

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

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 OR 15(d)  
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) June 7, 2022



**Hostess Brands, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

001-37540  
(Commission  
File Number)

47-4168492  
(I.R.S. Employer  
Identification No.)

7905 Quivira Road  
Lenexa, KS 66215  
(Address of principal executive offices and zip code)

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

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

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Class A Common Stock, \$0.0001 par value	TWNK	The Nasdaq Stock Market LLC

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

Emerging growth company

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

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

***Approval of Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan***

As described in Item 5.07 of this Current Report on Form 8-K, on June 8, 2022, at its 2022 annual meeting of stockholders (the "Annual Meeting"), the stockholders of Hostess Brands, Inc. (the "Company") approved changes to the Hostess Brands, Inc. 2016 Equity Incentive Plan (the "2016 Equity Incentive Plan") pursuant to the Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan (the "Amended Incentive Plan"). The principal changes made by the Amended Incentive Plan are:

- increase the number of shares of Class A Common Stock, par value \$0.0001 per share (the "Shares") reserved for issuance to 8,137,836 Shares, which is equal to the sum of: (i) 1,293,810 Shares, which is the number of Shares that could have been issued under the 2016 Equity Incentive Plan as of March 31, 2022; (ii) 2,844,026, which is the number of Shares subject to outstanding awards under the 2016 Equity Plan as of March 31, 2022; and (iii) 4,000,000 additional Shares;
- remove certain provisions that were implemented to ensure the Company's ability to take maximum deductibility under a performance-based compensation exception to Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), that was repealed in connection with changes under the Tax Cuts and Jobs Act;
- maintain a limit on the number of Shares that may be subject to (i) stock options, (ii) stock appreciation rights, (iii) restricted stock awards, (iv) restricted stock units, or (v) other stock-based awards, in each case, granted to any participant in the Plan that is not a non-employee director in any year at 1,000,000 Shares, and for restricted stock awards, restricted stock units, or other stock-based awards, expanded the limitation so that applies to time-based awards in addition to the performance-based awards limitation that was included in the 2016 Equity Incentive Plan;
- remove the ability to grant dividends or dividend equivalent rights on Shares underlying stock options and share appreciation rights; and
- extend the term of the 2016 Equity Incentive Plan from July 26, 2026, to June 8, 2032.

For a further description of the terms and conditions of the Amended Incentive Plan, as approved by stockholders, see "Proposal 2: Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan" in the Company's Proxy Statement, as filed with the Securities and Exchange Commission on April 29, 2022 (the "Proxy Statement"), which description is incorporated herein by reference.

The foregoing description of the Amended Incentive Plan, including the description contained in the Proxy Statement, is qualified in its entirety by reference to the full text of the Amended Incentive Plan, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

***Approval of Hostess Brands, Inc. 2022 Employee Stock Purchase Plan***

As described in Item 5.07 of this Current Report on Form 8-K, on June 8, 2022, at the Annual Meeting, the stockholders of the Company approved the Hostess Brands, Inc. 2022 Employee Stock Purchase Plan (the "ESPP").

The ESPP is a broad-based plan intended to qualify as an employee stock purchase plan under Section 423 of the Code ("Section 423"). Favorable tax treatment is available for United States tax residents participating in a Section 423 plan. The ESPP also authorizes the grant of rights to purchase Shares that do not qualify under Section 423 pursuant to rules, procedures or sub-plans adopted by the plan administrator to achieve tax, securities law or other compliance objectives in particular locations outside of the United States. The ESPP provides employees with the right to purchase Shares through payroll deduction. A total of 3,000,000 Shares have been reserved for issuance under the ESPP.

For a further description of the terms and conditions of the ESPP, as approved by stockholder see "Proposal 3: Hostess Brands, Inc. 2022 Employee Stock Purchase Plan in the Company's Proxy Statement, which description is incorporated herein by reference.

The foregoing description of the ESPP, including the description contained in the Proxy Statement, is qualified in its entirety by reference to the full text of the ESPP, a copy of which is filed herewith as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

### **Approval of One-time Payment**

On June 7, 2022, the Company's Talent & Compensation Committee approved a one-time payment of \$50,000 to Michael J. Gernigin, Senior Vice President and Chief Accounting Officer, in recognition of his service as Interim Chief Financial Officer from November 9, 2021 to May 11, 2022.

### **Item 5.07. Submission of Matters to a Vote of Security Holders.**

On June 8, 2022, the Company held its 2022 Annual Meeting of Stockholders. At the Annual Meeting, the Company's stockholders voted on five proposals and cast their votes as set forth below.

#### **Proposal 1: Election of Directors**

The stockholders elected all of the nominees for election as directors to serve for a term that shall expire at the 2023 Annual Meeting of Stockholders. The results of the vote taken were as follows:

<b>Nominee</b>	<b>For</b>	<b>Withheld</b>	<b>Broker Non-Vote</b>
Jerry D. Kaminski	114,911,950	1,117,523	4,570,171
Andrew P. Callahan	115,176,209	853,264	4,570,171
Olu Beck	113,807,931	2,221,542	4,570,171
Laurence Bodner	114,435,040	1,594,433	4,570,171
Gretchen R. Crist	114,324,033	1,705,440	4,570,171
Rachel P. Cullen	114,855,317	1,174,156	4,570,171
Hugh G. Dineen	112,913,774	3,115,699	4,570,171
Ioannis Skoufalos	114,478,028	1,551,445	4,570,171
Craig D. Steeneck	115,066,053	963,420	4,570,171

#### **Proposal 2: Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan.**

The stockholders approved the Amended Incentive Plan. The results of the vote taken were as follows:

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Vote</b>
110,902,649	4,906,346	220,478	4,570,171

#### **Proposal 3: Hostess Brands, Inc. 2022 Employee Stock Purchase Plan.**

The stockholders approved the ESPP. The results of the vote taken were as follows:

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Vote</b>
115,749,792	112,997	166,684	4,570,171

#### **Proposal 4: Say-on-Pay**

The stockholders approved, on an advisory basis, the compensation paid to the Company's named executive officers for 2021. The results of the vote taken were as follows:

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Vote</b>
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109,103,547	6,698,610	227,316	4,570,171
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**Proposal 5: Ratification of Appointment of Independent Auditor**

The stockholders ratified the selection, by the Audit Committee of the Board, of KPMG LLP, an independent registered public accounting firm, as auditors of the Company for the fiscal year ending December 31, 2022. The results of the vote taken were as follows:

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Vote</b>
118,677,776	1,725,664	196,204	N/A

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
10.1	<a href="#">Hostess Brands, Inc. Amended and Restated 2016 Equity Incentive Plan</a>
10.2	<a href="#">Hostess Brands, Inc. 2022 Employee Stock Purchase Plan</a>
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

**SIGNATURES**

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

Date: June 10, 2022

**HOSTESS BRANDS, INC.**

By: /s/ Jolyn J. Sebree

Name: Jolyn J. Sebree

Title: Senior Vice President

**AMENDED AND RESTATED HOSTESS BRANDS, INC.  
2016 EQUITY INCENTIVE PLAN  
Effective as of June 8, 2022**

1. Purpose.

The purpose of the Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan is to further align the interests of eligible participants with those of the Company's stockholders by providing long-term incentive compensation opportunities tied to the performance of the Company and its Common Stock. The Plan is intended to advance the interests of the Company and increase stockholder value by attracting, retaining and motivating key personnel upon whose judgment, initiative and effort the successful conduct of the Company's business is largely dependent.

The Plan first became effective as of July 26, 2016. This amended and restated Plan will be effective as of the Amendment Effective Date, subject to approval by the Company's stockholders. Changes made pursuant to this amendment and restatement shall only apply to Awards made after the Amendment Effective Date. Awards made prior to the Amendment Effective Date shall continue to be governed by the applicable Award Agreement and the terms of the Plan in effect prior to the Amendment Effective Date without giving effect to changes made pursuant to this amendment and restatement.

2. Definitions. Wherever the following capitalized terms are used in the Plan and/or an Award Agreement (as defined below), they shall have the meanings specified below:

"*Amendment Effective Date*" means June 8, 2022.

"*Award*" means an award of a Stock Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit, Cash Performance Award or Other Stock-Based Award granted under the Plan.

"*Award Agreement*" means a notice or an agreement entered into between the Company and a Participant setting forth the terms and conditions of an Award granted to a Participant as provided in Section 15.2 hereof.

"*Beneficial Owner*" shall have the meaning ascribed to such term in Rule 13d-3 under the Exchange Act.

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

"*Cash Performance Award*" means an Award that is denominated by a cash amount to an Eligible Person under Section 10 hereof and payable based on or conditioned upon the attainment of pre-established business and/or individual Performance Goals over a specified performance period.

"*Cause*" shall have the meaning set forth in Section 13.2(b) hereof.

"*Change of Control*" shall have the meaning set forth in Section 12.2 hereof.

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

"*Committee*" means (i) the Compensation Committee of the Board, (ii) such other committee of the Board appointed by the Board to administer the Plan or (iii) the Board, as determined by the Board.

"*Common Stock*" means the Company's Class A common stock, par value \$0.0001 per share.

"*Company*" means Hostess Brands, Inc., a Delaware corporation, or any successor thereto.

“*Date of Grant*” means the date on which an Award under the Plan is granted by the Committee or such later date as the Committee may specify to be the effective date of an Award.

“*Disability*” shall mean, unless otherwise defined in an individual Award Agreement, the Participant has been unable to perform the essential duties, responsibilities and functions of Participant’s position with the Company and its Subsidiaries by reason of any medically determinable physical or mental impairment for 180 days in any one-year period and has qualified to receive long-term disability payments under the Company’s long-term disability policy, as may be in effect from time to time. Participant shall cooperate in all respects with the Company if a question arises as to whether Participant has become subject to a Disability (including, without limitation, submitting to reasonable examinations by one or more medical doctors and other health care specialists selected by the Company and authorizing such medical doctors and other health care specialists to discuss Participant’s condition with the Company). Notwithstanding the foregoing, in the event that a Participant is party to an employment, consulting, severance or other service-related agreement with the Company or any of its affiliates and such agreement contains a definition of “Disability,” the definition of “Disability” set forth above shall be deemed replaced and superseded, with respect to such Participant, by the definition of “Disability” used in such agreement.

“*Effective Date*” means July 26, 2016.

“*Eligible Person*” means any person who is an employee, Non-Employee Director, consultant or other personal service provider of the Company or any of its Subsidiaries.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“*Excluded Persons*” means each of Gores Sponsor LLC, AP Hostess Holdings, L.P., CDM Hostess Class C, LLC and Hostess DM Co-Invest, LLC and their respective affiliates.

“*Fair Market Value*” means, with respect to a share of Common Stock as of a given date of determination hereunder, the closing price as quoted on Nasdaq or on such other principal exchange or market on which the Common Stock is then traded, or if the Common Stock was not traded on such date, then the immediately preceding date on which sales of shares of Common Stock have been so quoted or reported shall be used. If there should not be a public market for the Common Stock on such date, “Fair Market Value” shall be such value as determined by the Board in its discretion and, to the extent necessary, shall be determined in a manner consistent with Section 409A of the Code and the regulations thereunder.

“*GAAP*” means United States generally accepted accounting principles.

