereunder. Prior to the date of this Agreement, Sellers have made available to Purchaser true and complete copies of all such Insurance Policies. All of the Insurance Policies are in full force and effect. No Acquired Company is in default with respect to the payment of any premiums under any Insurance Policy or in material default with respect to any of the other provisions contained in the Insurance Policies, nor has any Acquired Company failed to give any notice or to present any claim under any Insurance Policy in a due and timely fashion, where such default would not have a Material Adverse Effect. No Acquired Company has received written notice of default under any Insurance Policy, nor has any of them received written notice or, to the knowledge of Sellers, oral notice of any pending or threatened termination or cancellation, coverage limitation or reduction with respect to any Insurance Policy.

(dd) **Bank Accounts**. Schedule 3.2(dd) of the Disclosure Letter is a correct and complete list showing the name of each bank in which any of the Acquired Companies has an account or safety deposit box and the names of all Persons authorized to draw on the account or to have access to the safety deposit box.

(ee) **Tax Matters.** Except as disclosed in Schedule 3.2(ee) of the Disclosure Letter:

(i) The Acquired Companies have duly filed or caused to be filed on a timely basis with the appropriate Governmental Entity, in the manner prescribed by applicable Law, all Tax Returns which are required to be filed by or with respect to them. The information contained in such Tax Returns is correct and complete in all material respects. No jurisdiction or authority in or with which an Acquired Company does not file a Tax Return has alleged that the Acquired Company is required to file such a Tax Return;

(ii) The Acquired Companies have paid all Taxes which are due and payable as required by applicable Law, and have paid all assessments and reassessments they have received in respect of Taxes. Each of the Acquired Companies has made adequate provision in the Books and Records and the Financial Statements for all Taxes which are not yet due and payable but which relate to periods ending on or before the date thereof. Since December 29, 2018, the Acquired Companies have only incurred Tax liabilities in the Ordinary Course;

(iii) There are no outstanding agreements, arrangements, waivers or objections extending the statutory limitations period or providing for an extension of time with respect to the assessment or reassessment of Taxes of any of the Acquired Companies;

(iv) There are no claims, actions, suits or audits pending or, to the knowledge of Sellers, threatened against any of the Acquired Companies in respect of Taxes that have been raised in writing by a Governmental Entity;

(v) Each Acquired Company has withheld from each payment made to other persons, including any of its past and present shareholders, directors, officers, employees and agents the amount of all Taxes and other deductions required to be withheld and has paid such amounts when due, in the form required under appropriate laws, or made adequate provision for the payment of such amounts to the proper receiving authorities. The amount of Tax withheld but not remitted by each Acquired Company has been retained in the appropriate accounts;

(vi) Each Acquired Company has collected from each receipt from any of its past and present customers (or other Persons paying amounts to the Acquired Companies) the amount of all Taxes required to be collected and has paid and remitted such Taxes when due, in the form required under appropriate laws or made adequate provision for the payment of such amounts to the proper receiving authorities. The amount of Tax collected but not remitted by each Acquired Company has been retained in the appropriate accounts;

(vii) There are no Liens for Taxes on any of the assets of any of the Acquired Companies;

(viii) Each Acquired Company has made available to Purchaser a true copy of all Tax Returns filed by such Acquired Company and all correspondence with any Governmental Entity relating to Taxes, in each case, for any taxation periods that remain open for assessment or reassessment as of the date hereof;

(ix) There are no circumstances that exist and would result or that have existed and resulted in sections 78 to 80.04 of the Tax Act or any similar provincial or territorial provisions applying to any Acquired Company;

(x) No Acquired Company has, either directly or indirectly, transferred property to or acquired property from a person with whom such Acquired Company was not dealing at arm's length (as that term is understood for purposes of the Tax Act) for consideration other than consideration equal to the fair market value of the property at the time of the disposition or acquisition thereof;

(xi) No Acquired Company has outstanding loans or indebtedness incurred by directors, former directors, officers, shareholders and/or employees or by any person or corporation not dealing at arm's length (as that term as understood for purposes of the Tax Act) with any of the foregoing;

(xii) Except in respect of deferred revenue accounted for as a current liability in the determination of Working Capital, no Acquired Company has claimed, nor will it claim, any reserve under any one or more of subparagraph 40(1)(a)(iii), or paragraph 20(1)(m) or 20(1)(n) of the Tax Act or any similar provincial or territorial provision, if any such amount could be included in the income of such Acquired Company for any period ending after the Closing Date;

(xiii) No Acquired Company has, and will not as a consequence of the acquisition of control of such Acquired Company by the Purchaser pursuant to this Agreement, realize a gain or loss by virtue of the application of subsection 111(12) of the Tax Act;

(xiv) No Acquired Company has had a permanent establishment or trade or business in any country other than the country under the laws of which it is organized and, for greater certainty, except as disclosed on Tax Returns, no Acquired Company has had a U.S. trade or business or otherwise been subject to U.S. federal, or state and local, income and franchise taxes;

(xv) At no time in the twelve months preceding the Closing Date, has any Acquired Company had (i) a "significant interest" (as defined in section 34.2 of the Tax Act) in any partnership, or (ii) an interest in a joint venture in respect of which it reported income and loss on the basis that the joint venture had its own fiscal period;

(xvi) No Acquired Company is party to any Tax sharing, allocation, indemnity or similar agreement or arrangement (other than such an agreement or arrangement the main object of which is not Taxes) pursuant to which it will have any obligations to make any payment on or after the Closing Date;

(xvii) No Acquired Company has made an election to report its Canadian tax results in a currency other than the currency of Canada;

(xviii) At no time in the 60 month period preceding the date hereof was more than 50% of the fair market value of any the Purchased Shares derived directly or indirectly (otherwise than through a corporation, partnership or trust the shares or interests in which were not themselves taxable Canadian property (as defined in the Tax Act)) from one or any combination of real or immovable property situated in Canada, Canadian resource properties, timber resource properties or options in respect of, or interest in, or for civil law rights in, any such property, whether or not the property exists, (as each such term is interpreted for the purposes of the definition of taxable Canadian property in the Tax Act);

(xix) Each Acquired Company has complied in all material respects with the intercompany transfer pricing provisions of each applicable law relating to Taxes, including the contemporaneous documentation and disclosure requirements thereunder, to the extent that failure to do so could reasonably be expected to give rise to Taxes;

(xx) Each Acquired Company is eligible for benefits under Article VII of the Canada-US Treaty;

(xxi) No U.S.-Based Employee of any Acquired Company has ever had the authority to enter into agreements or conclude contracts on behalf of, or otherwise legally bind, any Acquired Company while physically present in the U.S.;

(xxii) No U.S.-Based Employee of any Acquired Company has routinely engaged in meaningful negotiations with a U.S. counterparty as to the terms of any contract

to which such Acquired Company would become a party without explicitly informing the other parties to the negotiation that such employee did not have actual authority to conclude the contract and that the contract would only be entered into once approved by authorized officers or employees of the Acquired Company entering into such contract;

(xxiii) No U.S.-Based Employee of any Acquired Company has held him or herself out as having ostensible authority to contract on behalf of any Acquired Company while physically present in the U.S. and no Acquired Company has ever become party to an agreement formed pursuant to the purported exercise of such ostensible authority by any U.S.-Based Employee while physically present in the U.S.;

(xxiv) All contracts entered into by Acquired Companies that were negotiated in whole or in part by U.S.-Based Employees (other than U.S.-Based Employees who were physically present outside of the U.S. throughout the period of negotiations) were reviewed, and all the material terms of such contracts were approved by, a duly authorized officer or employee (other than a U.S.-Based Employee who was physically present in the U.S. at the relevant time) of the relevant Acquired Company prior to execution;

(xxv) All U.S.-Based Employees of the Acquired Companies had complete autonomy over the determination of the location(s) from which their services were performed (subject to the requirement that they be in a position to service their route / key accounts / district) and no U.S.-Based Employee was required to work out of or otherwise utilize a single location (whether specified by any Acquired Company or chosen by such employee) on a regular basis;

(xxvi) No property of any Acquired Company used in a trade or business carried on by such company was situated within the United States other than property intended for mobile use on term consistent with the representation that U.S.-Based Employees had autonomy over determining the locations from which services would be performed;

(xxvii) No Acquired Company has made an "excessive eligible dividend designation" as defined in the Tax Act;

(xxviii) No Acquired Company has ever participated in any transaction that is a "reportable transaction" (as defined for purposes of section 237.3 of the Tax Act) or that is subject to the provisions of any similar federal, provincial, U.S. or foreign Tax Law;

(xxix) Each Acquired Company is, to the extent it is required to be, a registrant for purposes of any taxes imposed under the HST Act, an Act respecting the Quebec sales tax and any other applicable commodity and sales taxes registrations and each of their goods and services tax/harmonized sales tax registration number, Quebec sales tax number and applicable registration number is set out in Schedule 3.2(ee) of the Disclosure Letter.

(ff) **Customers and Suppliers.** Schedule 3.2(ff) of the Disclosure Letter contains a list of the top ten customers of the Acquired Companies (determined on the basis of revenues) for each of the last two calendar years ("**Key Customers**") and the top ten suppliers of the Acquired Companies (determined on the basis of cost of goods and services purchased) for each of the last two calendar years ("**Key Suppliers**"). None of the Key Customers or Key Suppliers has ceased to do, or materially decreased the rate of doing, business or has indicated to any of the Acquired Companies in writing that it intends to cease or materially decrease the rate of doing business with the Business. To the knowledge of Sellers, there is no reasonable basis for believing that any Key Customer or Key Supplier intends to cease doing business with any of the Acquired Companies or to modify or change in any material adverse manner any existing arrangement with such Acquired Companies for the purchase or supply of any products or services after, or as a result of, the consummation of any transactions contemplated by this Agreement.

(gg) **No Brokers.** Except as disclosed in Schedule 3.2(gg) of the Disclosure Letter, no broker, finder or investment banker or other Person is directly or indirectly entitled to receive from any of the Acquired Companies any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions contemplated by this Agreement.

(hh) **Product Recalls; Warranties**. Except as disclosed in Schedule 3.2(hh)(A) of the Disclosure Letter, with respect to the products produced, distributed or sold by the Acquired Companies in the past three years, (i) no Acquired Company has incurred any material warranty or recall claims or expenses; (ii) no material recalls or proceedings are pending, requested or, to the knowledge of Sellers, threatened; (iii) all products have been produced, distributed and/or sold in conformity with all applicable contractual commitments, all express and implied warranties and other applicable Laws, except for any non-conformities which would not be material to the Business of the Acquired Companies, taken as a whole; and (iv) in the case of products described in (iii) above, no material liability exists for replacement or other damages in connection with any such products, other than for replacement or other damages in the Ordinary Course of Business. Except disclosed in Schedule 3.2(hh)(B) of the Disclosure Letter, no Acquired Company has any material liability arising from or, to the knowledge of Sellers, alleged to arise from, any actual or alleged injury to Persons, damage to property or other loss as a result of the ownership, possession or use of any product produced, sold, or distributed by the Acquired Companies.

(ii) **Indebtedness and Security**.

(i) Except as disclosed in Schedule 3.2(ii) of the Disclosure Letter, the Acquired Companies do not have Indebtedness, other than Indebtedness Not Payable at Closing and the overdraft position in the current accounts of the Acquired Companies resulting from conduct of the Business in the Ordinary Course.

(ii) Except for Permitted Liens, no Person has been granted a security interest or other Lien on any of the assets of the Acquired Companies.

(iii) Except for Permitted Liens, immediately following the Closing, there will not be outstanding any loan, guarantee or pledge given by any Acquired Company for the benefit of any other Person.

(jj) **Food Regulatory**.

(i) The Acquired Companies and their respective products are and for the past three (3) years have been, in compliance in all material respects with all Food Safety Laws and all reporting obligations pursuant to FDA's Reportable Food Registry. The Acquired Companies have established compliance programs and procedures to ensure compliance, in all material respects, with all applicable Food Safety Laws.

(ii) The Acquired Companies maintain and operate in compliance in all material respects with all Authorizations and food safety plans and/or procedures required pursuant to Food Safety Laws.

(iii) The facilities and operations of the Acquired Companies that are third party certified with respect to applicable food safety and quality industry standards have been conducted in compliance in all material respects, for the past three (3) years, with the requirements of all such third-party certification standards under which the Acquired Companies have obtained certification.

(iv) Except as disclosed in Schedule 3.2(jj) of the Disclosure Letter, over the past three (3) years, the Acquired Companies have not sold or distributed any products which are or were contaminated, adulterated, misbranded or mislabelled or any products that have been exposed to any food contaminants or adulterants, food poisoning, pests, mold or microbial agents, nor have their been any recalls, withdrawals, stock recoveries, seizures, or facility shutdowns with respect to the Business.

(v) Except as disclosed in Schedule 3.2(jj) of the Disclosure Letter, no Acquired Company has, in the past three (3) years, received or has been subject to any Food Safety Claim, nor to the knowledge of the Sellers are there conditions associated with the facilities or products of Acquired Companies that would reasonably be expected to give rise to a Food Safety Claim against, or other material liability of, any Acquired Company.

(vi) The Sellers have made available to the Purchaser all assessments, audits, reports and other documents for the past three (3) years materially bearing on food regulatory and food safety matters relating to the Business or facilities or products of the Acquired Companies that are in their possession or under their reasonable control.

(kk) **U.S. Sales.** Net sales of the Acquired Companies for the year ended December 29, 2018, as recorded in the Financial Statements, realized from sales to customers in the U.S. were less than US$90 million (converted, as applicable, from Canadian to U.S. dollars using an exchange rate of 1.2957).

3.3 Disclaimer of Sellers.

(a) Except as set forth in this Article 3, none of Sellers, their Affiliates or any of their respective officers, directors, employees or representatives makes or has made any other representation or warranty, express or implied, with respect to the Purchased Shares, the Acquired Companies or the Business, including with respect to (i) the operation of the Acquired Companies by Purchaser after the Closing, and (ii) the success or profitability of the Acquired Companies after the Closing.

(b) None of Sellers, their Affiliates or any of their respective officers, directors, employees or representatives will have or be subject to any liability or indemnification obligation to Purchaser or to any other Person resulting from the distribution to Purchaser, its Affiliates or representatives of, or Purchaser's use of, any projections, financial models, estimates, forecasts or budgets relating to the Business ("**FOFI**"), including FOFI provided in the confidential information memorandum, the management presentation and any other information, documents or material made available to Purchaser, whether orally or in writing, in certain "data rooms", management presentations, responses to questions submitted on behalf of Purchaser or in any other form in expectation of the transactions contemplated by this Agreement. Any such other representation or warranty is hereby expressly disclaimed.

3.4 Disclosure Letter.

Contemporaneously with the execution and delivery of this Agreement, Sellers are delivering to Purchaser the Disclosure Letter required to be delivered pursuant to this Agreement, which is deemed to constitute an integral part of this Agreement and to set out the qualifications, exceptions and other information called for in the representations and warranties of Sellers contained in this Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PURCHASER

4.1 Representations and Warranties of Purchaser.

Purchaser represents and warrants to and in favour of Sellers as follows and acknowledges that Sellers are relying upon such representations and warranties in connection with the entering into of this Agreement:

(a) **Formation and Qualification.** Purchaser is a corporation duly incorporated, validly subsisting and in good standing under the Laws of its jurisdiction of incorporation.

(b) **Validity of Agreement.** The execution, delivery and performance by Purchaser of this Agreement:

(i) have been duly authorized by all necessary action on the part of Purchaser;

(ii) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the constating documents, by-laws or other similar documents of Purchaser; and

(iii) will not result in the violation of any applicable Law.

(c) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms subject only to any limitation on enforcement under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.

(d) **Litigation.** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Purchaser's knowledge, threatened against Purchaser, which prohibit, restrict or seek to enjoin the transactions contemplated by this Agreement.

(e) **Required Authorizations.** Except as disclosed in Schedule 4.1(e) of the Disclosure Letter, no filing with, notice to or Authorization of, any Governmental Entity is required on the part of Purchaser as a condition to the lawful completion of the transactions contemplated by this Agreement.

(f) **Investment Canada Act**. Purchaser is a WTO investor or trade agreement investor and is not a state-owned enterprise within the meaning of the Investment Canada Act.

(g) **Competition Act**. Purchaser and its affiliates have no assets in Canada and their gross revenues from sales in, from or into Canada are less than $10,000,000, each calculated in accordance with Part IX the Competition Act.

(h) **Sophisticated Purchaser; Access.** Purchaser is knowledgeable, sophisticated and experienced in business and financial matters, has had access to its full satisfaction to management of the Acquired Companies and their respective books and records, contracts, agreements and documents for the purpose of conducting its due diligence review, and has had such opportunity to seek accounting, legal or other advice or information in connection with its entry into this Agreement and the other documents referred to herein relating to the consummation of the transactions contemplated hereby and thereby as it has seen fit.

(i) **No Brokers.** Except as disclosed in Schedule 4.1(i) of the Disclosure Letter, no broker, finder or investment banker or other Person engaged by Purchaser is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions contemplated by this Agreement.

(j) **No Reliance.** Purchaser acknowledges that:

(i) it has conducted to its satisfaction an independent investigation of the business, operations, assets, liabilities and financial condition of the Acquired Companies and the Business. In making the determination to proceed with the transactions contemplated by this Agreement, Purchaser has relied solely on the results of its own independent investigation and the representations and warranties in this Agreement (including the related portions of the Disclosure Letter), and has not relied on any representation or warranty of the Sellers, the Acquired Companies

or any of their related parties, express or implied, statutory or otherwise, with respect to the Purchased Shares, the Business, the Acquired Companies or any other matter contemplated by this Agreement, including with respect to the operation of the Business after the Closing, and the probable success or profitability of the Business or the Acquired Companies after the Closing. Purchaser hereby recognizes and agrees that such representations and warranties constitute the complete extent of what it considered to be determinant, decisive and material in the decision to proceed with the transactions contemplated by this Agreement.

(ii) except as set forth in Article 9, none of the Sellers, the Acquired Companies or any of their related parties will have, or be subject to, any liability or obligation to Purchaser or any other Person (including, after Closing, the Acquired Companies) resulting from the distribution to Purchaser or any of its related parties of, or their use of, any information relating to the Business or the Acquired Companies made available to Purchaser or its related parties by the Sellers, the Acquired Companies or any of their related parties, whether orally or in writing, prior to the execution of this Agreement or during the Interim Period, including in the Data Room, projections, financial models, estimates, forecasts or budgets, the confidential information memorandum, management presentations, functional break-out discussions or responses to questions submitted on behalf of Purchaser, in connection with the transactions contemplated by this Agreement. Without limiting the foregoing, with respect to any projections, financial models, estimates, forecasts or budgets relating to the Business, the Purchaser acknowledges and agrees that (i) there are uncertainties inherent in attempting to make any projections, financial models, estimates, forecasts or budgets, (ii) it is familiar with such uncertainties, (iii) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections, financial models, estimates, forecasts or budgets so furnished to it, (iv) planned efficiencies or business opportunities may not materialize for a number of reasons, and (v) the Purchaser shall have no claim against the Sellers or any of their respective Affiliates, representatives or shareholders with respect thereto.

ARTICLE 5

PRE-CLOSING COVENANTS OF THE PARTIES

5.1 Conduct of Business Prior to Closing.

(a) Except as expressly provided in this Agreement or the Disclosure Letter or with the prior written consent of Purchaser, which consent shall not be unreasonably withheld, and to the extent lawfully able to do so, Sellers shall cause the Acquired Companies to, and the Acquired Companies shall, during the Interim Period, conduct their respective Businesses in the Ordinary Course and, without limiting the generality of the foregoing, Sellers shall cause each Acquired Company not to, and no Acquired Company shall, take any affirmative action or omit to take any reasonable action within its control, as a result of which action or omission any of the representations and warranties in Section 3.2(bb) would become untrue.

(b) In furtherance and not in limitation of Section 5.1(a), during the Interim Period, except as expressly provided in this Agreement, as disclosed in Schedule 5.1 of the Disclosure Letter, or as required by applicable Law, Sellers shall cause the Acquired Companies not to (unless otherwise consented to by Purchaser, which consent shall not be unreasonably withheld, to the extent lawfully able to do so):

(i) declare, set aside, make or pay any dividend or other distribution in respect of or purchase, redeem or otherwise acquire, any shares of its capital stock (other than the declaration and payment in full (but not, for the avoidance of doubt, only the declaration), in each case prior to the Effective Time, of dividends payable solely in cash);

(ii) transfer, issue, sell, pledge encumber or dispose of any shares in its capital, or any other interest in or with respect to it, or grant options, warrants, calls or other rights to purchase or otherwise acquire any of the foregoing;

(iii) effect any recapitalization, reclassification, share split, combination or like change in the capitalization, or amend the terms of ·any outstanding shares in its capital;

(iv) amend its articles of incorporation or by-laws or other organizational documents;

(v) make any capital expenditures (including expenditures for additions to plant, property and equipment) or appropriations or commitments with respect thereto, in the aggregate, in excess of $500,000;

(vi) enter into any transaction or Contract with any officer, director, shareholder or Affiliate of a Seller or an Acquired Company;

(vii) create, incur or assume any Indebtedness for borrowed money, other than Indebtedness incurred or assumed in the Ordinary Course that will be included in Indebtedness or repaid in full prior to the Effective Time;

(viii) change its accounting methods, principles or practices, except as required by ASPE or any applicable Law;

(ix) sell, assign, lease, license, transfer or otherwise dispose of any of its material assets (including, for certainty, any sale of any "corporate ID routes", being any product distribution routes currently owned and serviced by Voortman, to an Independent Distributor), except for sales of inventory in the Ordinary Course of Business, or mortgage, pledge or subject to any Lien any of its material assets (other than Permitted Liens and Liens that will be terminated on or prior to the Closing Date);

(x) change or modify any of the following: (i) billing and collection policies, procedures and practices with respect to accounts receivable or unbilled charges; (ii) policies, procedures and practices with respect to the provision of discounts, rebates or allowances (excluding any discounts, rebate or allowances that are consistent with past practice and in the Ordinary Course of Business); or (iii) payment policies, procedures and practices with respect to accounts payable;

(xi) settle or compromise any suit, action or claim for an amount in excess of $150,000;

(xii) make, change or rescind any election concerning Taxes or Tax Returns, change any annual accounting period, adopt or change any accounting method with respect to Taxes, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any Tax claim, audit or assessment, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, obtain or enter into any Tax ruling, agreement, contract, understanding, arrangement or take any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(xiii) enter into any transaction or Contract that is material to the Business of the Acquired Companies other than in the Ordinary Course of the Business; or

(xiv) authorize any of, or commit or agree to take, whether in writing or otherwise, any of the foregoing actions.

(c) In furtherance and not in limitation of Sections 5.1(a) and 5.1(b), during the Interim Period, except as set forth in Section 5.1 of the Disclosure Letter, Sellers shall cause each Holding Company not to, and no Holding Company shall, unless otherwise consented to by Purchaser, (i) incur any liability, or (ii) enter into any Contract, or (iii) consummate any transaction, of any nature whatsoever, other than pursuant to this Agreement.

5.2 Access.

During the Interim Period, Sellers shall, to the extent lawfully able to do so, cause the Acquired Companies to afford to Purchaser and its legal, accounting and other representatives reasonable access during normal business hours (without undue interference to the ordinary conduct of the Business of the Acquired Companies) to the Business and their affairs and properties. All requests by Purchaser or its legal, accounting or other representatives for such access shall be made at least 48 hours in advance of such access and shall be directed through Douglas MacFarlane.

5.3 Confidentiality.

The terms of the Confidentiality and Non-Disclosure Agreement dated June 28, 2019 (the "**Confidentiality Agreement**") between Voortman and Hostess Brands, LLC are hereby incorporated herein by reference and shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement and the obligations of Purchaser under the Confidentiality Agreement shall terminate; provided, however, that the Confidentiality Agreement shall terminate only in respect of that portion of the Confidential Information (as defined in the Confidentiality Agreement) exclusively relating to the Business and the transactions contemplated by this Agreement, subject at all times to compliance with Laws. If this Agreement is, for any reason, terminated prior to Closing, the Confidentiality Agreement shall continue in full force and effect.

5.4 Filings and Authorizations.

(a) Each of Sellers and Purchaser will and Sellers shall cause Corporation to use reasonable best efforts to make, or cause to be made, all filings and applications with, and give all

notices and submissions to Governmental Entities forthwith upon the execution of this Agreement, and in any event no more than two Business Days after the execution of this Agreement, that are necessary or advisable to obtain all Authorizations from Governmental Entities that are necessary or advisable for the lawful completion of the transactions contemplated by this Agreement.

(b) Purchaser and Sellers will and Sellers shall cause Corporation to coordinate and cooperate in exchanging information and supplying assistance that is reasonably requested by the other in connection with this Section 5.4 including (i) providing each other with advance copies and reasonable opportunity to comment on all notices, applications, submissions, responses, filings and information supplied to or filed with any Governmental Entity (except for information which any of Purchaser, Sellers or Corporation, acting reasonably, considers highly confidential and competitively sensitive, which shall only be provided to outside counsel of such other Parties on a confidential and privileged basis), and (ii) keeping each other apprised of communications with any Governmental Entity.

(c) Each of Sellers and Purchaser will and Sellers shall cause Corporation to use their commercially reasonable efforts to satisfy, as soon as possible, all requests for information and documentation received from any Governmental Entity.

(d) Neither Purchaser, on the one hand, nor Sellers and Corporation, on the other hand, shall participate in any meeting, telephone call, negotiation, discussion or correspondence with any Governmental Entity in respect of the transactions contemplated by this Agreement, without giving the other prior notice of such meeting, telephone call, negotiation, discussion or correspondence and, to the extent permitted by such Governmental Entity, the opportunity to attend and participate (such participation to be limited to a Party's counsel where communications or meetings involve information that the other Party reasonably considers to be highly confidential and competitively sensitive).

5.5 Request for Consent.

Sellers will use their commercially reasonable efforts to obtain, or cause to be obtained, on or prior to Closing, the relevant consents or waivers required in Schedule 5.5 of the Disclosure Letter. Despite the previous sentence, Sellers are not required to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain such consents. Purchaser shall co-operate in obtaining such consents, including providing information of Purchaser as is reasonably requested by a third party in order to grant its consent.

5.6 Representation and Warranty Insurance

Purchaser acknowledges that Sellers have entered into this Agreement in reliance on the fact that Purchaser has obtained the Representation and Warranty Policy as of the date of this Agreement. Accordingly, and notwithstanding any provision to the contrary in this Agreement, without the prior written consent of Agent, up to and following the Closing, Purchaser shall, to the extent within its control, ensure that the Representation and Warranty Policy is in effect and not amended or varied in any manner that is adverse to Sellers.