“*Incentive Stock Option*” means a Stock Option granted under Section 6 hereof that is intended to meet the requirements of Section 422 of the Code and the regulations thereunder.

“*Incumbent Directors*” shall have the meaning set forth in Section 12.2(b) hereof.

“*Nasdaq*” means The Nasdaq Stock Market.

“*Non-Employee Director*” means a member of the Board who is not an employee of the Company or any of its Subsidiaries.

“*Nonqualified Stock Option*” means a Stock Option granted under Section 6 hereof that is not an Incentive Stock Option.

“*Other Stock-Based Awards*” shall have the meaning set forth in Section 11 hereof.

“*Outstanding Company Voting Securities*” shall have the meaning set forth in Section 12.2(a) hereof.

“*Participant*” means any Eligible Person who holds an outstanding Award under the Plan.

“*Performance Criteria*” means any performance criteria determined by the Committee to be applicable to an Award, which may include, but shall not be limited to, one or any combination of the following, for the Company or any identified Subsidiary or business unit, as determined by the Committee at the time of the Award: (i) net earnings; (ii) earnings per share; (iii) net debt; (iv) net revenue; (v) revenue growth, sales growth or product revenue growth; (vi) net income (before or after taxes); (vii) pre- or after-tax income (before or after allocation of corporate overhead and bonus); (viii) net operating profit; (ix) return measures (including, but not limited to, return on assets or net assets, capital, equity or sales); (x) cash flow (including, but not limited to, operating cash flow, distributable cash flow, cash flow per share and free cash flow); (xi) earnings before or after interest, taxes depreciation, amortization and/or rent; (xii) appreciation in and/or maintenance of share price (including, but not limited to, growth measures and total stockholder return); (xiii) cost reduction, expense control or loss management; (xiv) market share; (xv) economic value added; (xvi) working capital; (xvii) adjusted operating margins, gross margins or cash margin; (xviii) year-end cash; (xix) debt reductions; (xx) the completion of corporate transactions; (xxi) gross or net profit margins; (xxii) revenue mix; (xxiii) operating efficiency; (xxiv) product diversification; (xxv) market penetration; (xxvi) measurable achievement in quality, operation or development initiatives or production volume levels; (xxvii) quarterly dividends or distributions; (xxviii) employee retention or turnover; (xxix) operating income before depreciation, amortization and/or taxes; (xxx) strategic goals and objectives, including objectives related to qualitative or quantitative environmental, social and governance metrics; and/or (xxxi) any combination of or a specified increase or decrease, as applicable, in any of the foregoing.

Any applicable Performance Criteria shall be applied and interpreted in the discretion of the Committee. Any applicable Performance Criteria may be consistently applied on a business unit, divisional, Subsidiary or consolidated basis or any combination thereof, described in terms of objectives that are related to the individual Participant or objectives that are Company-wide or related to a Subsidiary, division, department, region, function or business unit and may be measured on an absolute or cumulative basis or on the basis of percentage of improvement over time, and may be measured in terms of Company performance (or performance of the applicable Subsidiary, division, department, region, function or business unit) or measured relative to a selected peer company or group of peer companies (including particular business segments or divisions of such company or companies) or a market or other index, or in such other manner as determined by the Committee.

“*Performance Goals*” means the levels of achievement relating to the Performance Criteria selected by the Committee for the Award. The Performance Goals need not be the same for all Participants.

“*Performance Stock Unit*” means a Restricted Stock Unit designated as a Performance Stock Unit under Section 9.1 hereof, to be paid or distributed based on or conditioned upon the attainment of pre-established business and/or individual Performance Goals over a specified performance period.

“*Person*” shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a “group” as defined in Section 13(d) thereof.

“*Plan*” means this Amended and Restated Hostess Brands, Inc. 2016 Equity Incentive Plan as set forth herein, effective and as may be amended from time to time as provided herein, and includes any sub-plan or appendix that may be created and approved by the Board to allow Eligible Persons of Subsidiaries to participate in the plan.

“*Policy*” shall have the meaning set forth in Section 13.3(b) hereof.

“*Restricted Stock Award*” means a grant of shares of Common Stock to an Eligible Person under Section 8 hereof that are issued subject to such vesting and transfer restrictions as the Committee shall determine, and such other conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Restricted Stock Unit*” means a contractual right granted to an Eligible Person under Section 9 hereof representing notional unit interests equal in value to a share of Common Stock to be paid or distributed at such times, and subject to such conditions, as set forth in the Plan and the applicable Award Agreement.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“*Service*” means a Participant’s employment with the Company or any Subsidiary or a Participant’s service as a Non-Employee Director, consultant or other service provider with the Company or any Subsidiary, as applicable.

“*Share Reserve*” shall have the meaning set forth in Section 4.1 hereof.

“*Stock Appreciation Right*” means a contractual right granted to an Eligible Person under Section 7 hereof entitling such Eligible Person to receive a payment representing the excess of the Fair Market Value of a share of Common Stock over the base price per share of the right, at such time, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Stock Option*” means a contractual right granted to an Eligible Person under Section 6 hereof to purchase shares of Common Stock at such time and price, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Subsidiary*” means an entity (whether or not a corporation) that is wholly or majority owned or controlled, directly or indirectly, by the Company or any other affiliate of the Company that is so designated, from time to time, by the Committee, during the period of such affiliated status; provided, however, that with respect to Incentive Stock Options, the term “Subsidiary” shall include only an entity that qualifies under Section 424(f) of the Code as a “subsidiary corporation” with respect to the Company.

### 3. Administration.

3.1 *Committee Members.* The Plan shall be administered by the Committee; provided, however, if there is a Committee but the Board is not acting as the Committee, the Board may exercise any and all authority granted to the Committee under the Plan, including without limitation the right to grant awards to executive officers and other Eligible Persons; provided, further, in the case of Awards to executive officers, the grants shall be based on the recommendation of a Committee (or subcommittee of the Board) comprised of “independent directors” under the rules adopted by Nasdaq. To the extent required by, or intended to obtain an exemption or benefit under, applicable law or securities exchange rules, it is intended that the Committee or subcommittee thereof be comprised of no fewer than two members of the Board who are appointed by the Board to administer the Plan and who satisfy the requirements for (i) an “independent director” under rules adopted by Nasdaq or such other principal exchange or market on which the Common Stock is then traded and/or (ii) a “nonemployee director” within the meaning of Rule 16b-3 under the Exchange Act, as applicable. Notwithstanding the foregoing, the mere fact that an Award has been granted inconsistent with any of the foregoing provisions of this Section 3.1 shall not invalidate any Award which is otherwise validly made under the Plan. Neither the Company nor any member of the Committee shall be liable for any action or determination made in good faith by the Committee with respect to the Plan or any Award thereunder.

3.2 *Committee Authority.* The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (i) determine the Eligible Persons to whom Awards shall be granted under the Plan, (ii) prescribe the restrictions, terms and conditions of all Awards, (iii) interpret the Plan and terms of the Awards, (iv) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and interpret, amend or revoke any such rules, (v) make all determinations with respect to a Participant’s Service and the termination of such Service for purposes of any Award, (vi) correct any defect(s) or omission(s) or reconcile

any ambiguity(ies) or inconsistency(ies) in the Plan or any Award thereunder, (vii) make all determinations it deems advisable for the administration of the Plan, (viii) decide all disputes arising in connection with the Plan and to otherwise supervise the administration of the Plan, (ix) subject to the terms of the Plan, amend the terms of an Award in any manner that is not inconsistent with the Plan, (x) accelerate the vesting or, to the extent applicable, exercisability of any Award at any time (including, but not limited to, upon a Change of Control or upon termination of Service under certain circumstances, as set forth in the Award Agreement or otherwise), and (xi) adopt such procedures, modifications or subplans as are necessary or appropriate to permit participation in the Plan by Eligible Persons who are foreign nationals or employed outside of the United States. The Committee's determinations under the Plan need not be uniform and may be made by the Committee selectively among Participants and Eligible Persons, whether or not such persons are similarly situated. The Committee shall, in its discretion, consider such factors as it deems relevant in making its interpretations, determinations and actions under the Plan including, without limitation, the recommendations or advice of any officer or employee of the Company or board of directors of a Subsidiary or such attorneys, consultants, accountants or other advisors as it may select. All interpretations, determinations, and actions by the Committee shall be final, conclusive, and binding upon all parties.

3.3 *Delegation of Authority.* The Committee shall have the right, from time to time, to delegate in writing to one or more officers of the Company the authority of the Committee to grant and determine the terms and conditions of Awards granted under the Plan, subject to the requirements of Section 157(c) of the Delaware General Corporation Law (or any successor provision) or such other limitations as the Committee shall determine. In no event shall any such delegation of authority be permitted with respect to Awards granted to any member of the Board or to any Eligible Person who is subject to Rule 16b-3 under the Exchange Act or is a covered employee under Section 162(m) of the Code. The Committee shall also be permitted to delegate, to any appropriate officer or employee of the Company, responsibility for performing certain ministerial functions under the Plan. In the event that the Committee's authority is delegated to officers or employees in accordance with the foregoing, all provisions of the Plan relating to the Committee shall be interpreted in a manner consistent with the foregoing by treating any such reference as a reference to such officer or employee for such purpose. Any action undertaken in accordance with the Committee's delegation of authority hereunder shall have the same force and effect as if such action was undertaken directly by the Committee and shall be deemed for all purposes of the Plan to have been taken by the Committee.

#### 4. Shares Subject to the Plan.

4.1 *Number of Shares Reserved.* Subject to adjustment as provided in Section 4.5 hereof, the total number of shares of Common Stock that may be issued under the Plan on or after the Amendment Effective Date (the "*Share Reserve*") shall equal 8,137,836 shares of Common Stock, which is equal to the sum of: (i) 1,293,810 shares of Common Stock, which is the number of shares of Common Stock that may be issued under the Plan as of March 31, 2022; (ii) 2,844,026, which is the number of shares of Common Stock subject to outstanding awards under the Plan as of March 31, 2022; and (iii) 4,000,000 additional shares of Common Stock; provided, however, that Awards that are required to be paid in cash pursuant to their terms shall not reduce the Share Reserve. Any shares of Common Stock delivered under the Plan shall consist of authorized and unissued shares or treasury shares. Shares of Common Stock that are (A) tendered by a Participant or withheld by the Company in payment of the exercise, base or purchase price relating to an Award, (B) tendered by the Participant or withheld by the Company to satisfy any taxes or tax withholding obligations with respect to an Award, or (C) not issued or delivered as a result of the net settlement of an outstanding Stock Option or Stock Appreciation Right under the Plan, as applicable, will not be available for future Awards under the Plan. The aggregate number of shares of Common Stock that may be issued or transferred under the Plan pursuant to Incentive Stock Options shall not exceed 8,137,836 shares of Common Stock.

4.2 *Share Replenishment.* To the extent that an Award granted under this Plan is canceled, expired, forfeited, or otherwise terminated without delivery of the shares of Common Stock or payment of

consideration to the Participant under the Plan (other than as contemplated by Section 4.1), the shares of Common Stock retained by or returned to the Company will (i) not be deemed to have been delivered under the Plan, as applicable, (ii) be available for future Awards under the Plan, and (iii) increase the Share Reserve by one share for each share that is retained by or returned to the Company.