5.7 Notice of Certain Material Developments

The Corporation will give prompt written notice to the Purchaser of the occurrence at any time during the Interim Period of any of the following:

(a) the initiation of any Tax audit, proceeding or other related investigation by any Governmental Entity, or the receipt of any notice of any adverse determination made by any Governmental Entity with respect to any Tax position taken by any Acquired Company in any Tax return or otherwise with respect to any material Tax;

(b) the initiation of any Food Safety Claim by any Person or Governmental Entity that would reasonably be expected to result in a material liability of any Acquired Company, or the occurrence of any event, fact or circumstance that would reasonably be expected to result in a recall of any product produced or distributed by any Acquired Company;

(c) the suspension, revocation, cancellation or modification of any material Authorization that is necessary for the Acquired Companies to conduct the Business as conducted on the date of this Agreement;

(d) the commencement of, or the receipt of notice threatening, any material litigation, arbitration or mediation involving the Acquired Companies, the Business, any of the Acquired Companies' assets, or against or affecting any of their officers, directors or employees (in their capacities as such);

(e) the receipt of written, or to the knowledge of Sellers, oral notice from any Key Customer or any Key Supplier that such Person intends to stop or materially and adversely change the terms (whether related to payment, price or otherwise) with respect to purchasing or supplying, as applicable, materials, products or services to any Acquired Company;

(f) the receipt of any written or, to the knowledge of Sellers, oral notice of any labor union or similar Person asserting or holding (or seeking to assert or hold) any bargaining rights with respect to the employees of any Acquired Company or the occurrence of any collective labour dispute, including a strike, slowdown, walkout, picketing, work stoppage or other organizational activity against any Acquired Company;

(g) material damage, destruction or other casualty loss (whether or not insured) with respect to material property or assets owned or leased by the Acquired Companies; or

(h) any event, fact or circumstance has occurred which, individually or in the aggregate, has had or would reasonably be expected to result in a Material Adverse Effect.

Delivery of any such notice by the Corporation shall have no effect on the rights and obligations of the Parties hereunder.

5.8 Parent Guarantee

Purchaser Parent hereby agrees to (i) unconditionally guarantee the timely performance and fulfillment by the Purchaser of its obligations under this Agreement, including pursuant to Sections 2.3 and 2.4, and (ii) be jointly and severally liable with the Purchaser for any Damages suffered by, imposed upon or asserted against the Sellers as a result of any failure to fulfill or perform by the Purchaser of any of its covenants or any breach or inaccuracy of any representation or warranty given by the Purchaser under this Agreement. The liabilities and obligations of Purchaser Parent are subject to the terms of this

Agreement and shall not exceed any liability or obligation of the Purchaser under this Agreement. Purchaser Parent is entitled to all rights, privileges and defences available to the Purchaser with respect to any liability or obligation.

5.9 Pre-Acquisition Reorganization

(a) Prior to the Effective Time, upon request by, and at the expense of, the Purchaser, Sellers shall cause the Acquired Companies to use commercially reasonable efforts to, prior to the Closing Date, take such actions as are necessary to reorganize their capital, assets and structure or effect such other transactions as the Purchaser may reasonably require ("**Pre-Acquisition Reorganization Activity**"); provided that: (i) any Pre-Acquisition Reorganization Activity shall not delay or prevent the completion of the transactions contemplated by this Agreement; (ii) any Pre-Acquisition Reorganization Activity shall not unreasonably interfere with the ongoing operations or the Business of the Acquired Companies; (iii) such Pre-Acquisition Reorganization Activity shall be implemented as close as possible to or concurrent with the Effective Time; (iv) the Acquired Companies shall not be required to take any action in contravention of applicable Law, their respective organizational documents or any material Contracts; (v) any such Pre-Acquisition Reorganization Activity shall be contingent upon the Purchaser confirming that the conditions of Section 6.2 have been or will be satisfied or waived by the Purchaser (it being understood that in any event the Pre-Acquisition Reorganization Activity will be deemed to have occurred immediately prior to the Effective Time); (vi) the Pre-Acquisition Reorganization Activity shall not affect or modify in any respect the obligations of the Purchaser under this Agreement, and (vii) the Acquired Companies shall not be required to take any action that could reasonably be expected to result in Taxes being imposed on, or any adverse Tax or other consequences to, any Seller, incrementally greater than the Taxes or other consequences to such party in connection with the consummation of the Agreement in the absence of such action being taken pursuant to this Section 5.9.

(b) If Closing does not occur other than by reason of a breach of this Agreement by Sellers, Purchaser shall forthwith reimburse Sellers and/or the Acquired Companies for all reasonable third-party out-of-pocket fees and expenses (including any professional fees, expenses and Taxes) incurred by Sellers and/or the Acquired Companies in considering and effecting the Pre-Acquisition Reorganization Activity and shall be responsible for any reasonable out-of-pocket costs and Taxes of Sellers and/or the Acquired Companies in reversing or unwinding any Pre-Acquisition Reorganization Activity that was effected prior to termination of this Agreement (provided that such reversal or unwinding must occur in the most tax-efficient manner which is commercially reasonable under the circumstances). The obligation of Purchaser to reimburse Sellers and/or the Acquired Companies for reasonable third-party out-of-pocket fees, expenses and Taxes and to be responsible for reasonable out-of-pocket costs and Taxes as set out in this Section 5.9 will be in addition to any other payment Purchaser may be obligated to make hereunder and, notwithstanding anything to the contrary herein, shall survive termination of this Agreement.

5.10 Pre-Closing Employment Matters

No later than three Business Days prior to the Closing Date (or such later date as the Parties agree) (the "**Rationalization Date**"), Sellers shall terminate, or cause the Acquired Companies to terminate, the employment of the employees of the Acquired Companies set out on Schedule 5.10 of the Disclosure Letter (the "**Excluded Employees**"). Sellers shall pay (or reimburse prior to the Closing Date the Acquired Companies, to the extent paid by the Acquired Companies directly) and in any event remain obligated for the Excluded Employees Severance Cost.

5.11 Management Non-Competition and Non-Solicitation Agreements

Sellers shall use their commercially reasonable efforts to cause the employees of the Acquired Companies set out in Schedule 5.11 of the Disclosure Letter to executed and deliver on or before Closing, in favour of the Acquired Companies and the Purchaser, the non-competition and non-solicitation agreements substantially in the form of Exhibit 5.11 hereto.

5.12 401(k) Plan

If requested by Purchaser no later than ten Business Days preceding the Closing Date, Sellers shall cause Voortman to adopt a resolution terminating the Voortman Cookies 401(k) Retirement Plan effective as of the date immediately prior to the Closing Date but contingent on the occurrence of the Closing. No later than three Business Days prior to the Closing Date, the Sellers shall provide Purchaser copies of any such resolution.

5.13 Section 280G Approval.

(a) The Corporation shall use its reasonable commercial efforts to obtain prior to the initiation of the requisite shareholder approval procedure under subparagraph (b) below, a waiver of the right to receive payments and/or benefits to the extent they reasonably could cause such payments and/or benefits to constitute "parachute payments" under Section 280G of the Code and regulations promulgated thereunder (a "**Parachute Payment Waiver**") from each Person who, with respect to the Corporation, reasonably could be a "disqualified individual" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) and who, with respect to the Corporation, reasonably might otherwise receive, have received, or have the right or entitlement to receive, any parachute payment under Section 280G of the Code, and the Corporation shall have delivered each such Parachute Payment Waiver to Purchaser on or before the Closing Date.

(b) Prior to the Closing Date, the Corporation shall obtain the approval by such number of shareholders of the Corporation as is required by the terms of Section 280G(b)(5)(B) of the Code so as to render the parachute payment provisions of Section 280G of the Code inapplicable to any and all payments and/or benefits provided pursuant to the contracts or arrangements that, in the absence of the executed Parachute Payment Waivers by the affected Persons under subparagraph (a) above, might otherwise result, separately or in the aggregate, in the payment of any amount and/or the provision of any benefit that would not be deductible by reason of Section 280G of the Code or that would be subject to an excise tax by reason of Section 4999 of the Code, with such shareholder approval to be solicited in a manner which satisfies all applicable requirements of such Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations. The Parachute Payment Waivers and

documents to be provided to the Corporation's shareholders in connection with the solicitation of shareholder approval shall be in a form reasonably acceptable to Purchaser.

ARTICLE 6

CONDITIONS OF CLOSING

6.1 Conditions of Closing.

Purchaser on the one hand, and Sellers on the other hand, shall use all best efforts, to procure the satisfaction of the conditions set out in Sections 6.2 and 6.5 over which they have reasonable control, respectively.

6.2 Conditions for the Benefit of Purchaser.

The purchase and sale of the Purchased Shares is subject to the following conditions to be fulfilled or performed prior to the Closing, which conditions are for the exclusive benefit of Purchaser and may be waived, in whole or in part, by Purchaser in its sole discretion:

(a) **Truth of Representations and Warranties and Performance of Covenants**. Each of:

(i) the Individual Fundamental Representations of each Seller must be true and correct in all respects, except for *de minimis* inaccuracies, as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. To the extent that a representation and warranty speaks only as of a specific date, it only needs to be so true and correct as of that date;

(ii) the other representations and warranties of each Seller contained in Section 3.1 of this Agreement, must be true and correct in all respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date, except if any falseness or incorrectness of such representations and warranties, considered in the aggregate, would not have a Material Adverse Effect (without giving effect to any qualifications as to materiality by reference to "material", "Material Adverse Effect", "in all material respects" or similar qualifications contained in such representations and warranties), and which such representations and warranties are subject to the limitations in Section 9.1. To the extent that a representation and warranty speaks only as of a specific date, it only needs to be so true and correct as of that date; and

(iii) the covenants contained in this Agreement to be performed by each Seller on or prior to the Closing Date shall have been performed in all material respects,

and Purchaser shall have received a certificate from each Seller, confirming the foregoing, in form and substance reasonably satisfactory to Purchaser (the "**Individual Sellers' Closing Certificate**"). Each of:

(iv) the Corporation Fundamental Representations must be true and correct in all respects, except for *de minimis* inaccuracies, as of the Closing Date with the same

force and effect as if such representations and warranties were made on and as of such date. To the extent that a representation and warranty speaks only as of a specific date, it only needs to be true and correct as of that date; and

(v) the other representations and warranties of Sellers contained in Section 3.2 of this Agreement, must be true and correct in all respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date, except if any falseness or incorrectness of such representations and warranties, considered in the aggregate, would not have a Material Adverse Effect (without giving effect to any qualifications as to materiality by reference to "material", "Material Adverse Effect", "in all material respects" or similar qualifications contained in such representations and warranties, other than in the case of Section 3.2(u) (Financial Statements and Financial Controls) to the extent of the materiality qualifiers contained in such representation and warranty, the definition of Material Contracts in Section 3.2(y) (Contracts) or Section 3.2(w) (Material Adverse Change)). To the extent that a representation and warranty speaks only as of a specific date, it only needs to be so true and correct as of that date,

and Purchaser shall have received a certificate from Sellers, confirming the foregoing, in form and substance reasonably satisfactory to Purchaser (the "**Joint Sellers' Closing Certificate**", and together with the Individual Sellers' Closing Certificate, the "**Sellers' Closing Certificate**").

(b) **Deliveries to Purchaser.** At or prior to Closing, Sellers shall deliver or cause to be delivered to Purchaser the following in form and substance satisfactory to Purchaser, acting reasonably:

(i) a copy of the Escrow Agreement executed by Agent, for and on behalf of the Sellers, and Escrow Agent;

(ii) evidence of termination of the shareholders' agreement of Corporation;

(iii) certificates representing the Purchased Shares duly endorsed in blank for transfer by the holders of record;

(iv) certified copies of (i) the charter documents and by laws of Sellers and the Acquired Companies; (ii) all required resolutions of the board of directors of Sellers, approving the entering into and completion of the transactions contemplated by this Agreement; and (iii) all required resolutions of the board of directors of Corporation approving the transfer of the Purchased Shares to Purchaser;

(v) a certificate of status, compliance, good standing or like certificate with respect to corporate Sellers and the Acquired Companies issued by appropriate government officials of their respective jurisdictions of incorporation, if available in such jurisdiction;

(vi) a duly executed resignation and release of each director and officer of the Acquired Companies specified by the Purchaser in writing at least five days prior to Closing effective as at Closing;

(vii) Payoff Letters, duly executed by the Payoff Creditors; and

(viii) an IRS Form W-8BEN, W-8BEN-E, W-8IMY or W-9 from each Seller, duly completed and executed from each Seller in form reasonably satisfactory to Purchaser.

(c) **No Legal Action**. No court order initiated by any Person (other than Purchaser or Purchaser Parent) or any other legal restraint or prohibition issuable or issued by any Governmental Entity to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement shall be outstanding.

(d) **No Material Adverse Effect**. Between the date of this Agreement and the Effective Time, there shall not have occurred a Material Adverse Effect.

6.3 Termination by Purchaser.

Purchaser may terminate this Agreement by notice in writing to Sellers:

(a) if any representation and warranty of Sellers in this Agreement fails to be true and correct such that any of the conditions set forth in Sections 6.2(a)(i) or 6.2(a)(ii) would not be satisfied or if Sellers breach, or fail to perform, their/its covenants or obligations contained in this Agreement, in each case, such that the condition set forth in Section 6.2(a)(iii) would not be satisfied at the Closing (other than those conditions which by their nature are to be fulfilled by actions taken at Closing), and, in each case, such failure or breach either cannot be cured or continues uncured for 10 Business Days (or until the Termination Date, if earlier) after the date on which Purchaser provides Agent (for an on behalf of Sellers) with written notice of such failure or breach;

(b) if any of the conditions set forth in Section 6.2 (other than those conditions which by their nature are to be satisfied by actions taken at the Closing and other than those covered in Section 6.3(a)), have not been fulfilled in all material respects or waived on or prior to the Termination Date; or

(c) by the mutual written consent of Agent (for and on behalf of Sellers) and Purchaser;

in each case, provided, however, that Purchaser shall not be entitled to terminate this Agreement if the failure or impossibility of satisfaction of the condition was as a result of the breach by Purchaser of any of its obligations under this Agreement.

If Purchaser waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination, if any, in the event of non-fulfillment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

6.4 Effect of Termination by Purchaser.

(a) Subject to Section 6.4(b), upon termination of this Agreement by Purchaser pursuant to Section 6.3, Purchaser and Sellers shall be released from all of their respective obligations under this Agreement and there will be no liability on the part of any Party, save and except for their respective obligations under Sections 5.3 (Confidentiality), 10.5 (Announcements), 10.7 (Expenses), and 10.17 (Governing Law) which will survive any termination of this Agreement, and provided that no such termination shall relieve any Party from any Damages in respect of this Agreement arising out of its actual and intentional fraud prior to the termination hereof.

(b) Notwithstanding Section 6.4(a), Sellers will only be released from their obligations and liabilities under this Agreement (other than their obligations and liabilities under Sections 6.4(a) (Effect of Termination), which will survive any termination of this Agreement) if the failed condition for which Purchaser has terminated this Agreement was not caused by a willful breach of this Agreement by Sellers. If the failed condition for which Purchaser has terminated this Agreement was caused by a willful breach of this Agreement by Sellers, Purchaser's right of termination pursuant to Section 6.3 is in addition to any other rights it may have under this Agreement (including to seek indemnification for breaches, defaults or violations of the representations, warranties or covenants) or otherwise (including specific performance), and the exercise of a right of termination will not constitute an election of remedies.

6.5 Conditions for the Benefit of Sellers.

The purchase and sale of the Purchased Shares is subject to the following conditions to be fulfilled or performed prior to the Closing, which conditions are for the exclusive benefit of Sellers and may be waived, in whole or in part, by Sellers, in its sole discretion:

(a) **Truth of Representations and Warranties and Performance of Covenants**. Each of:

(i) the representations and warranties of Purchaser contained in Sections 4.1(a) (Formation and Qualification), 4.1(b) (Validity of Agreement), 4.1(c) (Execution and Binding Obligation) and 4.1(i) (No Brokers), must be true and correct in all respects, except for *de minimis* inaccuracies, as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. To the extent that a representation and warranty speaks only as of a specific date, it only needs to be true and correct as of that date;

(ii) the other representations and warranties of Purchaser contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date, provided that if a representation and warranty is qualified by materiality, it must be true and correct in all respects after giving effect to such qualification except for any inaccuracies which would not have a material and adverse impact on Purchaser's ability to consummate the transactions contemplated by this Agreement; and

(iii) the covenants contained in this Agreement to be performed by Purchaser on or prior to the Closing Date shall have been performed in all material respects,

and Sellers shall have received a certificate confirming the foregoing, signed by a senior officer or director of Purchaser, in form and substance reasonably satisfactory to Sellers (the "**Purchaser's Closing Certificate**").

(b) **Deliveries to Sellers.** At or prior to Closing, Purchaser shall deliver or cause to be delivered to Agent (for and on behalf of Sellers) the following in form and substance satisfactory to Sellers, acting reasonably:

(i) a copy of the Escrow Agreement executed by Purchaser;

(ii) a copy of the Representation and Warranty Policy;

(iii) certified copies of (i) the charter documents and by laws of Purchaser, (ii) all required resolutions of the board of directors of Purchaser approving the entering into and completion of the transaction contemplated by this Agreement;

(iv) a certificate of status, compliance, good standing or like certificate with respect to Purchaser issued by the appropriate government official of its jurisdiction of incorporation; and

(v) the Purchase Price in the manner set forth in Section 2.2.

(c) **No Legal Action.** No court order initiated by any Person (other than Sellers) or any other legal restraint or prohibition issuable or issued by any Governmental Entity to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement shall be outstanding.

6.6 Termination by Sellers.

Agent (for and on behalf of Sellers) may terminate this Agreement by notice in writing to Purchaser:

(a) if any representation and warranty of Purchaser in this Agreement fails to be true and correct such that any of the conditions set forth in Sections 6.5(a)(i) or 6.5(a)(ii) would not be satisfied or Purchaser breaches, or fails to perform its covenants and obligations contained in this Agreement such that the condition set forth in Section 6.5(a)(iii) would not be satisfied at the Closing (other than those conditions which by their nature are to be fulfilled by actions taken at Closing), and, in each case, such failure or breach either cannot be cured or continues uncured for 10 Business Days (or until the Termination Date, if earlier) after the date on which Agent (for and on behalf of Sellers) provides Purchaser with written notice of such failure or breach, except if Purchaser can reasonably expect to cure such failure or breach prior to the Termination Date (and Purchaser confirms in writing to Sellers that Purchaser is continuing to exercise reasonable best efforts to cause such failure or breach to be cured) Agent may not terminate this Agreement on account of such failure or breach prior to the Termination Date (and then, Agent may only terminate this Agreement to the extent that such failure or breach is not cured on or before the Termination Date);

(b) if any of the conditions set forth in Section 6.5 (other than those conditions which by their nature are to be satisfied by actions taken at the Closing and other than those

covered in Section 6.6(a)) has not been fulfilled in all material respects or waived on or prior to the Termination Date; or

(c) by the mutual written consent of Agent (for and on behalf of Sellers) and Purchaser,

in each case, provided, however, that Agent (for and on behalf of Sellers) shall not be entitled to terminate this Agreement if the failure or impossibility of satisfaction of the condition was as a result of the breach by Sellers of any of its obligations under this Agreement.

If Agent (for and on behalf of Sellers) waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of their rights of termination in the event of non-fulfillment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

6.7 Effect of Termination by Sellers.

(a) Subject to Section 6.7(b), upon termination of this Agreement by Sellers pursuant to Section 6.6, Purchaser and Sellers shall be released from all of their respective obligations under this Agreement and there will be no liability on the part of any Party, save and except for their respective obligations under Sections 5.3 (Confidentiality), 10.5 (Announcements), 10.7 (Expenses), and 10.17 (Governing Law) which will survive any termination of this Agreement, and provided that no such termination shall relieve any Party from any Damages in respect of this Agreement arising out of its actual and intentional fraud prior to the termination hereof.

(b) Notwithstanding Section 6.7(a), Purchaser will only be released from its obligations and liabilities under this Agreement (other than its obligations and liabilities under Sections 6.7(a) (Effect of Termination), which will survive any termination of this Agreement) if the failed condition for which Agent (for and on behalf of Sellers) has terminated this Agreement was not caused by a willful breach of this Agreement by Purchaser. If the failed condition for which Agent has terminated this Agreement was caused by a willful breach of this Agreement by Purchaser, Sellers' right of termination pursuant to Section 6.6 is in addition to any other rights they may have under this Agreement (including to seek indemnification for breaches, defaults or violations of the representations, warranties or covenants) or otherwise (including specific performance), and the exercise of a right of termination will not constitute an election of remedies.

ARTICLE 7

CLOSING

7.1 Date, Time and Place of Closing.

The completion of the transactions of purchase and sale contemplated by this Agreement shall take place at the offices of Stikeman Elliott LLP, 1155 René-Lévesque Blvd. West, 41 st Floor, Montreal, Québec, Canada, H3B 3V2, at the Effective Time on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing between Agent, for on behalf of Sellers, and Purchaser. Notwithstanding the previous sentence, the Closing can take place virtually on the Closing Date by exchange of executed documents by facsimile, electronic mail, other electronic means or

courier and payment by wire transfer of immediately available funds, with original documents to be exchanged by the Parties as quickly as possible thereafter.

ARTICLE 8

POST-CLOSING COVENANTS

8.1 Books and Records.

For a period of six years from Closing, Purchaser shall maintain and make available to Sellers the Books and Records (or, if practicable, the relevant points thereof) for inspection and copying (at Sellers' expense, provided that there shall be no mark-up of Purchaser's actual cost). If it is not practicable to make available only the relevant parts of such Books and Records, Sellers shall furnish such undertaking as to confidentiality as Purchaser may reasonably require prior to receiving access to such Books and Records.

8.2 Further Assurances.

Each Party upon the request of the other, whether at or after the Closing, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased Shares to Purchaser and carry out the intent of this Agreement.

8.3 Tax Matters.

(a) **Amended Tax Returns.** Neither Purchaser, nor any of the Acquired Companies shall file any amended Tax Return relating to any of the Acquired Companies with respect to taxable periods ending on or prior to the Closing Date that would have the effect of increasing the Tax liability of any Acquired Company in respect of a Pre-Closing Tax Period without a written consent of Agent, for and on behalf of Sellers, which consent shall not be unreasonably conditioned, withheld or denied. If Purchaser or any of the Acquired Companies is required by Law to file an amended Tax Return for any Acquired Company (or otherwise change such Tax Returns) or make an election with respect to taxable periods or portions thereof ending on or prior to the Closing Date and the effect of filing such amended Tax Return or making such election would be to increase the Tax liability of any Acquired Company in respect of a Pre-Closing Tax Period, Purchaser shall provide Sellers with a draft of such amended Tax Return 15 days prior to the due date (taking into account any extensions obtained) on which such amended return must be filed with the appropriate taxing authorities. Agent (for and on behalf of Sellers) shall have the right to review the draft of the Tax Returns provided to them by Purchaser and make any reasonable comments that they deem appropriate, which comments shall be accepted by Purchaser. If Agent (for and on behalf of Sellers) objects to any item on any such Tax Return, Purchaser and Agent (for and on behalf of Sellers) shall follow the notification and dispute resolution procedure set out in Section 8.3(b) to finally resolve the matter except that the references therein to 10 days shall be read as references to five (5) days.

(b) **Filing of Tax Returns for Pre-Closing Periods**. Purchaser will cause each of the Acquired Companies to prepare and file all Tax Returns for each of the Acquired Companies that are due after the Closing Date in respect of any Pre-Closing Tax Period

or Straddle Period, which Tax Returns must be prepared and filed on a timely basis and in accordance with applicable Law. Purchaser shall provide Agent (for and on behalf of Sellers) with a draft of such Tax Returns 30 days prior to the due date (taking into account any extensions obtained) for filing the Tax Returns with the appropriate taxing authorities. Agent (for and on behalf of Sellers) shall have the right to review the draft of the Tax Returns provided to them by Purchaser and make any reasonable comments that they deem appropriate, which comments shall be accepted by Purchaser. If Agent (for and on behalf of Sellers) objects to any item on any such Tax Return, it shall, within 10 days after delivery of such Tax Return, notify Purchaser in writing that it so objects, specifying with reasonable particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection is duly delivered, Purchaser and Agent (for and on behalf of Sellers) shall negotiate in good faith and use their commercially reasonable efforts to resolve such items. If the Purchaser and Agent are unable to reach such agreement within 10 days after delivery of the notice of objection, the disputed items shall be resolved by the Third Party Auditors and any determination by the Third Party Auditors shall be final. The Third Party Auditors shall resolve any disputed items within 10 days of having the item referred to them pursuant to such procedures as it may require. If the Third Party Auditors are unable to resolve any disputed items before the due date (taking into account any extensions obtained) for such Tax Return, the Tax Return shall be filed as prepared by the Purchaser and then amended to reflect the Third Party Auditors' resolution. The costs, fees and expenses of the Third Party Auditors shall be borne equally by the Purchaser and Agent. The preparation and filing of any Tax Return of any Acquired Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of the Purchaser.

(c) **Filing Tax Returns as a Result of Connection with a Jurisdiction** . Notwithstanding Section 8.3(b), if, as a result of any past or present connection between any Acquired Company and any U.S. state or local taxing jurisdiction, Purchaser, acting in good faith, determines that it is required to file a Tax Return in such U.S. state or local taxing jurisdiction for any Pre-Closing Tax Period, Purchaser shall take such steps as are necessary to file such return and shall provide Agent (for and on behalf of Sellers) with a draft of such Tax Return 30 days prior to the due date (taking into account any extensions obtained) for filing the Tax Return (or, in the case of a non-income Tax Return, the times for review shall be appropriately adjusted to take into account the number of days from the end of the Tax period to the due date, taking into account extensions, of the Tax Return) with the appropriate taxing authorities. If Agent (for and on behalf of Sellers) objects to any item on any such Tax Return, Purchaser and Agent (for and on behalf of Sellers) shall follow the notification and dispute resolution procedure set out in Section 8.3(b) to finally resolve the matter.

(d) **Refunds**. Other than amounts applied to reduce the quantum of any loss or monetary remedy payable by the insurers to the Purchaser pursuant to the terms and conditions of the Representation and Warranty Policy, any refunds of Taxes (or credit for overpayment of Taxes) of any of the Acquired Companies, including any interest actually received (or credited) with respect thereto, from the applicable taxing authorities for any period ending on or before the Closing (including refunds arising from amended returns filed after the Closing Date) shall be for the account of Sellers and, if received by (or credited to) Purchaser or any of the Acquired Companies shall be paid, net of any Tax costs incurred or accrued on account of the receipt of such refund by the Acquired Companies

and any reasonable out-of-pocket costs incurred in connection with such receipt, to Sellers within 10 calendar days after Purchaser or any of the Acquired Companies receives such refund (or is credited with such over payment). At the request of Agent (for and on behalf of Sellers), Purchaser shall use commercially reasonable efforts to cause the Acquired Companies to pursue claims for refunds for periods ending on or before the Closing.