4.3 *Awards Granted to Eligible Persons Other Than Non-Employee Directors.* The maximum number of shares of Common Stock that may be subject to (i) Stock Options, (ii) Stock Appreciation Rights, (iii) Restricted Stock Awards, (iv) Restricted Stock Units, or (v) Other Stock-Based Awards, in each case, that are granted to any single Eligible Person other than a Non-Employee Director in any single calendar year during the term of the Plan shall be limited to 1,000,000 shares of Common Stock for each such Award type individually (subject to adjustment as provided in Section 4.5 hereof).

4.4 *Awards Granted to Non-Employee Directors.* Annual compensation awarded to any Non-Employee Director during each fiscal year, including both shares of Common Stock subject to Awards and any cash fees paid to such Non-Employee Director (but excluding expense reimbursements), may not exceed \$750,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

4.5 *Adjustments.* If there shall occur any change with respect to the outstanding shares of Common Stock by reason of any recapitalization, reclassification, stock dividend, extraordinary dividend, stock split, reverse stock split or other distribution with respect to the shares of Common Stock or any merger, reorganization, consolidation, combination, spin-off or other similar corporate change or any other change affecting the Common Stock (other than regular cash dividends to stockholders of the Company), the Committee shall, in the manner and to the extent it considers appropriate and equitable to the Participants and consistent with the terms of the Plan, cause an adjustment to be made to (i) the maximum number and kind of shares of Common Stock provided in Sections 4.1, 4.3 and 4.4 hereof (including the maximum number of shares of Common Stock that may become payable to a Participant provided in Sections 4.3 and 4.4), (ii) the number and kind of shares of Common Stock, shares of other classes of the Company's common stock, securities, units or other rights or property subject to, or issuable in respect of, then outstanding Awards, (iii) the exercise or base price for each share or unit or other right subject to then outstanding Awards, (iv) other value determinations applicable to the Plan and/or outstanding Awards, (v) any dividend equivalent rights associated with outstanding Awards and (vi) any other terms of an Award that are affected by the event. Notwithstanding the foregoing, (a) any such adjustments shall, to the extent necessary, be made in a manner consistent with the requirements of Section 409A of the Code and (b) in the case of Incentive Stock Options, any such adjustments shall, to the extent practicable, be made in a manner consistent with the requirements of Section 424(a) of the Code. Without limitation, any adjustments made pursuant to this Section 4.5 may in the Committee's sole discretion be made through the granting of dividend equivalent rights to holders of outstanding Awards other than with respect to Stock Options and Stock Appreciation Rights.

## 5. Eligibility and Awards.

5.1 *Designation of Participants.* Any Eligible Person may be selected by the Committee to receive an Award and become a Participant. The Committee has the authority, in its discretion, to determine and designate from time to time those Eligible Persons who are to be granted Awards, the types of Awards to be granted, the number of shares of Common Stock or units subject to Awards to be granted and the terms and conditions of such Awards consistent with the terms of the Plan. In selecting Eligible Persons to be Participants, and in determining the type and amount of Awards to be granted under the Plan, the Committee shall consider any and all factors that it deems relevant or appropriate. Designation of a Participant in any year shall not require the Committee to designate such person to receive an Award in any other year or, once designated, to receive the same type or amount of Award as granted to such Participant in any other year.

5.2 *Determination of Awards.* The Committee shall determine the terms and conditions of all Awards granted to Participants in accordance with its authority under Section 3.2 hereof. An Award may consist of

one type of right or benefit hereunder or of two or more such rights or benefits granted in tandem. With respect to any Awards which are subject to Performance Goals, (a) following the conclusion of the applicable performance period, the Committee shall certify in writing whether the Performance Goals for that performance period have been achieved, or certify the degree of achievement, if applicable; (b) upon certification of the Performance Goals for any such Award, the Committee shall determine the level of vesting or amount of payment to the Participant pursuant to such Award, if any; and (c) the Committee, in its sole discretion, may make adjustments to the applicable Performance Goals, the amounts payable in respect of the applicable Performance Goals, and performance results (including adjustments of performance results to take into account transactions or other events occurring during the applicable performance period or changes in accounting principles or applicable law), to the extent consistent with the terms of the applicable Award Agreement.

5.3 *Award Agreements.* Each Award granted to an Eligible Person shall be represented by an Award Agreement. The terms of all Awards under the Plan, as determined by the Committee, will be set forth in each individual Award Agreements as described in Section 15.2 hereof.

## 6. Stock Options.

6.1 *Grant of Stock Options.* A Stock Option may be granted to any Eligible Person selected by the Committee, except that an Incentive Stock Option may only be granted to an Eligible Person satisfying the conditions of Section 6.7(a) hereof. Each Stock Option shall be designated on the Date of Grant, in the discretion of the Committee, as an Incentive Stock Option or as a Nonqualified Stock Option. All Stock Options granted under the Plan to U.S. taxpayers are intended to comply with or be exempt from the requirements of Section 409A of the Code.

6.2 *Exercise Price.* The exercise price per share of a Stock Option shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant. The Committee may in its discretion specify an exercise price per share that is higher than the Fair Market Value of a share of Common Stock on the Date of Grant.

6.3 *Vesting of Stock Options.* The Committee shall, in its discretion, prescribe in an Award Agreement the time or times at which, or the conditions upon which, a Stock Option or portion thereof shall become vested and/or exercisable. The requirements for vesting and exercisability of a Stock Option may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified Performance Goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Option are not satisfied, the Award shall be forfeited.

6.4 *Term of Stock Options.* The Committee shall in its discretion prescribe in an Award Agreement the period during which a vested Stock Option may be exercised; provided, however, that the maximum term of a Stock Option shall be ten years from the Date of Grant. The Committee may provide that a Stock Option will cease to be exercisable upon or at the end of a specified time period following a termination of Service for any reason as set forth in the Award Agreement or otherwise. A Stock Option may be earlier terminated as specified by the Committee and set forth in an Award Agreement upon or following the termination of a Participant's Service with the Company or any Subsidiary, including by reason of voluntary resignation, death, Disability, termination for Cause or any other reason. Subject to Section 409A of the Code and the provisions of this Section 6, the Committee may extend at any time the period in which a Stock Option may be exercised.

6.5 *Stock Option Exercise; Tax Withholding.* Subject to such terms and conditions as specified in an Award Agreement, a Stock Option may be exercised in whole or in part at any time during the term thereof by notice in the form required by the Company, together with payment of the aggregate exercise price and applicable withholding tax. Payment of the exercise price may be made: (i) in cash or by cash equivalent acceptable to the Committee, or, (ii) to the extent permitted by the Committee in its sole discretion in an Award Agreement or otherwise (A) in shares of Common Stock valued at the Fair Market Value of such

shares on the date of exercise, (B) through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the exercise price, (C) by reducing the number of shares of Common Stock otherwise deliverable upon the exercise of the Stock Option by the number of shares of Common Stock having a Fair Market Value on the date of exercise equal to the exercise price, (D) by a combination of the methods described above or (E) by such other method as may be approved by the Committee and set forth in the Award Agreement. In accordance with Section 15.12 hereof, and in addition to and at the time of payment of the exercise price, the Participant shall pay to the Company the full amount of any and all applicable income tax, employment tax and other amounts required to be withheld in connection with such exercise, payable under such of the methods described above for the payment of the exercise price as may be approved by the Committee and set forth in the Award Agreement.

6.6 *Limited Transferability of Nonqualified Stock Options.* All Stock Options shall be nontransferable except (i) upon the Participant's death, in accordance with Section 15.3 hereof or (ii) in the case of Nonqualified Stock Options only, for the transfer of all or part of the Stock Option to a Participant's "family member" (as defined for purposes of the Form S-8 registration statement under the Securities Act), or as otherwise permitted by the Committee, in each case as may be approved by the Committee in its discretion at the time of proposed transfer. The transfer of a Nonqualified Stock Option may be subject to such terms and conditions as the Committee may in its discretion impose from time to time. Subsequent transfers of a Nonqualified Stock Option shall be prohibited other than in accordance with Section 15.3 hereof.

6.7 *Additional Rules for Incentive Stock Options.*

(a) *Eligibility.* An Incentive Stock Option may only be granted to an Eligible Person who is considered an employee for purposes of Treasury Regulation Section 1.421-1(h) with respect to the Company or any Subsidiary that qualifies as a "subsidiary corporation" with respect to the Company for purposes of Section 424(f) of the Code.

(b) *Annual Limits.* No Incentive Stock Option shall be granted to a Participant as a result of which the aggregate Fair Market Value (determined as of the Date of Grant) of the Common Stock with respect to which incentive stock options under Section 422 of the Code are exercisable for the first time in any calendar year under the Plan and any other stock option plans of the Company or any Subsidiary or parent corporation, would exceed \$100,000, determined in accordance with Section 422(d) of the Code. This limitation shall be applied by taking Stock Options into account in the order in which granted. Any Stock Option grant that exceeds such limit shall be treated as a non-qualified stock option.

(c) *Additional Limitations.* In the case of any Incentive Stock Option granted to an Eligible Person who owns, either directly or indirectly (taking into account the attribution rules contained in Section 424(d) of the Code), stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Subsidiary, the exercise price shall not be less than 110% of the Fair Market Value of a share of Common Stock on the Date of Grant and the maximum term shall be five years.

(d) *Termination of Service.* An Award of an Incentive Stock Option may provide that such Stock Option may be exercised not later than (i) three months following termination of Service of the Participant with the Company and all Subsidiaries (other than as set forth in clause (ii) of this Section 6.7(d)) or (ii) one year following termination of Service of the Participant with the Company and all Subsidiaries due to death or permanent and total disability within the meaning of Section 22(e)(3) of the Code, in each case as and to the extent determined by the Committee to comply with the requirements of Section 422 of the Code.

(e) *Other Terms and Conditions; Nontransferability.* Any Incentive Stock Option granted hereunder shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as are deemed necessary or desirable by the Committee, which terms, together with the terms of

the Plan, shall be intended and interpreted to cause such Incentive Stock Option to qualify as an “incentive stock option” under Section 422 of the Code. A Stock Option that is granted as an Incentive Stock Option shall, to the extent it fails to qualify as an “incentive stock option” under the Code, be treated as a Nonqualified Stock Option. An Incentive Stock Option shall by its terms be nontransferable other than in accordance with Section 15.3 hereof, and shall be exercisable during the lifetime of a Participant only by such Participant.

(f) *Disqualifying Dispositions.* If shares of Common Stock acquired by exercise of an Incentive Stock Option are disposed of within two years following the Date of Grant or one year following the transfer of such shares to the Participant upon exercise, the Participant shall, promptly following such disposition, notify the Company in writing of the date and terms of such disposition and provide such other information regarding the disposition as the Company may reasonably require.

6.8 *Dividend Equivalent Rights.* Dividends shall not be paid with respect to Stock Options. Dividend equivalent rights may not be granted with respect to the shares of Common Stock subject to Stock Options.

6.9 *No Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares underlying a Stock Option until such time as shares or Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

## 7. Stock Appreciation Rights.

7.1 *Grant of Stock Appreciation Rights.* Stock Appreciation Rights may be granted to any Eligible Person selected by the Committee. Stock Appreciation Rights may be granted on a basis that allows for the exercise of the right by the Participant or that provides for the automatic payment of the right upon a specified date or event. Stock Appreciation Rights shall be non-transferable, except as provided in Section 15.3 hereof. All Stock Appreciation Rights granted under the Plan to U.S. taxpayers are intended to comply with or otherwise be exempt from the requirements of Section 409A of the Code.