(e) **Options**. Purchaser will cause the relevant Acquired Company to file the election described in subsection 110(1.1) of the Tax Act (and undertake the other procedures described therein) on a timely basis after the Closing Date so that the Optionholders are not prohibited from claiming the deduction under paragraph 110(1)(d) of the Tax Act in respect of the surrender of such Options in accordance with Section2.6(c)(i). Purchaser will also cause the relevant Acquired Company to issue amended remuneration statements for tax purposes in connection with the net amounts received by the Optionholders under Section 2.6(c)(i), should those amounts have been subject to a reduction pursuant to Sections 2.6(c)(i) or 2.6(c)(i).

(f) **Section 338 Election.** Notwithstanding anything to the contrary in this Agreement, neither Purchaser, nor any of the Acquired Companies shall, without the written consent of Agent (for and on behalf of Sellers) make or change any Tax election that has retroactive effect to any taxation year, or portion thereof, ending on or before the Closing (including any election under Section 338 of the Code) with respect to the transactions contemplated by this Agreement.

(g) **Section 256(9) Election.** Purchaser and Sellers hereby covenant and agree that each of the Acquired Companies shall make an election pursuant to subsection 256(9) of the Tax Act in respect of any acquisition of control of the Acquired Companies that occurs as a result of the acquisition of the Purchased Shares by the Purchaser pursuant to this Agreement. Purchaser agrees that it shall take all steps necessary to ensure that such election is included in the income tax return for each Acquired Company for the taxation year ending immediately before Closing.

(h) **Cooperation**. Purchaser and Agent (for and on behalf of Sellers) shall cooperate, to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns, and any claim, action, suit, audit or similar proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are reasonably relevant to any such Tax Return filing and/or such claim, action, suit, audit or similar proceeding with respect to Taxes and making employees available on a mutually convenient basis to provide additional information and explanation with respect to such records and information. Without limiting the generality of the foregoing, Purchaser shall or shall cause the Acquired Companies to provide within a reasonable period following such request (but in no case more than (30) days from the date of such request) any information available to Purchaser or any Acquired Company that is requested by Agent (for and on behalf of Sellers) to permit Sellers or any beneficial owners of Sellers to perform any necessary Tax calculations/determinations and make any required Tax filings.

8.4 Tail Insurance.

For a period of six years from and after the Closing Date, Purchaser shall, at its cost, cause to be maintained (either directly or via run off insurance or insurance provided by an alternate provider) the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Acquired Companies with respect to claims arising from facts or events that occurred on or before the Closing Date.

8.5 Non-solicitation

(a) In consideration of the benefits of this Agreement to SPC and in order to induce Purchaser to enter into this Agreement, SPC hereby covenants and agrees with Purchaser that SPC shall not directly or indirectly to, for a period of 18 months from the Closing Date, offer employment to, or solicit or have contact with, for the purposes of soliciting the employment of, any Person who is an employee of an Acquired Company at the time any contact is made with such Person for the purposes of such solicitation (each such Person, being referred to herein as a "**Restricted Person**").

(b) Notwithstanding the foregoing, the restrictions set forth in this Section 8.5 will not prohibit SPC from, directly or indirectly: (i) engaging in any general advertising or general solicitation (including by way of executive search firm) not targeted to Restricted Persons and hiring any Restricted Person that responds thereto, (ii) participating in any third-party hiring fair or similar event open to the public, or (iii) soliciting or hiring any Restricted Person whose employment with the Corporation has been terminated prior to the commencement of any such solicitations or employment discussions between SPC and such Restricted Person.

8.6 Release

In consideration of the mutual benefits of this Agreement to the Parties and in order to induce the Parties to enter into this Agreement, effective upon the Closing, each of the Sellers and Purchaser, on behalf of itself and its Affiliates (other than, in the case of the Sellers, the Acquired Companies), successors, assigns, spouse and next of kin (collectively, the "**Releasing Parties**"), hereby irrevocably waives, releases and discharges Purchaser, in the case of Sellers and their Releasing Parties, and Sellers, in the case of Purchaser and its Releasing Parties, and each of their respective predecessors, successors, Affiliates and lenders (including, in the case of Sellers and their Releasing Parties, the Acquired Companies) (collectively, the "**Released Parties**"), from any and all liabilities, disputes, claims, losses, actions, causes of actions and obligations of any kind or nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising under any agreement or understanding or otherwise at Law or in equity, that such Releasing Party has, or may have at the Closing or at any time thereafter, for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the Closing, and each Releasing Party agrees that he, she or it shall not seek to recover any amounts in connection therewith or thereunder from Purchaser and its applicable Released Parties, in the case of Sellers and their Releasing Parties, and Sellers and their applicable Released Parties, in the case of Purchaser and its Releasing Parties; provided, however, that the waiver, release and discharge contained in this Section 8.6 shall not apply to (i) the Parties' rights under the terms of this Agreement or any certificate or instrument delivered in connection herewith or any transaction contemplated hereby, (ii) any claims that are unrelated in any way to the Acquired Companies, and (iii) in the case of actual and intentional fraud.

ARTICLE 9

INDEMNIFICATION

9.1 Survival and Limitation of Representations and Warranties.

Without limiting Purchaser's recourse in the case of actual and intentional fraud, the representations and warranties contained in this Agreement, the Purchaser's Closing Certificate, and Sellers' Closing Certificate shall not survive Closing, other than pertaining to: (i) Individual and Corporation Fundamental Representations and Corporation Fundamental Representations, which survive the Closing and shall remain in full force and effect until the sixth anniversary of the Closing Date, and (ii) Section 3.2(ee) (Tax Matters), which shall survive the Closing and shall remain in full force and effect until 60 days following the expiration of the applicable statute of limitations and any extensions thereof granted prior to the Closing or with the prior written consent of the Agent (not to be unreasonably withheld, conditioned or delayed). The covenants and agreements of Sellers and Purchaser contained in this Agreement that are required to be performed or fulfilled (a) at or prior to the Closing shall terminate at, and not survive, the Closing and (b) after the Closing shall continue in full force and effect in accordance with their respective terms. Notwithstanding anything to the contrary contained in this Section 9.1, nothing herein shall limit in any way any Party's rights and remedies in the case of actual and intentional fraud with respect to any representation or warranty expressly set forth herein.

9.2 Indemnification in favour of Purchaser by Sellers.

(a) Subject to the limitations set out in Sections 9.4 and 9.5, each Seller shall, severally and not jointly or jointly and severally, indemnify and save Purchaser harmless of and from any Damages suffered by, imposed upon or asserted against Purchaser as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

(i) any failure of such Seller to perform or fulfil any of its covenants under this Agreement;

(ii) any breach or inaccuracy of any Individual Fundamental Representation given by such Seller; and

(iii) any breach or inaccuracy of any representation or warranty given by such Seller contained in this Agreement involving such Seller's actual and intentional fraud.

(b) Subject to the limitations set out in Sections 9.4 and 9.5, each Seller shall, severally and not jointly or jointly and severally with each other Seller, indemnify and save Purchaser harmless of and from any Damages suffered by, imposed upon or asserted against Purchaser as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

(i) any failure of the any Acquired Company to perform or fulfil prior to Closing any of its covenants under this Agreement;

(ii) any breach or inaccuracy of any Corporation Fundamental Representation;

(iii) any breach or inaccuracy of any representation or warranty contained in this Agreement involving any Acquired Company's actual and intentional fraud;

(iv) any unpaid Indebtedness or unpaid Transaction Expenses of any Acquired Company;

(v) any Pre-Closing Taxes;

(vi) the Class Action Suit, provided and only to the extent that Purchaser and the Acquired Company comply in all respects with the terms and conditions of the Settlement;

(vii) any legal or administrative action or claim pursuant to or under any Environmental Law commenced by any third party, including any Governmental Entity, to or against any Acquired Company in connection with the presence of Hazardous Materials in the soil and/or groundwater as a result of the use of the oil/water separator in the garage/truck bay at the Leased Property located at 4455 North Service Road, Burlington, Ontario; and

(viii) the removal, replacement and/or sealing of the oil/water separator in the garage/truck bay at the Leased Property located at 4455 North Service Road, Burlington, Ontario; and any investigation and remediation of the presence of Hazardous Materials in the soil and/or groundwater above the applicable standards (as set out in of the Ontario Ministry of Environment, Conservation and Parks publication "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act" April 15, 2011) as a result of the use of that oil/water separator.

9.3 Indemnification in favour of Sellers by Purchaser.

Subject to Section 9.4, Purchaser shall indemnify and save Sellers harmless of and from any Damages suffered by, imposed upon or asserted against Sellers as a result of, in respect of, connected with, or arising out of, under or pursuant to:

(a) any failure of Purchaser to perform or fulfil any of its covenants under this Agreement; and

(b) any breach or inaccuracy of any representation or warranty given by Purchaser contained in this Agreement involving Purchaser's actual and intentional fraud.

9.4 Limitations.

(a) Subject to Section 9.1, the obligations of indemnification set out in:

(i) Sections 9.2(a)(i) through (iii), inclusive, 9.2(b)(i) through (iv), inclusive, 9.2(b)(vi) and 9.3 shall survive the Closing until the sixth anniversary of the Closing Date;

(ii) Section 9.2(b)(v) shall survive the Closing until 60 days following the expiration of the applicable statute of limitations and any extensions thereof granted prior to the Closing or with the prior written consent of the Agent (not to be unreasonably withheld, conditioned or delayed);

(iii) Section 9.2(b)(vii) shall survive the Closing until the third anniversary of the Closing Date; and

(iv) Section 9.2(b)(viii) shall survive the Closing until the first anniversary of the Closing Date.

(b) Following Closing, a Party has no obligation or liability for indemnification or otherwise with respect to any breach or inaccuracy of any representation or warranty in this Agreement, the Purchaser's Closing Certificate, or the Sellers' Closing Certificate, or any failure to perform or fulfil any covenants or obligations, if the Party making the claim waived such breach on or prior to Closing.

9.5 Limitation on Damages.

The aggregate liability of Sellers for indemnification pursuant to this Agreement shall be limited as follows:

(a) The covenants and agreements of each Seller and the obligations of each Seller to indemnify Purchaser for any breaches of such covenants, agreements, representations and warranties in Section 9.2(a) are given by such Seller with respect to itself only. Accordingly, each Seller will be solely liable for any failure to perform or fulfil any of its own covenants or any breach or inaccuracy of its own agreements, representations and warranties in Section 9.2(a) with respect to itself only, but not for any failure to perform or fulfil or any breach or inaccuracy of Section 9.2(a) by any other Seller;

(b) The covenants and agreements of each Seller and the obligations of each Seller to indemnify Purchaser for any breaches of such covenants, agreements, representations and warranties in Sections 9.2(b) are given severally by each Seller with the other Sellers in accordance with the terms of this Agreement. Accordingly, each Seller in breach of such covenants, agreements, representations and warranties in Section 9.2(b) is severally liable for the amount of Damages for any such breach only up to such Seller's Allocable Portion of such Damages, to the extent, and subject to the additional limitations, provided in this Article 9.

(c) Purchaser shall take all reasonable steps to mitigate its Damages upon and after becoming aware of any event which would reasonably be expected to give rise to any Damages, including if a claim may be reduced by any recovery under or pursuant to any insurance coverage, including pursuant to the Representation and Warranty Policy, or through the claiming of Canadian foreign tax credits, to the extent permitted by applicable Law, for any non-Canadian income taxes reassessed for a Pre-Closing Tax Period or Straddle Period. Notwithstanding anything herein to the contrary, any indemnification obligation of Sellers for Damages pursuant to Section 9.2 shall be satisfied (A) in the case of a claim pursuant to 9.2(b)(vii), first by Purchaser making a claim for such Damages against the landlord pursuant to the Leased Property located at 4455 North Service Road, Burlington, Ontario, (B) in the case of any claim other than pursuant to 9.2(b)(vii), first, or in the event Purchaser has exhausted its recovery pursuant to Section 9.5(c)(A) in the case of a claim pursuant to 9.2(b)(vii), second, by Purchaser making a claim for such Damages to the insurer(s) under the Representation and Warranty Policy and against the Escrow Indemnity Amount up to the portion of the retention/deductible amount then remaining at

the relevant time under the Representation and Warranty Policy, and (C) finally, if the Representation and Warranty Policy has been exhausted or coverage thereunder is unavailable (other than as a result of the fault or failure to act of Purchaser or its Affiliates), then Purchaser shall be entitled to make a claim for such Damages against the Escrow Indemnity Amount. Subject to the terms and conditions contained herein (including this Section 9.5) and only in the event that (x) the Representation and Warranty Policy has been exhausted or coverage thereunder is unavailable (other than as a result of the fault or failure to act of Purchaser or its Affiliates), and (y) there are no funds remaining in the Escrow Indemnity Amount, Purchaser may at such point seek to recover Damages indemnifiable pursuant to Section 9.2, from the applicable Sellers, in accordance with and subject to the limitations set forth in this Article 9.

(d) The maximum liability of each Seller for Damages based on claims pursuant to Sections 9.2(a) and 9.2(b) (other than Sections 9.2(b)(vii) and 9.2(b)(viii)) shall be limited to the lesser of (i) such Seller's Allocable Portion of such Damages and (ii) such Seller's Allocable Portion of the Purchase Price, in each case, less any Damages paid by such Seller to Purchaser pursuant hereto. The maximum aggregate liability of Sellers for Damages based on claims pursuant to (A) Section 9.2(b)(vii) shall be limited to $500,000, and (B) Section 9.2(b)(viii) shall be limited to $100,000.