7.2 *Stand-Alone and Tandem Stock Appreciation Rights.* A Stock Appreciation Right may be granted without any related Stock Option, or may be granted in tandem with a Stock Option, either on the Date of Grant or at any time thereafter during the term of the Stock Option. The Committee shall in its discretion provide in an Award Agreement the time or times at which or the conditions upon which, a Stock Appreciation Right or portion thereof shall become vested and/or exercisable. The requirements for vesting and exercisability of a Stock Appreciation Right may be based on the continued Service of a Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified Performance Goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Appreciation Right are not satisfied, the Award shall be forfeited. A Stock Appreciation Right will be exercisable or payable at such time or times as determined by the Committee; provided, however, that the maximum term of a Stock Appreciation Right shall be ten years from the Date of Grant. The Committee may provide that a Stock Appreciation Right will cease to be exercisable upon or at the end of a period following a termination of Service for any reason. The base price of a Stock Appreciation Right granted without any related Stock Option shall be determined by the Committee in its discretion; provided, however, that the base price per share of any such stand-alone Stock Appreciation Right shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant.

7.3 *Payment of Stock Appreciation Rights.* A Stock Appreciation Right will entitle the holder, upon exercise or other payment of the Stock Appreciation Right, as applicable, to receive an amount determined by multiplying: (i) the excess of the Fair Market Value of a share of Common Stock on the date of exercise or payment of the Stock Appreciation Right over the base price of such Stock Appreciation Right, by (ii) the number of shares as to which such Stock Appreciation Right is exercised or paid. Payment of the amount determined under the foregoing may be made, as approved by the Committee and set forth in the Award Agreement, in shares of Common Stock valued at their Fair Market Value on the date of exercise or payment, in cash or in a combination of shares of Common Stock and cash, subject to applicable tax withholding requirements.

7.4 *Dividend Equivalent Rights*. Dividends shall not be paid with respect to Stock Appreciation Rights. Dividend equivalent rights may not be granted with respect to the shares of Common Stock subject to Stock Appreciation Rights.

## 8. Restricted Stock Awards.

8.1 *Grant of Restricted Stock Awards*. A Restricted Stock Award may be granted to any Eligible Person selected by the Committee. The Committee may require the payment by the Participant of a specified purchase price in connection with any Restricted Stock Award.

8.2 *Vesting Requirements*. The restrictions imposed on shares granted under a Restricted Stock Award shall lapse in accordance with the vesting requirements specified by the Committee in the Award Agreement. The requirements for vesting of a Restricted Stock Award may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified Performance Goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Award shall not be satisfied or, if applicable, the Performance Goal(s) with respect to such Restricted Stock Award are not attained, the Award shall be forfeited and the shares of Common Stock subject to the Award shall be returned to the Company.

8.3 *Transfer Restrictions*. Shares granted under any Restricted Stock Award may not be transferred, assigned or made subject to any encumbrance, pledge or charge until all applicable restrictions are removed or have expired, except as provided in Section 15.3 hereof. Failure to satisfy any applicable restrictions shall result in the subject shares of the Restricted Stock Award being forfeited and returned to the Company. The Committee may require in an Award Agreement that certificates (if any) representing the shares granted under a Restricted Stock Award bear a legend making appropriate reference to the restrictions imposed, and that certificates (if any) representing the shares granted or sold under a Restricted Stock Award will remain in the physical custody of an escrow holder until all restrictions are removed or have expired.

8.4 *Rights as Stockholder*. Subject to the foregoing provisions of this Section 8 and the applicable Award Agreement, the Participant shall have all rights of a stockholder with respect to the shares granted to the Participant under a Restricted Stock Award, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto, unless the Committee determines otherwise at the time the Restricted Stock Award is granted. The Committee may provide in an Award Agreement for the payment of dividends and distributions to the Participant at such times as paid to stockholders generally, at the times of vesting or other payment of the Restricted Stock Award or otherwise. Notwithstanding anything in this Section 8.4 to the contrary, dividends and other distributions made with respect to a Restricted Stock Award that is subject to performance-based vesting shall not be paid until, and only to the extent that, the Award vests.

8.5 *Section 83(b) Election*. If a Participant makes an election pursuant to Section 83(b) of the Code with respect to a Restricted Stock Award, the Participant shall file, within 30 days following the Date of Grant, a copy of such election with the Company and with the Internal Revenue Service, in accordance with the regulations under Section 83 of the Code. The Committee may provide in an Award Agreement that the Restricted Stock Award is conditioned upon the Participant's making or refraining from making an election with respect to the Award under Section 83(b) of the Code.

## 9. Restricted Stock Units.

9.1 *Grant of Restricted Stock Units*. A Restricted Stock Unit may be granted to any Eligible Person selected by the Committee. The value of each Restricted Stock Unit is equal to the Fair Market Value of a share of Common Stock on the applicable date or time period of determination, as specified by the Committee. Restricted Stock Units shall be subject to such restrictions and conditions as the Committee shall determine. In addition, a Restricted Stock Unit may be designated as a "Performance Stock Unit," the vesting requirements of which may be based, in whole or in part, on the attainment of pre-established

business and/or individual Performance Goal(s) over the applicable specified performance period, or otherwise, as approved by the Committee in its discretion. Restricted Stock Units shall be non-transferable, except as provided in Section 15.3 hereof.

9.2 *Vesting of Restricted Stock Units.* The Committee shall, in its discretion, determine any vesting requirements with respect to Restricted Stock Units, which shall be set forth in the Award Agreement. The requirements for vesting of a Restricted Stock Unit may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods) and/or on such other terms and conditions as approved by the Committee (including Performance Goal(s)) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Unit Award are not satisfied, the Award shall be forfeited.

9.3 *Payment of Restricted Stock Units.* Restricted Stock Units shall become payable to a Participant at the time or times determined by the Committee and set forth in the Award Agreement, which may be upon or following the vesting of the Award. Payment of a Restricted Stock Unit may be made, as approved by the Committee and set forth in the Award Agreement, in cash or in shares of Common Stock or in a combination thereof, subject to applicable tax withholding requirements. Any cash payment of a Restricted Stock Unit shall be made based upon the Fair Market Value of a share of Common Stock, determined on such date or over such time period as determined by the Committee.

9.4 *Dividend Equivalent Rights.* Restricted Stock Units may be granted together with dividend equivalent rights with respect to the shares of Common Stock subject to the Award, which dividend equivalent rights may be accumulated and may be deemed reinvested in additional Restricted Stock Units or may be accumulated in cash, as determined by the Committee in its discretion. Any payments made pursuant to dividend equivalent rights will be paid at such times as determined by the Committee in its discretion (including, without limitation, at the times paid to stockholders generally or at the times of vesting or payment of the Restricted Stock Units). Notwithstanding anything in this Section 9.4 to the contrary, dividends and other distributions made with respect to a Restricted Stock Unit that is subject to performance-based vesting shall not be paid until, and only to the extent that, the Award vests. Dividend equivalent rights may be subject to forfeiture under the same conditions as apply to the underlying Restricted Stock Units.

9.5 *No Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares subject to a Restricted Stock Unit until such time as shares of Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

## 10. Cash Performance Awards.

10.1 *Grant of Cash Performance Awards.* A Cash Performance Award may be granted to any Eligible Person selected by the Committee. Each Cash Performance Award shall be evidenced by an Award Agreement that shall specify the performance period and such other terms and conditions as the Committee, in its discretion, shall determine. The Committee may accelerate the vesting of a Cash Performance Award upon a Change of Control or termination of Service under certain circumstances, as set forth in the Award Agreement. Cash Performance Awards shall be non-transferable, except as provided in Section 15.3 hereof.

10.2 *Payment.* Payment amounts may be based on the attainment of specified levels of the Performance Goals, including, if applicable, specified threshold, target and maximum performance levels, and performance falling between such levels. The requirements for payment may be also based upon the continued Service of the Participant with the Company or a Subsidiary during the applicable performance period and on such other conditions as determined by the Committee and set forth in the Award Agreement.

10.3 *Payment.* Cash Performance Awards may be paid, at the discretion of the Committee, in any combination of cash or shares of Common Stock, based upon the Fair Market Value of such shares at the time of payment.

11. Other Stock-Based Awards. The Committee, in its sole discretion, may grant Awards that are valued, in or whole or in part, by reference to, or are otherwise based on the Fair Market Value of shares of Common Stock (“*Other Stock-Based Awards*”), including without limitation, unrestricted shares, deferred shares, phantom shares or units, and dividend equivalent rights. Such Other Stock-Based Awards shall be in such form, and dependent on such conditions, as the Committee shall determine, including without limitation, the right to receive one or more shares of Common Stock (or the equivalent cash value thereof) upon the completion of a specified period of service, the occurrence of an event and/or the attainment of a Performance Goal(s). Other Stock-Based Awards may be granted alone or in addition to any other Awards granted under the Plan. Subject to the provisions of the Plan, the Committee shall determine to whom and when Other Stock-Based Awards will be made, the number of shares to be awarded under (or otherwise related to) such Other Stock-Based Awards, whether such Other Stock-Based Awards shall be settled in cash, shares or a combination of cash and shares, and all other terms and conditions of such Awards not inconsistent with the terms of the Plan.

12. Change of Control.

12.1 *Effect on Awards*. Upon the occurrence of a Change of Control, unless otherwise provided in the Award Agreement, the Committee is authorized (but not obligated) to make adjustments in the terms and conditions of outstanding Awards, including, without limitation, the following (or any combination thereof): (a) continuation or assumption of such outstanding Awards under the Plan by the Company (if it is the surviving company or corporation) or by the surviving company or corporation or its parent; (b) substitution by the surviving company or corporation or its parent of awards with substantially the same terms for outstanding Awards (with appropriate adjustments to the type of consideration payable upon settlement of the Awards); (c) acceleration of exercisability, vesting and/or payment under outstanding Awards immediately prior to the occurrence of such event or upon a termination of Service following such event; and (d) if all or substantially all of the Company’s outstanding shares of Common Stock are transferred in exchange for cash, shares or other property or consideration in connection with such Change of Control: (i) upon written notice, provide that any outstanding Stock Options and Stock Appreciation Rights are exercisable during a reasonable period of time immediately prior to the scheduled consummation of the event or such other reasonable period as determined by the Committee (contingent upon the consummation of the event), and at the end of such period, such Stock Options and Stock Appreciation Rights shall terminate to the extent not so exercised within the relevant period; and (ii) cancel all or any portion of outstanding Awards for fair value (in the form of cash, shares of Common Stock, other property or any combination thereof) as determined in the sole discretion of the Committee; provided, however, that, in the case of Stock Options and Stock Appreciation Rights, the fair value may equal the excess, if any, of the value or amount of the consideration to be paid in the Change of Control transaction to holders of shares of Common Stock (or, if no such consideration is paid, Fair Market Value of the shares of Common Stock) over the aggregate exercise or base price, as applicable, with respect to such Awards or portion thereof being canceled, or if no such excess, zero; provided, further, that if any payments or other consideration are deferred and/or contingent as a result of escrows, earnouts, holdbacks or any other contingencies, payments under this provision may be made on substantially the same terms and conditions applicable to, and only to the extent actually paid to, the holders of shares in connection with the Change of Control.