(e) Notwithstanding anything to the contrary contained in this Agreement, Purchaser shall be entitled to make a claim for Damages against the Escrow Indemnity Amount without regard to several liability of the Sellers, if otherwise applicable.

9.6 Calculation of Damages

For purposes of this Article 9, any breach or inaccuracy of any representation or warranty or Damages calculated in respect of such breach or inaccuracy of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty (the "**Materiality Scrape**"), provided, however, that the Materiality Scrape will not apply to the representations and warranties set out in Section 3.2(u) (Financial Statements and Financial Controls) to the extent materiality qualifiers are contained in ASPE, the definition of Material Contracts in Section 3.2(y) (Contracts) or Section 3.2(w) (Material Adverse Change), nor will the Materiality Scrape affect the materiality qualifications or limitations applicable to the conditions set out in Sections 6.2(a) and 6.4(a). The amount of the Damages suffered by Purchaser shall be reduced to the extent of any Tax benefit available to Purchaser arising in connection with the accrual, incurrence or payment of any such Damages (including the net present value of any Tax benefit arising in subsequent taxable years). The amount of the Damages suffered by Purchaser shall include the net present value of any net Tax cost incurred by the Purchaser arising from the receipt of indemnity payments under this Agreement.

9.7 Notification.

Promptly upon obtaining knowledge thereof, the Party seeking indemnification pursuant to this Agreement (the " **Indemnified Party**") shall notify the other Party in writing (the "**Indemnifying Party**") of any cause which the Indemnified Party has determined has given rise to indemnification under this Article 9, provided that no failure to provide such notice promptly, unless the notification occurs after the expiration of the specified period set out in Section 9.1, shall limit the rights of the Indemnified Party or Parties to indemnification hereunder in respect of any such facts, circumstances or cause, except to the

extent that the Indemnifying Party has actually been prejudiced thereby. No claim may be asserted nor may any action be commenced against an Indemnifying Party for breach of any representation, warranty or covenant, contained herein, unless such written notice of such claim or action is received by the Indemnifying Party describing in reasonable detail the facts and circumstances with respect to the subject matter of such claim or action on or prior to the date on which the representation, warranty or covenant on which such claim or action is based ceases to survive as set forth in this Agreement, irrespective of whether the subject matter of such claim or action shall have occurred before or after such date.

9.8 Defense of Third Party Claim.

(a) If any legal proceeding shall be instituted or any claim or demand shall be asserted by a third party against the Indemnified Party (each a "**Third Party Claim**"), then the Indemnifying Party shall have the right, at its expense, after receipt of the Indemnified Party's notice under Section 9.7 and upon giving notice to the Indemnified Party within 20 Business Days of such receipt, to defend the Third Party Claim at its own cost and expense with counsel of its own selection, provided that:

(i) the Indemnifying Party irrevocably and unconditionally acknowledges in writing complete responsibility for, and agrees to indemnify the Indemnified Party in respect of all Damages relating to the Third Party Claim, subject to the limitations set forth in this Article 9, as applicable;

(ii) the Indemnifying Party furnishes evidence to the Indemnified Party whenever required by the Indemnified Party, which is satisfactory to the Indemnified Party, acting reasonably, of the Indemnifying Party's financial ability to indemnify the Indemnified Party;

(iii) the Indemnified Party shall at all times have the right to fully participate in the defense at its own expense;

provided that, notwithstanding the foregoing, the Indemnifying Party shall not be permitted to control and defend the Third Party Claim if such Third Party Claim:

(iv) seeks injunctive or other equitable relief against the Indemnified Party; or

(v) involves criminal liability.

(b) If the Indemnifying Party fails within 20 Business Days from receipt of the notice of a Third Party Claim to give notice of its intention to defend the Third Party Claim in accordance with Section 9.8, then the Indemnifying Party shall be deemed to have waived its right to defend the Third Party Claim and the Indemnified Party shall have the right (but not the obligation) to undertake or to cause the Indemnifying Party to undertake the defence of the Third Party Claim and compromise and settle the Third Party Claim on behalf, for the account and at the risk and expense of the Indemnifying Party, provided that such Third Party Claim may not be settled or compromised by the Indemnified Party without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld, conditioned or delayed.

(c) If, having elected to assume control of the defense of a Third Party Claim as contemplated by Section 9.8(a), the Indemnifying Party thereafter fails to conduct the

negotiation, settlement or defense of such Third Party Claim with reasonable diligence, then the Indemnified Party shall be entitled to assume such control and the Indemnified Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.

(d) Where the defence of a Third Party Claim is being undertaken and controlled by the Indemnifying Party, the Indemnified Party will use its commercially reasonable efforts to make available to the Indemnifying Party those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating and defending any such claims.

(e) With respect to any Third Party Claim, the Indemnified Party shall make available to the Indemnifying Party or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party, reasonably required by the Indemnifying Party for its use in defending any such claim and shall otherwise cooperate on a timely basis with the Indemnifying Party in the defence of such claim.

9.9 Payments.

(a) Any amount due to an Indemnified Party from an Indemnifying Party pursuant to this Article 9 shall be paid by the Indemnifying Party to the Indemnified Party not later than five days following the final determination of an indemnification claim by way of wire transfer of immediately available funds to an account designated by the Indemnified Party.

(b) Any amounts payable by or to Principal Sellers under this Article 9 shall be deemed to be adjustments to the Purchase Price and any amounts payable by or to Optionholders under this Article 9 shall be deemed to be adjustments to the "in-the-money" value of the Options, as applicable

9.10 Remedies.

Except pursuant to Section 10.3 and except for the rights of the Purchaser under the Representation and Warranty Policy, the Parties agree that (a) following the Closing, the indemnification provisions of Article 9 shall be the sole and exclusive remedies of the Parties, and (b) notwithstanding anything herein to the contrary, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of any Party, after the Closing, to rescind this Agreement or any of the transactions contemplated hereby.

ARTICLE 10

MISCELLANEOUS

10.1 Conflicts and Privilege.

It is acknowledged by each of the Parties that Sellers have retained Stikeman Elliott LLP (" **SE**") to act as its counsel in connection with the transactions contemplated by this Agreement. Purchaser agrees that, in the event that a dispute arises after Closing between the Parties, SE may represent Sellers in such dispute even though the interests of Sellers may be directly adverse to Purchaser or Corporation, and even though SE may have represented Corporation in a matter substantially related to such dispute, or may be

handling ongoing matters for Purchaser or Corporation. Purchaser further agrees that, as to all communications among SE, Corporation, and Sellers that relate in any way to the transactions contemplated by this Agreement, the attorney or solicitor-client privilege and the expectation of client confidence belongs to Sellers and may be controlled by Sellers and will not pass to or be claimed by Purchaser or Corporation. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser or Corporation and a third party other than a Party after the Closing, Corporation may assert the attorney or solicitor-client privilege on behalf of Sellers to prevent disclosure of confidential communications by SE to such third party; provided, however, that Corporation may not waive such privilege without the prior written consent of Sellers.

10.2 Notices.

Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it by electronic mail or other similar form of recorded communication addressed:

a) to Purchaser at:

2727939 Ontario Inc. c/o Hostess Brands, LLC
P.O. Box 419593
Kansas City, MO 64141

Attention: Tom Peterson
E-mail: tpeterson@hostessbrands.com

with a copy to:

Hostess Brands, LLC
P.O. Box 419593
Kansas City, MO 64141

Attention: Jolyn Sebree
E-mail: jsebree@hostessbrands.com

b) if to Sellers, to Agent:

c/o Swander Pace Capital
550 Hills Drive, Suite 220
Bedminster, New Jersey 07921

Attention: Tyler Matlock
E-mail: tyler@spcap.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
41st Floor
Montreal, Québec
H3B 3V2

Attention: Peter Castiel
Telephone: (514) 397-3272
E-mail: pcastiel@stikeman.com

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, or (ii) if transmitted by electronic mail or similar means of recorded communication on the Business Day following the date of transmission. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

10.3 Specific Performance.

Notwithstanding anything in this Agreement to the contrary, each Party agrees that the other would suffer irreparable damage in the event that any of the provisions of this Agreement are not performed by such Party in accordance with the terms hereof or are otherwise breached by it, and that monetary damages, even if available, may not be an adequate remedy, and that either Party shall be entitled to an injunction or injunctions or declaration or declarations in any court of competent jurisdiction to compel specific performance by the other Party of its obligations under this Agreement and to prevent breaches or threatened breaches of the provisions of this Agreement by the other Party, in addition to any other remedy available to the Parties at law or equity. No Party shall be required to prove actual harm or provide or post any bond or other security in connection with any such injunction, specific performance or other equitable relief, including on the basis that the other Party has an adequate remedy at law or that any injunction or injunctions, award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law or in equity.

10.4 Time of the Essence.

Time shall be of the essence of this Agreement.

10.5 Announcements.

Until such time as the transactions contemplated hereby become publicly disclosed, and except for reference to such transactions in marketing materials prepared by a Seller and consented to by Purchaser, no Party nor their respective representatives will make any public disclosure concerning the matters set forth in this Agreement or the transactions contemplated hereby without the prior consent of Agent, in the case of disclosure by Purchaser, or Purchaser and Agent, in the case of disclosure by any Seller, except if required for legal, securities Laws or other regulatory reasons.

10.6 Third Party Beneficiaries; Non-Recourse.

Other than as set forth in the immediately succeeding sentence, the Parties intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties to this Agreement and no Person, other than the Parties to this Agreement shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. No entity that has committed to provide or arrange or otherwise entered into agreements in connection with any financings by the Purchaser or its Affiliates in connection with the transactions contemplated hereby (together with their respective Affiliates, and their and their respective Affiliates' officers, directors, employees, agents and representatives and their respective successors and assigns, a "**Financing Source**")

will have any liability to the Sellers or their respective Affiliates relating to or arising out of this Agreement, any such financing or otherwise, whether at law, or equity, in contract, in tort or otherwise, and neither the Sellers nor any of their respective Affiliates will have any rights or claims against any of Financing Source and in no event shall the Sellers or any of their respective Affiliates be entitled to seek the remedy of specific performance of this Agreement against any Financing Source (such Financing Sources being intended third party beneficiaries of this sentence).

10.7 Expenses.

Except as otherwise set forth herein, each Seller shall pay for its own fees and expenses incident to the negotiation, preparation and execution of this Agreement and the agreements contemplated hereby, including legal and accounting fees and expenses in connection with the transactions contemplated by this Agreement. Except as otherwise set forth herein, Purchaser shall pay for its own fees and expenses incident to the negotiation, preparation and execution of this Agreement and the agreements contemplated hereby, including legal and accounting fees and expenses.

10.8 Appointment of Agent.

(a) In order to administer efficiently the determination of certain matters under this Agreement, each Seller grants to SPC (the " **Agent**") its respective mandate to act as each such Seller's agent with respect to all matters under this Agreement, other than as contemplated in this Section 10.8.

(b) Without limiting the generality of the foregoing, Agent has full power and authority to make all decisions and take all actions relating to Sellers' respective rights, obligations and remedies under this Agreement including to receive and make payments, to receive and send notices (including notices of termination), to receive and deliver documents, to exercise, enforce or waive rights or conditions, to give releases and discharges, to seek indemnification on behalf of Sellers and to defend against indemnification claims of Purchaser. All decisions and actions taken by Agent are binding upon all Sellers, and no Seller has the right to object, dissent, protest or otherwise contest the same.

(c) Notwithstanding the foregoing or anything else contained in this Agreement, Agent shall not have the authority to do anything on behalf any Seller (other than itself only) that will or might have the result of increasing the liability of any Seller hereunder or decreasing the Purchase Price payable to any Seller other than in respect of settling adjustments to the Purchase Price contemplated hereby.

(d) Purchaser is entitled to deal only with Agent in respect of all matters arising under this Agreement including to receive and make payments, to receive and send notices (including notices of termination), to receive and deliver documents, to exercise, enforce or waive rights or conditions, to give releases and discharges, to seek indemnification against Sellers or any one of them and to defend against indemnification claims of Sellers.

(e) All references in this Agreement to decisions and actions to be taken by Sellers or any one of them, as the case may be, are deemed taken by Sellers or any one of them, as the case may be, if such decisions or actions are taken by Agent. All references in this Agreement to decisions and actions to be taken by Purchaser and directed to Sellers or

any one of them, as the case may be, are deemed directed to Sellers or any one of them, as the case may be, if such decisions or actions are directed by Purchaser to Agent.

(f) In no event will Purchaser be held responsible or liable for the application or allocation of any monies paid to Agent by Purchaser, and Purchaser will be entitled to rely upon any notice provided to Purchaser by Agent or action taken by Agent acting within the scope of its authority. All monies received by Agent hereunder for the account of Sellers shall be held by Agent in trust for Sellers and shall be paid to Sellers, to each to Seller to the extent entitled thereto hereunder or for the account of whom such monies are held, reasonably promptly upon receipt.

(g) Notwithstanding the foregoing, no payment, notice, receipt or delivery of documents, exercise, enforcement or waiver of rights or conditions, indemnification claim or indemnification or a principal defence will be ineffective by reason only of it having been made or given to or by a Seller, as the case may be, directly if each of Purchaser and such Seller consent by virtue of not objecting to such dealings without the intermediary of Agent.

10.9 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by Purchaser and Sellers, such consent not to be unreasonably withheld.