12.2 *Definition of Change of Control*. Unless otherwise defined in an Award Agreement, “*Change of Control*” shall mean the occurrence of one or more of the following events:

(a) Any Person, other than the Excluded Persons, becomes the Beneficial Owner, directly or indirectly, of more than 30% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of its directors (the “*Outstanding Company Voting Securities*”), including by way of merger, consolidation or otherwise; provided, however, that for purposes of this definition, the following acquisitions shall not be taken into account in determining whether a Change of Control has occurred: (i) any acquisition of voting securities of the Company directly from the Company or (ii) any acquisition by the Company or any of its Subsidiaries of Outstanding Company Voting Securities, including an acquisition by any employee benefit plan or related trust sponsored or maintained by the Company or any of its Subsidiaries.

(b) During any period of twelve (12) months, the following individuals (the “*Incumbent Directors*”) cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the Amendment Effective Date, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent or proxy solicitation, relating to the election of directors of the Company by or on behalf of a Person other than the Board) whose appointment or election by the Board or nomination for election by the Company’s stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were directors on the Amendment Effective Date or whose appointment, election or nomination for election was previously so approved or recommended.

(c) Consummation of a reorganization, recapitalization, merger or consolidation involving the Company, unless, following such transaction: (i) any individuals and entities that were the Beneficial Owners of Outstanding Company Voting Securities immediately prior to such transaction are the Beneficial Owners, directly or indirectly, of more than 50% of the combined voting power of the outstanding voting securities entitled to vote generally in the election of directors (or election of members of a comparable governing body) of the entity resulting from the transaction (“successor entity”) in substantially the same relative proportions as their ownership immediately prior to such transaction; (ii) no Person (excluding any successor entity, any Excluded Person or any employee benefit plan or related trust of the Company, such successor entity or any of their Subsidiaries) is the Beneficial Owner, directly or indirectly, of more than 30% of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or comparable governing body) of the successor entity, except to the extent that such ownership existed prior to any such transaction; and (iii) at least a majority of the members of the board of directors (or comparable governing body) of the successor entity were Incumbent Directors (including persons deemed to be Incumbent Directors) at the time of the execution of the initial agreement or of the action of the Board providing for such transaction.

(d) The sale or disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company to any Person that is not an Excluded Person.

Notwithstanding the foregoing, to the extent necessary to comply with Section 409A of the Code with respect to the payment of “nonqualified deferred compensation,” “Change of Control” shall be limited to a “change in control event” as defined under Section 409A of the Code.

### 13. Forfeiture Events.

13.1 *General.* The Committee may specify in an Award Agreement at the time of the Award that the Participant’s rights, payments and benefits with respect to an Award are subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, without limitation, termination of Service for Cause; violation of Company policies; breach of noncompetition, non-solicitation, confidentiality or other restrictive covenants that may apply to the Participant; or other conduct by the Participant that is detrimental to the business or reputation of the Company.

#### 13.2 *Termination for Cause.*

(a) *Treatment of Awards.* Unless otherwise provided by the Committee and set forth in an Award Agreement, if (i) a Participant’s Service with the Company or any Subsidiary shall be terminated for Cause or (ii) after termination of Service for any other reason, the Committee determines in its reasonable discretion that after termination, the Participant engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, such Participant’s rights, payments and benefits with respect to an Award shall be subject to cancellation, forfeiture and/or recoupment, as provided in Section 13.3 below. The Company shall have the power to determine whether the Participant has been terminated for Cause, the date upon which such termination

for Cause occurs and whether the Participant engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary. Any such determination shall be final, conclusive and binding upon all Persons. In addition, if the Company shall reasonably determine that a Participant has committed or may have committed any act which could constitute the basis for a termination of such Participant's Service for Cause or violates any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, the Company may suspend the Participant's rights to exercise any Stock Option or Stock Appreciation Right, receive any payment or vest in any right with respect to any Award pending a determination by the Company of whether an act or omission could constitute the basis for a termination for Cause as provided in this Section 13.2.

(b) *Definition of Cause.* Unless otherwise defined in an Award Agreement, "Cause" shall mean any of the following, as determined by the Board: the Participant's: (i) failure, refusal or neglect to perform his or her job functions, or to follow the lawful directives of the Company or its Subsidiaries (other than by reason of a physical or mental impairment); (ii) commission of any felony or commission of a non-felony crime involving moral turpitude; (iii) embezzlement, misappropriation or fraud, whether or not related to the Participant's employment with the Company or its Subsidiaries; (iv) engagement in dishonesty or misconduct which has negatively reflected on the public reputation of the Company or its Subsidiaries; (v) violation of any material policy of the Company or its Subsidiaries; (vi) breach of the restrictive covenants contained in any agreement between the Participant and the Company or any Subsidiary; or (vii) material breach of any obligation under any written agreement between the Participant and the Company or any Subsidiary. Any voluntary termination of Service or other engagement by the Participant in anticipation of an involuntary termination of the Participant's Service for Cause shall be deemed to be a termination for "Cause." Notwithstanding the foregoing, in the event that a Participant is party to an employment, consulting, severance or other service-related agreement with the Company or any of its affiliates and such agreement contains a definition of "Cause," the definition of "Cause" set forth above shall be deemed replaced and superseded, with respect to such Participant, by the definition of "Cause" used in such agreement.

### 13.3 *Right of Recapture.*

(a) *General.* If at any time within one year (or such longer time specified in an Award Agreement or other agreement with a Participant or policy applicable to the Participant) after the date on which a Participant exercises a Stock Option or Stock Appreciation Right or on which a Restricted Stock Award, Restricted Stock Unit or Other-Stock Based Award vests or becomes payable or on which a Cash Performance Award is paid to a Participant, or on which income otherwise is realized by a Participant in connection with an Award, (i) a Participant's Service is terminated for Cause, (ii) the Committee determines in its discretion that the Participant is subject to any recoupment of benefits pursuant to the Company's compensation recovery, "clawback" or similar policy, as may be in effect from time to time, or (iii) after a Participant's Service terminates for any other reason, the Committee determines in its discretion either that, (1) during the Participant's period of Service, the Participant engaged in an act or omission which would have warranted termination of the Participant's Service for Cause or (2) after a Participant's termination of Service, the Participant engaged in conduct that materially violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, then any gain realized by the Participant from the exercise, vesting, payment or other realization of income by the Participant in connection with an Award, shall be paid by the Participant to the Company upon notice from the Company, subject to applicable law. Such gain shall be determined as of the date or dates on which the gain is realized by the Participant, without regard to any subsequent change in the Fair Market Value of a share of Common Stock. To the extent not otherwise prohibited by law, the Company shall have the right to offset such gain against any amounts otherwise owed to the Participant by the Company (whether as wages, vacation pay or pursuant to any benefit plan or other compensatory arrangement).

(b) *Accounting Restatement*. If a Participant receives compensation pursuant to an Award under the Plan (whether a Stock Option, Cash Performance Award or otherwise) based on financial statements that are subsequently required to be restated in a way that would decrease the value of such compensation, the Participant will, to the extent not otherwise prohibited by law, upon the written request of the Company, forfeit and repay to the Company the difference between what the Participant received and what the Participant should have received based on the accounting restatement, in accordance with (i) the Company's compensation recovery, "clawback" or similar policy, as may be in effect from time to time and (ii) any compensation recovery, "clawback" or similar policy made applicable by law including the provisions of Section 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed (clauses (i) and (ii), the "Policy"). Each Award granted hereunder shall be subject to the Policy, and all incentive-based compensation payable pursuant to such Award shall be subject to forfeiture and repayment pursuant to the terms of the Policy.

14. *Transfer, Leave of Absence, Etc.* For purposes of the Plan, except as otherwise determined by the Committee, the following events shall not be deemed a termination of Service: (a) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or (b) an approved leave of absence for military service or sickness, a leave of absence where the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted, a leave of absence for any other purpose approved by the Company or if the Committee otherwise so provides in writing.

#### 15. *General Provisions.*

15.1 *Status of Plan*. The Committee may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver shares of Common Stock or make payments with respect to Awards.

15.2 *Award Agreement*. An Award under the Plan shall be evidenced by an Award Agreement in a written or electronic form approved by the Committee setting forth the number of shares of Common Stock or Restricted Stock Units subject to the Award, the exercise price, base price or purchase price of the Award, the time or times at which an Award will become vested, exercisable or payable and the term of the Award. The Award Agreement also may set forth the effect on an Award of (i) a Change of Control and/or (ii) a termination of Service under certain circumstances. The Award Agreement shall be subject to and incorporate, by reference or otherwise, all of the applicable terms and conditions of the Plan, and also may set forth other terms and conditions applicable to the Award as determined by the Committee consistent with the limitations of the Plan. The grant of an Award under the Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in the Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the Award Agreement. The Committee need not require the execution of an Award Agreement by a Participant, in which case, acceptance of the Award by the Participant shall constitute agreement by the Participant to the terms, conditions, restrictions and limitations set forth in the Plan and the Award Agreement as well as the administrative guidelines of the Company in effect from time to time. In the event of any conflict between the provisions of the Plan and any Award Agreement, the provisions of the Plan shall supersede and control.

15.3 *No Assignment or Transfer; Beneficiaries*. Except as provided in Section 6.6 hereof or as otherwise determined by the Committee, Awards under the Plan shall not be assignable or transferable by the Participant, and shall not be subject in any manner to assignment, alienation, pledge, encumbrance or charge. Notwithstanding the foregoing, in the event of the death of a Participant, except as otherwise provided by the Committee in an Award Agreement, an outstanding Award may be exercised by or shall become payable to the legatee or legatees of such Award designated under the Participant's last will or by such Participant's executors, personal representatives or distributees of such Award in accordance with the Participant's will or the laws of descent and distribution. The Committee may provide in the terms of an

Award Agreement or in any other manner prescribed by the Committee that the Participant shall have the right to designate a beneficiary or beneficiaries who shall be entitled to any rights, payments or other benefits specified under an Award following the Participant's death.

15.4 *Deferrals of Payment.* The Committee may in its discretion permit a Participant to defer the receipt of payment of cash or delivery of shares of Common Stock that would otherwise be due to the Participant by virtue of the exercise of a right or the satisfaction of vesting or other conditions with respect to an Award; provided, however, that such discretion shall not apply in the case of a Stock Option or Stock Appreciation Right. If any such deferral is to be permitted by the Committee, the Committee shall establish rules and procedures relating to such deferral in a manner intended to comply with the requirements of Section 409A of the Code, including, without limitation, the time when an election to defer may be made, the time period of the deferral and the events that would result in payment of the deferred amount, the interest or other earnings attributable to the deferral and the method of funding, if any, attributable to the deferred amount.

15.5 *No Right to Employment or Continued Service.* Nothing in the Plan, in the grant of any Award or in any Award Agreement shall confer upon any Eligible Person or any Participant any right to continue in the Service of the Company or any of its Subsidiaries or interfere in any way with the right of the Company or any of its Subsidiaries to terminate the Service of an Eligible Person or a Participant for any reason or no reason at any time.

15.6 *Rights as Stockholder.* A Participant shall have no rights as a holder of shares of Common Stock with respect to any unissued securities covered by an Award until the date the Participant becomes the holder of record of such securities. Except as provided in Section 4.5 hereof, no adjustment or other provision shall be made for dividends or other stockholder rights, except to the extent that the Award Agreement provides for dividend payments or dividend equivalent rights. The Committee may determine in its discretion the manner of delivery of Common Stock to be issued under the Plan, which may be by delivery of stock certificates, electronic account entry into new or existing accounts or any other means as the Committee, in its discretion, deems appropriate. The Committee may require that the stock certificates (if any) be held in escrow by the Company for any shares of Common Stock or cause the shares to be legended in order to comply with the securities laws or other applicable restrictions, or, should the shares of Common Stock be represented by book or electronic account entry rather than a certificate, the Committee may take such steps to restrict transfer of the shares of Common Stock as the Committee considers necessary or advisable.

15.7 *Trading Policy and Other Restrictions.* Stock Option exercises and other transactions involving Awards under the Plan shall be subject to the Company's insider trading policy as may be in effect from time to time, and other restrictions, terms and conditions established by the Committee or by applicable law, including any other applicable policies set by the Committee from time to time.

15.8 *Section 16 Participants.* With respect to Participants subject to Section 16 of the Exchange Act, transactions under the Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors under the Exchange Act. The Plan and Awards granted hereunder to any Participants subject to Section 16 of the Exchange Act shall be deemed amended to the extent necessary to conform to the applicable conditions of Rule 16b-3 or its successors under the Exchange Act.

15.9 *Section 409A Compliance.*

(a) To the extent applicable, it is intended that the Plan and all Awards hereunder comply with, or be exempt from, the requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, and that the Plan and all Award Agreements shall be interpreted and applied by the Committee in a manner consistent with this intent in order to avoid the imposition of any additional tax under Section 409A of the Code. In the event that any (i) provision of the Plan or an Award Agreement, (ii) Award, payment, transaction or (iii) other action or arrangement contemplated by the provisions of the Plan is determined by the Committee to not comply with the applicable

requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, the Committee shall have the authority to take such actions and to make such changes to the Plan or an Award Agreement as the Committee deems necessary to comply with such requirements.

(b) No payment that constitutes deferred compensation under Section 409A of the Code that would otherwise be made under the Plan or an Award Agreement upon a termination of Service will be made or provided unless and until such termination is also a “separation from service,” as determined in accordance with Section 409A of the Code. Notwithstanding the foregoing or anything elsewhere in the Plan or an Award Agreement to the contrary, if a Participant is a “specified employee” as defined in Section 409A of the Code at the time of termination of Service with respect to an Award, then solely to the extent necessary to avoid the imposition of any additional tax under Section 409A of the Code, the commencement of any payments or benefits under the Award shall be deferred until the date that is six months plus one day following the date of the Participant’s termination of Service or, if earlier, the Participant’s death (or such other period as required to comply with Section 409A). In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant on account of Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

15.10 *Securities Law Compliance.* No shares of Common Stock will be issued or transferred pursuant to an Award unless and until all then applicable requirements imposed by Federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any exchanges upon which the shares of Common Stock may be listed, have been fully met. As a condition precedent to the issuance of shares of Common Stock pursuant to the grant or exercise of an Award, the Company may require the Participant to take any reasonable action that the Company determines is necessary or advisable to meet such requirements. The Committee may impose such conditions on any shares of Common Stock issuable under the Plan as it may deem advisable, including, without limitation, restrictions under the Securities Act under the requirements of any exchange upon which such shares of the same class are then listed, and under any blue-sky or other securities laws applicable to such shares. The Committee may also require the Participant to represent and warrant at the time of issuance or transfer that the shares of Common Stock are being acquired solely for investment purposes and without any current intention to sell or distribute such shares.

15.11 *Substitute Awards in Corporate Transactions.* Nothing contained in the Plan shall be construed to limit the right of the Committee to grant Awards under the Plan in connection with the acquisition, whether by purchase, merger, consolidation or other corporate transaction, of the business or assets of any corporation or other entity. Without limiting the foregoing, the Committee may grant Awards under the Plan to an employee or director of another corporation who becomes an Eligible Person by reason of any such corporate transaction in substitution for awards previously granted by such corporation or entity to such person. The terms and conditions of the substitute Awards may vary from the terms and conditions that would otherwise be required by the Plan solely to the extent the Committee deems necessary for such purpose. Any such substitute awards shall not reduce the Share Reserve except as may otherwise be required under applicable law or the listing requirements of Nasdaq or other exchange or securities market on which the Common Stock is listed.

15.12 *Tax Withholding.* The Participant shall be responsible for payment of any taxes or similar charges required by law to be paid or withheld from an Award or an amount paid in satisfaction of an Award. Any required withholdings shall be paid by the Participant on or prior to the payment or other event that results in taxable income in respect of an Award. The Award Agreement may specify the manner in which the withholding obligation shall be satisfied with respect to the particular type of Award, which may include permitting the Participant to elect to satisfy the withholding obligation by tendering shares of Common Stock to the Company or having the Company withhold a number of shares of Common Stock having a value equal to the minimum statutory tax or as otherwise specified in an Award Agreement, or similar charge required to be paid or withheld.

15.13 *Unfunded Plan.* The approval of the Plan and any reservation of shares of Common Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of shares of Common Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations under the Plan.

15.14 *Other Compensation and Benefit Plans.* The approval of the Plan shall not affect any other share incentive or other compensation plans in effect for the Company or any Subsidiary, nor shall the Plan preclude the Company from establishing any other forms of share incentive or other compensation or benefit program for employees of the Company or any Subsidiary. The amount of any compensation deemed to be received by a Participant pursuant to an Award shall not constitute includable compensation for purposes of determining the amount of benefits to which a Participant is entitled under any other compensation or benefit plan or program of the Company or a Subsidiary, including, without limitation, under any pension or severance benefits plan, except to the extent specifically provided by the terms of any such plan.

15.15 *Plan Binding on Transferees.* The Plan shall be binding upon the Company and its transferees and assigns, and the Participant and the Participant's executor, administrator and permitted transferees and beneficiaries.

15.16 *Severability.* If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

15.17 *Governing Law.* The Plan and all rights hereunder shall be subject to and interpreted in accordance with the laws of the State of Delaware, without reference to the principles of conflicts of laws, and to applicable Federal or other securities laws.

15.18 *No Fractional Shares.* No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

15.19 *No Guarantees Regarding Tax Treatment.* Neither the Company nor the Committee make any guarantees to any person regarding the tax treatment of Awards or payments made under the Plan. Neither the Company nor the Committee has any obligation to take any action to prevent the assessment of any tax on any person with respect to any Award under Section 409A of the Code, Section 4999 of the Code or otherwise, and neither the Company nor the Committee shall have any liability to a person with respect thereto.

15.20 *Data Protection.* By participating in the Plan, each Participant consents to the collection, processing, transmission and storage by the Company, its Subsidiaries and any third-party administrators of any data of a professional or personal nature for the purpose of administering the Plan.

15.21 *Awards to Non-U.S. Participants.* To comply with the laws in countries other than the United States in which the Company or any of its Subsidiaries or affiliates operates or has employees, Non-Employee Directors, consultants or other personal service providers, the Committee, in its sole discretion, shall have the power and authority to (i) modify the terms and conditions of any Award granted to Participants outside the United States to comply with applicable local laws, (ii) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local government regulatory exemptions or approvals and (iii) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable. Any subplans and

modifications to Plan terms and procedures established under this Section 15.21 by the Committee shall be attached to this Plan document as appendices.

16. Term; Amendment and Termination; Stockholder Approval; Arbitration.

16.1 *Term.* The Plan was originally effective as of the Effective Date. The Plan is being amended and restated as of the Amendment Effective Date, subject to the approval by the stockholders of the Company. Subject to Section 16.2 hereof, the Plan shall terminate on the tenth anniversary of the Amendment Effective Date.

16.2 *Amendment and Termination.* The Board may from time to time and in any respect, amend, modify, suspend or terminate the Plan; provided, however, that no amendment, modification, suspension or termination of the Plan shall materially and adversely affect any Award theretofore granted without the consent of the Participant or the permitted transferee of the Award. The Board may seek the approval of any amendment, modification, suspension or termination by the Company's stockholders to the extent it deems necessary in its discretion for purposes of compliance with applicable law or for any other purpose, and shall seek such approval to the extent it deems necessary in its discretion to comply with applicable law or listing requirements of Nasdaq or other exchange or securities market. Notwithstanding the foregoing, the Board shall have broad authority to amend the Plan or any Award under the Plan without the consent of a Participant to the extent it deems necessary or desirable in its discretion to comply with or to take into account changes in, or interpretations of, applicable tax laws, securities laws, employment laws, accounting rules and other applicable laws, rules and regulations.

16.3 *No Repricing of Options or Stock Appreciation Rights.* Except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, distribution (whether in the form of cash, Common Stock, other securities or property), stock split, extraordinary cash dividend, recapitalization, change in control, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities, or similar transactions), the Company may not, without obtaining stockholder approval, (i) amend the terms of outstanding Stock Options or Stock Appreciation Rights to reduce the exercise price of such outstanding Stock Options or base price of such Stock Appreciation Rights, (ii) cancel outstanding Stock Options or Stock Appreciation Rights in exchange for Stock Options or Stock Appreciation Rights with an exercise price or base price, as applicable, that is less than the exercise price or base price of the original Stock Options or Stock Appreciation Rights, or (iii) cancel outstanding Stock Options or Stock Appreciation Rights with an exercise price or base price, as applicable, above the current stock price in exchange for cash or other securities.

16.4 *Arbitration.* Any dispute, controversy or claim arising out of or relating to the Plan that cannot be resolved by the Participant on the one hand and the Company on the other, shall be submitted to arbitration in the State of Kansas under the National Rules for the Resolution of Employment Disputes of the American Arbitration Association; provided, however, that any such submission by the Participant must be made within one year of the date of the events giving rise to such dispute, controversy or claim. The determination of the arbitrator shall be conclusive and binding on the Company and the Participant, and judgment may be entered on the arbitrator's award in any court having jurisdiction. The expenses of such arbitration shall be borne by the Company; provided, however, that each party shall bear its own legal expenses.

**HOSTESS BRANDS, INC.**  
**2022 EMPLOYEE STOCK PURCHASE PLAN**  
*Effective as of June 8, 2022*

**I. PURPOSE OF THE PLAN**

This Hostess Brands, Inc. 2022 Employee Stock Purchase Plan (the “Plan”) is intended to promote the interests of the Company by providing eligible employees with the opportunity to acquire a proprietary interest in the Company through participation in a payroll-deduction based employee stock purchase plan intended to meet the requirements of section 423 of the Code.

Capitalized terms herein shall have the meanings assigned to such terms in Article XII.

**II. ADMINISTRATION OF THE PLAN**

A. The Plan Administrator shall have full authority to interpret and construe any provision of the Plan and to adopt such rules and regulations for administering the Plan as it may deem necessary or appropriate in order to implement the Plan or to comply with the requirements of section 423 of the Code. Decisions of the Plan Administrator shall be final and binding on all parties having an interest in the Plan.