10.10 Waiver.

Subject to Section 10.8(c), no waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by Agent (for and on behalf of Sellers) or by Purchaser, as the case may be.

No failure on the part of any Party to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

10.11 Non-Merger.

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing and, notwithstanding such Closing and any investigation made by or on behalf of any Party, shall continue in full force and effect.

10.12 Entire Agreement.

This Agreement together with the agreements referred to herein constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth herein and neither Party has relied or is relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

10.13 Successors and Assigns.

This Agreement shall become effective when executed and delivered by the Parties and after that time shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.14 Assignment.

Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either Party without the prior written consent of the other Party, provided that (i) Purchaser may assign its rights and obligations under this Agreement at any time, in whole or in part, without the consent of the other Parties to any Affiliate(s) of Purchaser so long as Purchaser and Purchaser Parent remain liable for the performance of their respective obligations and liabilities hereunder; and (ii) Purchaser may after the Closing assign its rights under this Agreement to any of its financing sources pursuant to the terms of any related debt financing obtained to complete the transactions contemplated this Agreement for the purposes of creating a security interest herein or otherwise assigning this Agreement as collateral in respect of such Purchaser debt financing obtained to complete the transactions contemplated this Agreement.

10.15 Inconsistency.

This Agreement shall override the Exhibits and Schedules annexed hereto to the extent of any inconsistency.

10.16 Severability.

If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

10.17 Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the province of Ontario and the federal Laws of Canada applicable therein. Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

10.18 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts electronically (PDF)) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above mentioned.

PRINCIPAL SELLERS

SPC Partners V, L.P

By: Swander Pace Capital V, L.P
Its: General Partner

By: SPC Management V, LLC
Its: General Partner

Per: /s/ Andrew Richards
Name: Andrew Richards
Title: Manager

SPCVC CO-INVESTMENT INC.
Per: /s/ Tyler Matlock
Name: Tylan Matlock
Title: Vice-President

Pacific Street Fund III, LP
By: Pacific Street BP III, LLC
Its: General Partner

Per: /s/ Joseph E. Dimbello
Name: Joseph E. Dimbello
Title: Partner
PPM America Private Equity Fund V, LP
By: PPM America Capital Partners V, LLC
Its: General Partner

By: /s/ Mark L. Staub
Name: Mark L. Staub
Title: Partner

By: /s/ Scott Rooth
Name: Scott Rooth
Title: Partner

The Manufacturers Life Insurance Company
By: /s/ C. Ferguson
Name: C. Ferguson
Title: Managing Director

Roynat Capital Inc.

By: /s/ Mark Brodkin
Name: Mark Brodkin
Title: Managing Director

Voortman Enterprises Trust
By: /s/ Arie Voortman
Name: Arie (Harry) Voortman
Title: Trustee

By: /s/Garry Postma
Name: Garry Postman
Title: Trustee

By: /s/ Robert Dilworth
Name: Robert Dilworth
Title: Trustee

OPTIONHOLDERS

/s/ Douglas MacFarlane
Name: Douglas MacFarlane

/s/ Diana Fife
Name: Diana Fife

/s/ Kenrick Cross
Name: Kenrick Cross

/s/ David Darch
Name: David Darch

/s/ Joseph Nischback
Name: Joseph Nischback

/s/ Chester Czerny
Name: Chester Czerny

/s/ Diana Praskey
Name: Diana Praskey

/s/ Gerald Dejong
Name: Gerald Dejong

/s/ Stephane Musicka
Name: Stephane Musicka

PURCHASER

2727939 ONTARIO INC.

Per: /s/ Michael J. Cramer

Name: Michael J. Cramer
Title: Vice President

PURCHASER PARENT

HOSTESS BRANDS, LLC

Per: /s/ Thomas A. Peterson

Name: Thomas A. Peterson
Title: Executive Vice President

Exhibits* :	**Description**
A	List of Optionholders
1.1(BB)	Form of the Escrow Agreement
1.1(DDDD)	Working Capital
5.1	Form of the Non-Competition and Non-Solicitation Agreement
2.11	List of provinces and territoties of Canada and the stares of the United states in which the Business is conducted as of the closing date

*Schedules and exhibits omitted pursuant to Regulation S-K Item 601(b)(2). The Company agrees to furnish supplementally a copy of any omitted schedules or exhibits to the SEC upon request.

Exhibit 4.4

DESCRIPTION OF CAPITAL STOCK

The following summary of the material terms of the securities of Hostess Brands, Inc. (the "Company" or "we") is not intended to be a complete summary of the rights and preferences of such securities. We urge you to read our certificate of incorporation and the Warrant Agreement (as defined below) in their entirety for a complete description of the rights and preferences of our securities. This summary is qualified in its entirety by such certificate of incorporation and Warrant Agreement, each of which is filed as an exhibit to our Annual Report on Form 10-K to which this summary is filed as an exhibit.

The Company (f/k/a Gores Holdings, Inc.) was originally incorporated in Delaware on June 1, 2015 as a special purpose acquisition company, or a SPAC, formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or other similar business combination with one or more target businesses. On August 19, 2015, the Company consummated its initial public offering (the "IPO"), following which its shares began trading on the Nasdaq Capital Market ("NASDAQ"). On November 4, 2016 (the "Closing Date"), in a transaction referred to as the "Business Combination," Gores Holdings, Inc. acquired a controlling interest in Hostess Holdings, L.P. ("Hostess Holdings"), an entity owned indirectly by C. Dean Metropoulos, and certain equity funds managed by affiliates of Apollo Global Management, LLC ("Apollo"). Hostess Holdings had acquired the Hostess brand and certain strategic assets out of the bankruptcy liquidation proceedings of its prior owner, free and clear of all past liabilities, in April 2013, and relaunched the Hostess brand later that year.

Authorized and Outstanding Stock

Our certificate of incorporation authorizes the issuance of 261,000,000 shares of capital stock, consisting of (i) 260,000,000 shares of common stock, including 200,000,000 shares of Class A common stock, $0.0001 par value per share ("Class A Common Stock"), 50,000,000 shares of Class B Common Stock, $0.0001 par value per share ("Class B Common Stock"), and 10,000,000 shares of Class F Common Stock, $0.001 par value per share ("Class F Common Stock" and, together with the Class A Common Stock and Class B Common Stock, "Common Stock") and (ii) 1,000,000 shares of preferred stock, par value $0.0001 per share. The outstanding shares of our Common Stock are duly authorized, validly issued, fully paid and non-assessable. As of February 21, 2020, there were 130,626,895 shares of Common Stock outstanding, held of record by approximately fifteen holders of Common Stock, including 123,186,308 shares of Class A Common Stock and 7,440,587 shares of Class B Common Stock, no shares of Class F Common Stock and no shares of preferred stock outstanding and 56,499,440 warrants outstanding held of record by approximately five holders of warrants, including 48,452,804 Public Warrants (as defined below) and 8,046,636 Private Warrants (as defined below). Such numbers do not include DTC participants or beneficial owners holding shares through nominee names.

The Class B Common Stock may only be issued to and held by CDM Hostess Class C, LLC, a Delaware series limited liability company controlled by our Chairman, C. Dean Metropoulos ("CDM Hostess"), Hostess CDM Co-Invest, LLC, a Delaware series limited liability company controlled by Mr. Metropoulos ("Hostess CDM Co-Invest"), CDM HB Holdings, LLC, a Delaware limited liability company controlled by Mr. Metropoulos ("CDM HB Holdings" and, together with CDM Hostess, Hostess CDM Co-Invest and Mr. Metropoulos, the "CDM Holders") and their respective permitted transferees and any other transferee of Class B units ("Class B Units") of Hostess Holdings (to the extent permitted by the limited partnership agreement of Hostess Holdings then in effect) (collectively, the "Permitted Holders"). At any time Hostess Holdings issues a Class B Unit to a Permitted Holder, the Company will issue a share of Class B Common Stock to such Permitted Holder. Upon the conversion or cancellation of any Class B Units pursuant to the Exchange Agreement, dated as of the Closing Date, by the Company, Hostess Holdings, the CDM Holders and such other holders of Class B Units from time to time party thereto (the "Exchange Agreement"), the corresponding share of Class B Common Stock automatically will be cancelled for no consideration. Shares of Class B Common Stock may only be transferred to a person other than the Company or Hostess Holdings if the transferee is a Permitted Holder and an equal number of Class B Units are simultaneously transferred to such transferee.

Voting Power

Except as otherwise required by law or as otherwise provided in any certificate of designation for any series of preferred stock, the holders of Common Stock possess all voting power for the election of our directors and all other matters requiring stockholder action and will at all times vote together as one class on all matters submitted to a vote of the stockholders of the Company. Holders of Common Stock are entitled to one vote per share on matters to be voted on by stockholders.

Dividends

Holders of Class A Common Stock will be entitled to receive such dividends and other distributions, if any, as may be declared from time to time by our board of directors in its discretion out of funds legally available therefor and shall share equally on a per share basis in such dividends and distributions. Holders of Class B Common Stock are not entitled to share in any such dividends or other distributions.

Liquidation, Dissolution and Winding Up

In the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding-up of the post-combination company, the holders of the Class A Common Stock will be entitled to receive an equal amount per share of all of our assets of whatever kind available for distribution to stockholders, after the rights of the holders of the preferred stock, if any, have been satisfied. Holders of Class B Stock are not entitled to receive any portion of any such assets in respect of their shares of Class B Stock.

Preemptive or Other Rights

Our stockholders have no preemptive or other subscription rights and there are no sinking fund or redemption provisions applicable to our Common Stock.

Election of Directors

Our Board is currently divided into three classes, Class I, Class II and Class III, with only one class of directors being elected in each year and each class serving a three-year term. Class I directors will serve until the 2020 annual meeting, Class II directors will serve until the 2021 annual meeting and Class III directors will serve until the 2022 annual meeting. There is no cumulative voting with respect to the election of directors, with the result that directions will be elected by a plurality of the votes cast at an annual meeting of stockholders by holders of our common stock.

Preferred Stock

Our certificate of incorporation provides that shares of preferred stock may be issued from time to time in one or more series. Our board of directors is authorized to fix the voting rights, if any, designations, powers, preferences, the relative, participating, optional or other special rights and any qualifications, limitations and restrictions thereof, applicable to the shares of each series. Our board of directors is able, without stockholder approval, to issue preferred stock with voting and other rights that could adversely affect the voting power and other rights of the holders of the Common Stock and could have anti-takeover effects. The ability of our board of directors to issue preferred stock without stockholder approval could have the effect of delaying, deferring or preventing a change of control of us or the removal of existing management. We have no preferred stock outstanding at the date hereof. Although we do not currently intend to issue any shares of preferred stock, we cannot assure you that we will not do so in the future.

Warrants

Public Warrants

The warrants included in the units issued in the IPO are referred to as “Public Warrants”. Each Public Warrant entitles the registered holder to purchase one-half of one share of our Class A Common Stock at a price of $5.75 per half share, subject to adjustment as discussed below. For example, if a warrant holder holds two Public Warrants,

such Public Warrants are exercisable for one share of the company's Class A Common Stock. Public Warrants must be exercised for a whole share. The Public Warrants will expire November 4, 2021 (i.e., five years after the completion of the Business Combination), at 5:00 p.m., New York City time, or earlier upon redemption or liquidation.

We are not obligated to deliver any shares of Class A Common Stock pursuant to the exercise of a Public Warrant and will have no obligation to settle such warrant exercise unless a registration statement under the Securities Act of 1933, as amended (the "Securities Act") with respect to the shares of Class A Common Stock underlying the warrants is then effective and a prospectus relating thereto is current, subject to our satisfying our obligations described below with respect to registration. No Public Warrant will be exercisable for cash or on a cashless basis, and we will not be obligated to issue any shares to holders seeking to exercise their Public Warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising holder, or an exemption is available. In the event that the conditions in the two immediately preceding sentences are not satisfied with respect to a Public Warrant, the holder of such Public Warrant will not be entitled to exercise such Public Warrant and such Public Warrant may have no value and expire worthless. In the event that a registration statement is not effective for the exercised warrants, the purchaser of a unit containing such Public Warrant will have paid the full purchase price for the unit solely for the share of Class A Common Stock underlying such unit.

The issuance of the shares of Class A Common Stock issuable upon exercise of the Public Warrants has been registered on a registration statement under the Securities Act. We will use our best efforts to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Public Warrants in accordance with the provisions of the warrant agreement. Notwithstanding the above, if our Class A Common Stock is at the time of any exercise of a Public Warrant not listed on a national securities exchange such that it satisfies the definition of a "covered security" under Section 18(b)(1) of the Securities Act, we may, at our option, require holders of Public Warrants who exercise their Public Warrants to do so a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act and, in the event we so elect, we will not be required to file or maintain in effect a registration statement, but will use our best efforts to qualify the shares under applicable blue sky laws to the extent an exemption is not available.

Once the Public Warrants become exercisable, we may call the Public Warrants for redemption:

- in whole and not in part;
- at a price of $0.01 per warrant;
- upon not less than 30 days' prior written notice of redemption to each warrant holder; and
- if, and only if, the last reported sale price of the Class A Common Stock equals or exceeds $24.00 per share for any 20 trading days within a 30 trading day period ending on the third trading day prior to the date we send the notice of redemption to the warrant holder.

If and when the Public Warrants become redeemable by us, we may exercise our redemption right even if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws.