B. The Plan Administrator may authorize one or more offerings under the Plan that are not designed to comply with the requirements of Code Section 423 but with the requirements of the foreign jurisdictions in which those offerings are conducted. Such offerings shall be separate from any offerings designed to comply with the Code Section 423 requirements but may be conducted concurrently with those offerings. In no event, however, shall the terms and conditions of any offering contravene the express limitations and restrictions of the Plan, and to the extent required by Code Section 423, the participants in each separate offering shall have equal rights and privileges under that offering in accordance with the requirements of Section 423(b)(5) of the Code and the applicable Treasury Regulations thereunder.

C. Notwithstanding any provision to the contrary in the Plan, the Plan Administrator may adopt such sub-plans relating to the operation and administration of the Plan to accommodate the specific requirements of local laws and procedures for jurisdictions outside of the United States.

**III. STOCK SUBJECT TO PLAN; CONDITIONS TO ISSUANCE OF COMMON STOCK**

A. The stock purchasable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares of Common Stock purchased on the open market. The maximum number of shares of Common Stock which may be issued over the term of the Plan shall not exceed 3,000,000 shares as of the Effective Date.

B. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination of shares, exchange of shares, spin-off transaction or other change affecting the outstanding Common Stock as a class without the Company’s receipt of consideration, or should the value of outstanding shares of Common Stock be substantially reduced as a result of a spin-off transaction or an extraordinary dividend or distribution, appropriate adjustments shall be made to (i) the maximum number and class of securities issuable under the Plan, (ii) the maximum number and class of securities purchasable per Participant on any one Purchase Date and (iii) the number and class of securities and the price per share in effect under each outstanding purchase right in order to prevent the dilution or enlargement of benefits thereunder.

C. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, shares of Common Stock purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions:

- (i) The admission of such shares of Common Stock to listing on all stock exchanges, if any, on which the Common Stock is then listed;
- (ii) The completion of any registration or other qualification of such shares of Common Stock under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body that the Plan Administrator shall, in its absolute discretion, deem necessary or advisable;
- (iii) The obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable;
- (iv) The payment to the Company of all amounts that it is required to withhold under federal, state or local law upon exercise of the rights, if any; and
- (v) The lapse of such reasonable period of time following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

#### IV. PURCHASE/HOLDING PERIODS

A. Shares of Common Stock shall be offered for purchase under the Plan through a series of successive purchase periods until such time as (i) the maximum number of shares of Common Stock available for issuance under the Plan shall have been purchased or (ii) the Plan shall have been sooner terminated.

B. Except as otherwise provided in Section X or as otherwise provided by the Plan Administrator, each purchase period shall have a duration of six (6) months, and in no event greater than twenty-seven (27) months. The Enrollment Date and Purchase Date for each purchase period shall be established by the Plan Administrator from time to time.

#### V. ELIGIBILITY

A. Each individual who (i) is an Eligible Employee on the Enrollment Date and (ii) has completed thirty (30) days of service (or such other period of service as determined by the Plan Administrator) with the Company or any Corporate Affiliate prior to such Enrollment Date shall be eligible to participate in the Plan for that purchase period on such Enrollment Date.

B. Each U.S. corporation that is a Corporate Affiliate as of the Effective Date has been designated as a Participating Company. Each U.S. corporation that becomes a Corporate Affiliate after the Effective Date shall automatically become a Participating Company effective as of the Enrollment Date of the first purchase period coincident with or next following the date on which it becomes such a Corporate Affiliate, unless the Plan Administrator determines otherwise prior to the Enrollment Date of that purchase period. Any other corporation that is a Corporate Affiliate as of the Effective Date or becomes a Corporate Affiliate after the Effective Date and any Corporate Affiliate whose participation in the Plan is delayed by the Plan Administrator under the preceding sentence shall become a Participating Company when authorized by the Plan Administrator to extend the benefits of the Plan to its Eligible Employees.

C. To participate in the Plan for a particular purchase period, the Eligible Employee must complete and submit enrollment forms prescribed by the Plan Administrator (including a payroll deduction authorization and Stock Purchase Agreement) in accordance with enrollment procedures prescribed by the Plan Administrator (which may include accessing a third party administrator's website and enrolling electronically) on or before the Enrollment Date of the purchase period. Unless otherwise specified by the Plan Administrator, once an Eligible Employee timely submits the properly completed enrollment forms, such Eligible Employee's participation in the

Plan will automatically remain in effect from one purchase period to the next in accordance with such Eligible Employee's payroll deduction authorization (including such Eligible Employee's designated rate of payroll deduction) unless and until such Eligible Employee withdraws from the Plan, changes the rate of such Eligible Employee's payroll deduction or such Eligible Employee's employment status changes.

## VI. PAYROLL DEDUCTIONS

A. The payroll deduction authorized by the Participant for purposes of acquiring shares of Common Stock under the Plan may be any multiple of one percent (1%) of the Base Salary paid to the Participant during each purchase period, up to a maximum of twenty-five percent (25%) unless the Plan Administrator establishes a different maximum percentage prior to the Enrollment Date of the applicable purchase period (subject to the limitations of Section VII). The deduction rate so authorized shall continue in effect for the entire purchase period except for changes effected in accordance with the following guidelines:

(i) The Participant may, at any time during the purchase period, reduce the Participant's rate of payroll deduction to become effective as soon as possible after submitting the appropriate form with the Plan Administrator. The Participant may not, however, effect more than one such reduction per purchase period, unless otherwise provided in the applicable offering documents related to such purchase period.

(ii) The Participant may at any time reduce such Participant's rate of payroll deduction under the Plan to 0%. Such reduction shall become effective as soon as possible after submitting the appropriate form with the Plan Administrator. The Participant's existing payroll deductions shall be applied to the purchase of shares of Common Stock on the next scheduled Purchase Date unless the Participant's participation in the Plan has terminated in accordance with Section VII.F.

(iii) The Participant may, at any time during the purchase period, increase the rate of such Participant's payroll deduction (up to the maximum percentage limit for that purchase period) to become effective for the next purchase period.

B. Payroll deductions shall begin on the first pay day administratively feasible following the Enrollment Date of the purchase period and shall (unless sooner terminated by the Participant) continue through the pay day ending with or immediately prior to the last day of the purchase period. The amounts so collected shall be credited to the Participant's book account under the Plan, but no interest shall be paid on the balance from time to time outstanding in such account unless otherwise required by the terms governing that purchase period. Unless the Plan Administrator determines otherwise prior to the start of the applicable purchase period, the amounts collected from the Participant shall not be held in any segregated account or trust fund and may be commingled with the general assets of the Company and used for general corporate purposes.

C. Payroll deductions collected in a currency other than U.S. Dollars shall be converted into U.S. Dollars on the last day of the purchase period in which collected, with such conversion to be based on an exchange rate determined by the Plan Administrator in its sole discretion.

D. Payroll deductions shall automatically cease upon the termination of the Participant's purchase right in accordance with the provisions of the Plan.

E. To the extent necessary to comply with local law, the Plan Administrator may permit Participants in one or more offerings to make contributions to the Plan by means other than payroll deductions.

## VII. PURCHASE RIGHTS

A. Grant of Purchase Right. A Participant shall be granted a separate purchase right on the Enrollment Date of each purchase period in which he or she participates. The purchase right shall provide the Participant with the right to purchase shares of Common Stock on the Purchase Date upon the terms set forth below.

Under no circumstances shall purchase rights be granted under the Plan to any Eligible Employee if such individual would, immediately after the grant, own (within the meaning of section 424(d) of the Code) or hold outstanding options or other rights to purchase, stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or any Corporate Affiliate.

B. Exercise of the Purchase Right. Each purchase right shall be automatically exercised on the Purchase Date, and shares of Common Stock shall accordingly be purchased on behalf of each Participant (other than any Participant whose payroll deductions have previously been refunded in accordance with the provisions of Section VII.B below) on such date. The purchase shall be affected by applying the Participant's payroll deductions for the purchase period ending on such Purchase Date to the purchase of whole shares of Common Stock (subject to the limitation on the maximum number of shares purchasable per Participant on any one Purchase Date) at the purchase price in effect for that purchase period. Fractional shares will not be issued under the Plan, unless otherwise determined by the Plan Administrator and provided under the applicable offering document. Any excess contributions in a Participant's account that would have been used to purchase fractional shares will be automatically re-invested in a subsequent purchase period unless the Participant timely revokes such Participant's authorization to re-invest such excess amounts or the Company elects to return such contributions to the Participant.

C. Purchase Price. Effective with the initial purchase period commencing following the Effective Date and until such time as otherwise determined by the Plan Administrator, the purchase price per share at which Common Stock will be purchased on the Participant's behalf on each Purchase Date shall be equal to eighty-five percent (85%) of the *lower* of (i) the Fair Market Value per share of Common Stock on the Enrollment Date of the applicable purchase period or (ii) the Fair Market Value per share of Common Stock on the Purchase Date of the applicable purchase period. However, the Plan Administrator may prior to the start of any purchase period establish a different purchase price per share at which Common Stock will be purchased on the Participant's behalf on the Purchase Date for that purchase period, but in no event shall such purchase price be less than eighty-five percent (85%) of the *lower* of (i) the Fair Market Value per share of Common Stock on the Enrollment Date of that purchase period or (ii) the Fair Market Value per share of Common Stock on that Purchase Date.

D. Number of Purchasable Shares. The number of shares of Common Stock purchasable by a Participant on each Purchase Date shall be the number of shares obtained by dividing the amount collected from the Participant through payroll deductions during the purchase period ending with that Purchase Date by the purchase price in effect for that Purchase Date. Notwithstanding the foregoing and subject to the limitations described in Section II.B and Section VIII, in connection with any offering, the Plan Administrator may (i) specify a maximum number of shares of Common Stock that may be purchased by any single Participant on a Purchase Date, and if no such limit is specified, such limit shall be 625 shares of Common Stock; and (ii) elect to specify a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such offering. For the avoidance of doubt, the Plan Administrator shall have the discretionary authority, exercisable prior to the start of any purchase period under the Plan, to increase or decrease the limitations to be in effect for the number of shares purchasable per Participant on the Purchase Date for that purchase period.

E. Excess Payroll Deductions. Any payroll deductions not applied to the purchase of Common Stock by reason of any limitation on the maximum number of shares purchasable by the Participant on the Purchase Date (whether such limitation is pursuant to Section VII.D, Section VIII or otherwise) shall be promptly refunded.

F. Termination of Purchase Right. The following provisions shall govern the termination of outstanding purchase rights:

(i) A Participant may, no later than fifteen (15) days (or such other period as determined by the Plan Administrator) prior to a Purchase Date for a purchase period, terminate such Participant's outstanding purchase right by submitting the prescribed form in accordance with procedures prescribed by the Plan Administrator (which may include accessing a third party administrator's website and electronically electing

to withdraw), and no further payroll deductions shall be collected from the Participant with respect to the terminated purchase right. Any payroll deductions collected during the purchase period in which such termination occurs shall, at the Participant's election, be immediately refunded or held for the purchase of shares on the next Purchase Date. If no such election is made at the time such purchase right is terminated, then the payroll deductions collected with respect to the terminated right shall be refunded as soon as possible.

(ii) The termination of such purchase right shall be irrevocable, and the Participant may not subsequently rejoin the purchase period for which the terminated purchase right was granted. In order to resume participation in any subsequent purchase period, such individual must re-enroll in the Plan (in accordance with procedures prescribed by the Plan Administrator) on or before the Enrollment Date of the new purchase period.

(iii) Should the Participant cease to remain an Eligible Employee for any reason (including death, disability or change in status) while such Participant's purchase right remains outstanding, then that purchase right shall immediately terminate, and all of the Participant's payroll deductions for the purchase period in which the purchase right so terminates shall be immediately refunded. However, should the Participant cease to remain in active service by reason of an approved unpaid leave of absence, then the Participant shall have the election, exercisable up until the business day preceding the Purchase Date for the applicable purchase period in which such leave commences, to (a) withdraw all the funds in the Participant's payroll account at the time of the commencement of such leave or (b) have such funds held for the purchase of shares at the end of such purchase period. In no event, however, shall any further payment deductions be added to the Participant's account during such leave. Upon the Participant's return to active service (x) within three (3) months following the commencement of such leave; or (y) prior to the expiration of any longer period for which such Participant is provided with reemployment rights by statute or contract, such Participant's payroll deductions under the Plan shall automatically resume at the rate in effect at the time the leave began. An individual who returns to active employment following a leave of absence which exceeds in duration the applicable (x) or (y) time period above will be treated as a new Eligible Employee for purposes of subsequent participation in the Plan and must accordingly re-enroll in the Plan (in accordance with procedures prescribed by the Plan Administrator) on or before the start of the purchase period.

G. Proration of Purchase Rights. Should the total number of shares of Common Stock which are to be purchased pursuant to outstanding purchase rights on any particular date exceed the number of shares then available for issuance under the Plan, the Plan Administrator shall make a pro-rata allocation of the available shares on a uniform and nondiscriminatory basis, and the payroll deductions of each Participant, to the extent in excess of the aggregate purchase price payable for the Common Stock pro-rated to such individual, shall be refunded.

H. Change of Control. In the event that a Change of Control occurs during a purchase period, the Plan Administrator may take such action as it deems appropriate, including (without limitation):

(i) provide that each outstanding purchase right shall remain outstanding;

(ii) provide that each outstanding purchase right will terminate as of a date prior to the effective date of the Change of Control without being exercised and all payroll deductions of each Participant accumulated during such purchase period (and not previously applied to the purchase of shares) shall be refunded to the Participant;

(iii) provide that a Purchase Date shall automatically occur immediately prior to the effective date of the Change of Control, and each purchase right outstanding at that time shall thereupon be exercised by applying the payroll deductions of each Participant for the purchase period in which such Change of Control occurs to the purchase of shares of Common Stock at the purchase price per share in effect for that purchase period pursuant to the purchase price formula provisions of Section VII.C;

(iv) provide that no new purchase period shall be initiated following the announcement of such Change of Control;

(v) provide for a new date on or before the consummation of such Change of Control that will be the Purchase Date for the applicable purchase period; or

(vi) provide that each outstanding purchase right will be assumed or an equivalent right will be substituted by the successor corporation (or parent or subsidiary thereof).

I. ESPP Brokerage Account. The Plan Administrator shall have the discretionary authority to require that the shares purchased on behalf of each Participant be deposited directly into a brokerage account which the Company shall establish for the Participant at a Company-designated brokerage firm (the "ESPP Brokerage Account"). Except as otherwise provided below, the deposited shares may not be transferred (either electronically or in certificate form) from the ESPP Brokerage Account until the **later** of the following two periods: (i) the end of the two (2)-year period measured from the Participant's Enrollment Date into the purchase period in which the shares were purchased and (ii) the end of the one (1)-year measured from the actual Purchase Date of those shares. Such limitation shall apply both to transfers to different accounts with the same ESPP broker and to transfers to other brokerage firms. Any shares held for the required holding period may be transferred (either electronically or in certificate form) to other accounts or to other brokerage firms.

***The foregoing procedures shall not in any way limit when the Participant may sell such Participant's shares.*** Those procedures are designed solely to assure that any sale of shares prior to the satisfaction of the required holding period is made through the ESPP Brokerage Account. In addition, the Participant may request a stock certificate or share transfer from such Participant's ESPP Brokerage Account prior to the satisfaction of the required holding period should the Participant wish to make a gift of any shares held in that account. However, shares may not be transferred (either electronically or in certificate form) from the ESPP Brokerage Account for use as collateral for a loan, unless those shares have been held for the required holding period.

The foregoing procedures shall apply to all shares purchased by the Participant under the Plan, whether or not the Participant continues in Eligible Employee status.

J. Assignability. During the Participant's lifetime, the purchase right shall be exercisable only by the Participant and shall not be assignable or transferable by the Participant (other than by will or the laws of descent).

K. Stockholder Rights. A Participant shall have no stockholder rights with respect to the shares subject to such Participant's outstanding purchase right until the shares are purchased on the Participant's behalf in accordance with the provisions of the Plan and the Participant has become a holder of record of the purchased shares.

## VIII. ACCRUAL LIMITATIONS

A. No Participant shall be entitled to accrue rights to acquire Common Stock pursuant to any purchase right outstanding under this Plan if and to the extent such accrual, when aggregated with (i) rights to purchase Common Stock accrued under any other purchase right granted under this Plan and (ii) similar rights accrued under other employee stock purchase plans (within the meaning of section 423 of the Code) of the Company or any Corporate Affiliate, would otherwise permit such Participant to purchase more than \$25,000 worth of stock of the Company or any Corporate Affiliate (determined on the basis of the Fair Market Value of such stock on the date or dates such rights are granted) for each calendar year such rights are at any time outstanding.

B. For purposes of applying such accrual limitations, the following provisions shall be in effect:

(i) The right to acquire Common Stock under each outstanding purchase right shall accrue on the Purchase Date in effect for the purchase period for which such right is granted.

(ii) No right to acquire Common Stock under any outstanding purchase right shall accrue to the extent the Participant has already accrued in the same calendar year the right to acquire Common Stock under one (1) or more other purchase rights at a rate equal to \$25,000 worth of Common Stock (determined on the basis of the Fair Market Value of such stock on the date or dates of grant) for each calendar year such rights were at any time outstanding.

C. If by reason of such accrual limitations, any purchase right of a Participant does not accrue for a particular purchase period, then the payroll deductions which the Participant made during that purchase period with respect to such purchase right shall be promptly refunded.

D. In the event there is any conflict between the provisions of this Section and one or more provisions of the Plan or any instrument issued thereunder, the provisions of this Section shall be controlling.

#### IX. EFFECTIVE DATE AND TERM OF THE PLAN

A. Subject to approval by the Company's stockholders, the Plan shall be effective as of the Effective Date.

B. Unless sooner terminated by the Board, the Plan shall terminate upon the earliest of (i) the tenth anniversary of the Effective Date, (ii) the date on which all shares available for issuance under the Plan have been sold pursuant to purchase rights exercised under the Plan or (iii) the date on which all purchase rights are exercised in connection with a Change of Control. No further purchase rights shall be granted or exercised, and no further payroll deductions shall be collected, under the Plan following its termination.

#### X. AMENDMENT OF THE PLAN

The Board may alter, amend, suspend or discontinue the Plan at any time and for any reason; *provided, however*, the Board may not, without the approval of the Company's stockholders, (i) increase the number of shares of Common Stock issuable under the Plan, except for permissible adjustments in the event of certain changes in the Company's capitalization or (ii) change the class of corporations that may be designated as Participating Companies.

#### XI. GENERAL PROVISIONS

A. All costs and expenses incurred in the administration of the Plan shall be paid by the Company.

B. Nothing in the Plan shall confer upon the Participant any right to continue in the employ of the Company or any Corporate Affiliate for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Corporate Affiliate employing such person) or of the Participant, which rights are hereby expressly reserved by each, to terminate such person's employment at any time for any reason, with or without cause.

C. The provisions of the Plan shall be governed by the laws of the State of Delaware, without resort to that state's conflict-of-laws rules.

#### XII. DEFINITIONS

The following definitions shall be in effect under the Plan:

A. "1933 Act" means the Securities Act of 1933, as amended.

B. "Base Salary" means the regular base salary paid to a Participant by one or more Participating Companies during such individual's period of participation in the Plan, plus any pre-tax contributions made by the Participant to any cash-or-deferred arrangement that meets the requirements of section 401(k) of the Code or any cafeteria benefit program that meets the requirements of section 125 of the Code, now or hereafter

established by the Company or any Corporate Affiliate. The following items of compensation shall not be included in Base Salary: (i) all overtime payments, bonuses, commissions (other than those functioning as base salary equivalents), profit-sharing distributions and other incentive-type payments and (ii) any and all contributions (other than contributions subject to sections 401(k) and 125 of the Code) made on the Participant's behalf by the Company or any Corporate Affiliate under any employee benefit or welfare plan now or hereafter established.

C. "Board" means the Company's Board of Directors.

D. "Change of Control" has the meaning given to such term in the Hostess Brands, Inc. 2016 Equity Incentive Plan or any successor plan thereto, in each case, as amended and/or restated from time to time.

E. "Code" means the Internal Revenue Code of 1986, as amended.

F. "Common Stock" means the Company's Class A common stock, par value \$0.0001 per share.

G. "Company" means Hostess Brands, Inc., a Delaware corporation, and any corporate successor to all or substantially all of the assets or voting stock of Hostess Brands, Inc., which shall, by appropriate action, adopt the Plan.

H. "Corporate Affiliate" means any parent or subsidiary of the Company (as determined in accordance with Code Section 424, whether now existing or subsequently established or acquired).

I. "Effective Date" means June 8, 2022, subject to the approval of the Company's stockholders.

J. "Eligible Employee" means any person who (i) does not immediately prior to the exercise of any rights under the Plan own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of common stock of the Company and other stock of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code) and (ii) is engaged, on a regularly-scheduled basis of more than twenty (20) hours per week for more than five (5) months per calendar year, in the rendition of personal services to any Participating Company as an employee for earnings considered wages under section 3401(a) of the Code; *provided, however*, that the Plan Administrator may, prior to the start of the applicable purchase period, waive one or both of the twenty (20) hour and five (5) month service requirements.

K. "Enrollment Date" means the first day of each purchase period.

L. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

M. "Fair Market Value" per share of Common Stock on any relevant date shall be the closing selling price per share of Common Stock on the date in question on the stock exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

N. "Participant" means any Eligible Employee of a Participating Company who is actively participating in the Plan.

O. "Participating Company" means the Company and each Corporate Affiliate that is authorized, in accordance with Section V.B. of the Plan, to extend the benefits of the Plan to its Eligible Employees.

P. "Plan Administrator" means a committee of two (2) or more Board members appointed by the Board to administer the Plan. As of the Effective Date, the Plan Administrator shall be the Talent and Compensation Committee of the Board (the "Committee"). Subject to the foregoing, the Board or the Committee may delegate authority to one or more subcommittees or to one or more individuals, in each case, as the Board or Committee deems appropriate and as consistent with applicable law, and such delegate(s) shall be considered "Plan Administrator" for purposes of this Plan.

Q. "Purchase Date" means the last business day of each purchase period.