We have established the last of the redemption criterion discussed above to prevent a redemption call unless there is at the time of the call a significant premium to the Public Warrant exercise price. If the foregoing conditions are satisfied and we issue a notice of redemption of the Public Warrants, each Public Warrant holder will be entitled to exercise his, her or its Public Warrant prior to the scheduled redemption date. However, the price of the Class A Common Stock may fall below the $24.00 redemption trigger price as well as the $11.50 Public Warrant exercise price (for whole shares) after the redemption notice is issued.

If we call the Public Warrants for redemption as described above, our management will have the option to require any holder that wishes to exercise his, her or its Public Warrant to do so on a "cashless basis." In determining whether to require all holders to exercise their Public Warrants on a "cashless basis," our management will consider, among other factors, our cash position, the number of Public Warrants that are outstanding and the dilutive effect on our stockholders of issuing the maximum number of shares of Class A Stock issuable upon the exercise of our Public Warrant. If we take advantage of this option, all holders of Public Warrants would pay the exercise price by

surrendering their Public Warrants for that number of shares of Class A Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Common Stock underlying the Public Warrant, multiplied by the difference between the exercise price of the Public Warrant and the “fair market value” (defined below) by (y) the fair market value. The “fair market value” shall mean the average reported last sale price of the Class A Common Stock for the ten trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of Public Warrants. If our management takes advantage of this option, the notice of redemption will contain the information necessary to calculate the number of shares of Class A Common Stock to be received upon exercise of the Public Warrants, including the “fair market value” in such case. Requiring a cashless exercise in this manner will reduce the number of shares to be issued and thereby lessen the dilutive effect of a warrant redemption. We believe this feature is an attractive option to us if we do not need the cash from the exercise of the Public Warrants. If we call our Public Warrants for redemption and we do not take advantage of this option, holders of Private Warrants would still be entitled to exercise their Private Warrants for cash or on a cashless basis using the same formula described above that other Public Warrant holders would have been required to use had all Public Warrant holders been required to exercise their Public Warrant on a cashless basis, as described in more detail below.

A holder of a Public Warrant may notify us in writing in the event it elects to be subject to a requirement that such holder will not have the right to exercise such Public Warrant, to the extent that after giving effect to such exercise, such person (together with such person’s affiliates), to the warrant agent’s actual knowledge, would beneficially own in excess of 9.8% (or such other amount as a holder may specify) of the shares of Class A Common Stock outstanding immediately after giving effect to such exercise.

If the number of outstanding shares of Class A Common Stock is increased by a stock dividend payable in shares of Class A Common Stock, or by a split-up of shares of Class A Common Stock or other similar event, then, on the effective date of such stock dividend, split-up or similar event, the number of shares of Class A Common Stock issuable on exercise of each Public Warrant will be increased in proportion to such increase in the outstanding shares of Class A Common Stock. A rights offering to holders of Class A Common Stock entitling holders to purchase shares of Class A Common Stock at a price less than the fair market value will be deemed a stock dividend of a number of shares of Class A Common Stock equal to the product of (i) the number of shares of Class A Common Stock actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for Class A Common Stock) multiplied by (ii) one minus the quotient of (x) the price per share of Class A Common Stock paid in such rights offering divided by (y) the fair market value. For these purposes (i) if the rights offering is for securities convertible into or exercisable for Class A Common Stock, in determining the price payable for Class A Common Stock, there will be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (ii) fair market value means the volume weighted average price of Class A Common Stock as reported during the ten trading day period ending on the trading day prior to the first date on which the shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights.

In addition, if we, at any time while the Public Warrants are outstanding and unexpired, pay a dividend or make a distribution in cash, securities or other assets to the holders of Class A Common Stock on account of such shares of Class A Common Stock (or other shares of our capital stock into which the Public Warrants are convertible), other than (a) as described above, (b) certain ordinary cash dividends, or (c) certain other limited exceptions, then the Public Warrant exercise price will be decreased, effective immediately after the effective date of such event, by the amount of cash and/or the fair market value of any securities or other assets paid on each share of Class A Common Stock in respect of such event.

If the number of outstanding shares of our Class A Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Class A Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Class A Common Stock issuable on exercise of each Public Warrant will be decreased in proportion to such decrease in outstanding shares of Class A Common Stock.

Whenever the number of shares of Class A Common Stock purchasable upon the exercise of the Public Warrants is adjusted, as described above, the Public Warrant exercise price will be adjusted by multiplying the Public Warrant exercise price immediately prior to such adjustment by a fraction (x) the numerator of which will be the number of shares of Class A Common Stock purchasable upon the exercise of the Public Warrants immediately prior to such adjustment, and (y) the denominator of which will be the number of shares of Class A Common Stock so purchasable immediately thereafter.

In case of any reclassification or reorganization of the outstanding shares of Class A Common Stock (other than those described above or that solely affects the par value of such shares of Class A Common Stock), or in the case of any merger or consolidation of us with or into another corporation (other than a consolidation or merger in which we are the continuing corporation and that does not result in any reclassification or reorganization of our outstanding shares of Class A Common Stock), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of us as an entirety or substantially as an entirety in connection with which we are dissolved, the holders of the Public Warrants will thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Public Warrants and in lieu of the shares of our Class A Common Stock immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the Public Warrants would have received if such holder had exercised its Public Warrants immediately prior to such event. However, if such holders were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets for which each Public Warrant will become exercisable will be deemed to be the weighted average of the kind and amount received per share by such holders in such consolidation or merger that affirmatively make such election, and if a tender, exchange or redemption offer has been made to and accepted by such holders under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than fifty percent (50%) of the outstanding shares of Class A Common Stock, the holder of a Public Warrant will be entitled to receive the highest amount of cash, securities or other property to which such holder would actually have been entitled as a stockholder if such Public Warrant holder had exercised the Public Warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the Class A Common Stock held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustments (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in the Warrant Agreement, dated as of August 13, 2015, by and between the Company and Continental Stock Transfer & Trust Company, as warrant agent (the “Warrant Agreement”). Additionally, if less than seventy percent (70%) of the consideration receivable by the holders of Class A Common Stock in such a transaction is payable in the form of Class A Common Stock in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the registered holder of the Public Warrant properly exercises the Public Warrant within 30 days following public disclosure of such transaction, the Public Warrant exercise price will be reduced as specified in Warrant Agreement based on the per share consideration minus Black-Scholes Warrant Value (as defined in the Warrant Agreement) of the Public Warrant.

The Warrant Agreement provides that the terms of the Public Warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision, but requires the approval by the holders of at least 65% of the then outstanding Public Warrants to make any change that adversely affects the interests of the registered holders of Public Warrants.

The Public Warrants may be exercised upon surrender of the Public Warrant certificate on or prior to the expiration date at the offices of the Public Warrant agent, with the exercise form on the reverse side of the Public Warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price (or on a cashless basis, if applicable), by certified or official bank check payable to us, for the number of Public Warrants being

exercised. The Public Warrant holders do not have the rights or privileges of holders of Class A Common Stock and any voting rights until they exercise their Public Warrants and receive shares of Class A Common Stock. After the issuance of shares of Class A Common Stock upon exercise of the Public Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

Public Warrants may be exercised only for a whole number of shares of Class A Common Stock. No fractional shares will be issued upon exercise of the Public Warrants. If, upon exercise of the Public Warrants, a holder would be entitled to receive a fractional interest in a share, we will, upon exercise, round down to the nearest whole number the number of shares of Class A Common Stock to be issued to the Public Warrant holder.

Private Warrants

Gores Sponsor LLC, a Delaware limited liability company (the "Sponsor") purchased 19,000,000 warrants at a price of $0.50 per warrant for an aggregate purchase price of $9,500,000 in a private placement that occurred prior to the IPO. Such warrants are referred to as the "Private Warrants". The Private Warrants will not be redeemable by us so long as they are held by the Sponsor or its permitted transferees. Otherwise, the Private Warrants have terms and provisions that are identical to those of the Public Warrants. At the closing of the Business Combination, our Sponsor transferred 2,000,000 Private Warrants to Mr. Metropoulos. If the Private Warrants are held by holders other than the Sponsor or its permitted transferees, the Private Warrants will be redeemable by us and exercisable by the holders on the same basis as the Public Warrants.

If holders of the Private Warrants elect to exercise them on a cashless basis, they would pay the exercise price by surrendering his, her or its warrants for that number of shares of Class A Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Common Stock underlying the warrants, multiplied by the difference between the exercise price of the warrants and the "fair market value" (defined below) by (y) the fair market value. The "fair market value" shall mean the average reported last sale price of the Class A Common Stock for the ten trading days ending on the third trading day prior to the date on which the notice of warrant exercise is sent to the warrant agent.

Dividends

We have not paid any cash dividends on our common stock to date. The payment of cash dividends in the future will be dependent upon our revenues and earnings, if any, capital requirements and general financial condition. The payment of any cash dividends is within the discretion of our board of directors. In addition, our board of directors is not currently contemplating and does not anticipate declaring any stock dividends in the foreseeable future. Further, restrictive covenants in our credit facilities limit our ability to declare dividends.

Transfer Agent and Warrant Agent

The transfer agent for our Common Stock and warrant agent for our warrants is Continental Stock Transfer & Trust Company. We have agreed to indemnify Continental Stock Transfer & Trust Company in its roles as transfer agent and warrant agent, its agents and each of its stockholders, directors, officers and employees against all liabilities, including judgments, costs and reasonable counsel fees that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence, willful misconduct or bad faith of the indemnified person or entity.

Certain Anti-Takeover Provisions of Delaware Law, the Company's Certificate of Incorporation and Bylaws

We have "opted out" of Section 203 of the Delaware General Corporation Law, which we refer to as "Section 203," regulating corporate takeovers. Instead, our certificate of incorporation contains a provision that is substantially similar to Section 203, but excludes our Sponsor, Apollo and the CDM Holders, each of their successors, certain affiliates and each of their respective transferees from the definition of "interested stockholder".

Section 203 prevents certain Delaware corporations, under certain circumstances, from engaging in a “business combination” with:

- a stockholder who owns fifteen percent (15%) or more of our outstanding voting stock (otherwise known as an “interested stockholder”);

- an affiliate of an interested stockholder; or
- an associate of an interested stockholder, for three years following the date that the stockholder became an interested stockholder.

A “business combination” includes a merger or sale of more than ten percent (10%) of our assets. However, the above provisions of Section 203 do not apply if:

- our board of directors approves the transaction that made the stockholder an “interested stockholder,” prior to the date of the transaction;
- after the completion of the transaction that resulted in the stockholder becoming an interested stockholder, that stockholder owned at least eighty-five percent (85%) of our voting stock outstanding at the time the transaction commenced, other than statutorily excluded shares of common stock; or
- on or subsequent to the date of the transaction, the business combination is approved by our Board and authorized at a meeting of our stockholders, and not by written consent, by an affirmative vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

Our certificate of incorporation provides that our board of directors is classified into three classes of directors. As a result, in most circumstances, a person can gain control of our board of directors only by successfully engaging in a proxy contest at three or more annual meetings.

Our certificate of incorporation requires the approval by affirmative vote of the holders of at least two-thirds of our Common Stock to make any amendment to key provisions of our certificate of incorporation or bylaws.

In addition, our certificate of incorporation does not provide for cumulative voting in the election of directors. Our board of directors is empowered to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death, or removal of a director in certain circumstances; and our advance notice provisions require that stockholders must comply with certain procedures in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting.

Our authorized but unissued Common Stock and preferred stock are available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved Common Stock and preferred stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Exhibit 21.1

Subsidiaries of the Registrant

Direct Subsidiary of the Registrant

Name	State of Organization	Percent Owned by the Registrant
Hostess Holdings, L.P.	Delaware	93.6 %
Hostess Holdings, GP, LLC	Delaware	100.0 %

Direct and Indirect Subsidiaries of Hostess Holdings, L.P. - Indirect Subsidiaries of the Registrant

Name	State of Organization or Incorporation	Percent Owned directly or indirectly by Hostess Holdings, L.P.
New Hostess Holdco, LLC	Delaware	100%
Hostess Holdco, LLC	Delaware	100%
HB Holdings, LLC	Delaware	100%
Hostess Brands, LLC	Delaware	100%
Hostess Brands Services, LLC	Delaware	100%
HB Holdings (RE), LLC	Delaware	100%
New HB Acquisition (RE), LLC	Delaware	100%
2727939 Ontario, Inc.	Ontario	100%

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Hostess Brands, Inc.:

We consent to the incorporation by reference in the Registration Statements No. 333-214603 and No. 333-219149 on Form S-3 and No. 333-215487 on Form S-8 of Hostess Brands, Inc. of our report dated February 26, 2020, with respect to the consolidated balance sheets of Hostess Brands, Inc. and subsidiaries as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes, and the effectiveness of internal control over financial reporting as of December 31, 2019, which report appears in the December 31, 2019 annual report on Form 10-K of Hostess Brands, Inc.

/s/ KPMG LLP

Kansas City, Missouri
February 26, 2020

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Andrew P. Callahan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Hostess Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2020

/s/ Andrew P. Callahan

President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Brain T. Purcell, certify that:

1. I have reviewed this Annual Report on Form 10-K of Hostess Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2020

/s/ Brian T. Purcell

Executive Vice President, Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Hostess Brands, Inc., (the "Company") on Form 10-K for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Andrew P. Callahan, President and Chief Executive Officer of the Company, certify, based on my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 26, 2020

/s/ Andrew P. Callahan

President and Chief Executive Officer

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Hostess Brands, Inc., (the "Company") on Form 10-K for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brian T. Purcell, Executive Vice President, Chief Financial Officer of the Company, certify, based on my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 26, 2020

/s/ Brian T. Purcell

Executive Vice President, Chief Financial Officer

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.