
**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 16, 2023

Carrols Restaurant Group, Inc.

(Exact name of registrant as specified in its charter)



Delaware
(State or other jurisdiction of
incorporation or organization)

001-33174
(Commission
File Number)

83-3804854
(I.R.S. Employer
Identification No.)

968 James Street
Syracuse, New York
(Address of principal executive office)

13203
(Zip Code)

Registrant's telephone number, including area code: (315) 424-0513

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.01 per share	TAST	The NASDAQ Global Market

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

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

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.

On June 16, 2023, at the 2023 Annual Meeting of Stockholders (the “Annual Meeting”) of Carrols Restaurant Group, Inc. (the “Company”), the Company’s stockholders approved the amendment and restatement of the Company’s 2016 Stock Incentive Plan, as amended (the “Amended and Restated 2016 Plan”). A summary of the Amended and Restated 2016 Plan is set forth in the Company’s definitive proxy statement (the “Proxy Statement”) filed with the Securities and Exchange Commission on April 27, 2023. The foregoing summary of the Amended and Restated 2016 Plan does not purport to be complete and is qualified in its entirety by reference to the complete text of the Amended and Restated 2016 Plan, which is filed as [Exhibit 10.1](#) hereto and incorporated by reference herein.

ITEM 5.07. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

On June 16, 2023, the Company held its Annual Meeting. At the Annual Meeting, the Company’s stockholders (i) re-elected Hannah S. Craven, Lawrence E. Hyatt and Alexander Sloane as Class II directors, to each serve a three-year term that expires at the Company’s 2026 Annual Meeting of Stockholders or until their respective successors have been duly elected and qualified, (ii) voted to approve, on an advisory basis, a resolution approving the compensation of the Company’s Named Executive Officers as described in the Proxy Statement under “Executive Compensation”, (iii) voted to select, on an advisory basis, the frequency of the advisory stockholder vote on the compensation of the Company’s Named Executive Officers, (iv) voted to approve the Amended and Restated 2016 Plan as described in the Proxy Statement under “PROPOSAL 4”, and (v) voted to ratify the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the 2023 fiscal year.

The results of voting for each proposal submitted to the stockholders are as follows:

Proposal 1. Election of Hannah S. Craven, Lawrence E. Hyatt and Alexander Sloane as Class II Directors.

Name	For	Against	Abstain	Broker Non-Vote
Hannah S. Craven	41,683,823	748,279	52,186	10,292,621
Lawrence E. Hyatt	41,779,301	690,484	14,503	10,292,621
Alexander Sloane	40,272,790	2,159,925	51,573	10,292,621

Proposal 2. Approval, on an advisory basis, of a resolution approving the compensation of the Company’s Named Executive Officers as described in the Proxy Statement under “Executive Compensation”.

For	Against	Abstain	Broker Non-Vote
42,076,369	368,149	39,770	10,292,621

Proposal 3. Selection, on an advisory basis, of the frequency of the advisory stockholder vote on the compensation of the Company's Named Executive Officers.

3 Years	2 Years	1 Year	Abstain
1,459,832	33,058	40,935,577	55,821

Based on the results of the stockholder advisory vote, the Company has determined, consistent with the recommendation of the Company's Board of Directors stated in the Proxy Statement for the Annual Meeting, that it will hold a stockholder advisory vote on the compensation of the Company's Named Executive Officers every year.

Proposal 4. Approval of the Amended and Restated 2016 Plan as described in the Proxy Statement under "PROPOSAL 4".

For	Against	Abstain	Broker Non-Vote
41,943,588	513,083	27,617	10,292,621

Proposal 5. Ratification of the appointment of Deloitte & Touche LLP as the Company's independent registered public accounting firm for the 2023 fiscal year.

For	Against	Abstain
52,504,322	176,974	95,613

Additionally, on June 16, 2023, the holders of all of the outstanding shares of the Company's Series D Convertible Preferred Stock voted to re-elect Thomas B. Curtis and Matthew Dunnigan to the Company's Board of Directors. Mr. Curtis and Mr. Dunnigan each will serve as a Class D Director for a one-year term that expires at the Company's 2024 Annual Meeting of Stockholders or until their respective successors shall have been elected and qualified.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

d) Exhibits

[10.1 Carrols Restaurant Group, Inc. 2016 Stock Incentive Plan, as Amended and Restated+](#)

104 Cover Page Interactive Data File (formatted as Inline XBRL)

+ Compensatory plan or arrangement

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 22, 2023

CARROLS RESTAURANT GROUP, INC.

By: /s/ Jared L. Landaw

Name: Jared L. Landaw

Title: Vice President, General Counsel and Secretary

CARROLS RESTAURANT GROUP, INC.
2016 STOCK INCENTIVE PLAN
AS AMENDED AND RESTATED EFFECTIVE JUNE 16, 2023

1. ESTABLISHMENT AND PURPOSE.

The Carrols Restaurant Group, Inc. 2016 Stock Incentive Plan (the "Plan") is established by Carrols Restaurant Group, Inc., a Delaware corporation (the "Company"), to attract and retain persons eligible to participate in the Plan; motivate Participants to achieve long-term Company goals; and further align Participants' interests with those of the Company's other stockholders. The Plan is adopted as of April 26, 2016, subject to approval by the Company's stockholders within 12 months after such adoption date. No Awards shall be granted hereunder prior to the approval of the Plan by the Company's stockholders. No Award shall be granted hereunder on or after the date 10 years after the Effective Date or such earlier date as of which the Plan is discontinued by the Board as provided herein. The Plan shall terminate on April 26, 2026 or such earlier time as the Board may determine.

Certain terms used herein are defined as set forth in **Section 12**.

2. ADMINISTRATION; ELIGIBILITY.

The Plan shall be administered by the Compensation Committee of the Board, or such other Committee, appointed by the Board consisting of three (3) or more members of the Board all of whom are intended to be "non-employee directors" within the meaning of Section 16 of the Exchange Act and the regulations promulgated thereunder and "outside directors" within the contemplation of Section 162(m) of the Code; provided, however, that, if at any time no Compensation Committee or other Committee has been appointed or is eligible to act in the circumstances, the Plan shall be administered by the Board. As used herein, the term "Administrator" means the Board, the Compensation Committee or any of the Board's other Committees as shall be administering the Plan or any individual delegated authority to act as the Administrator in accordance with this Section 2.

The Administrator shall have plenary authority to grant Awards pursuant to the terms of the Plan to Eligible Individuals. Participation shall be limited to such persons as are selected by the Administrator. Subject to Section 409A of the Code, Awards may be granted as alternatives to, in exchange or substitution for, or replacement of, awards outstanding under the Plan or any other plan or arrangement of the Company or a Subsidiary (including, subject to the requirements under the Plan, a plan or arrangement of a business or entity, all or a portion of which is acquired by the Company or a Subsidiary). The provisions of Awards need not be the same with respect to each Participant.

Among other things, the Administrator shall have the authority, subject to the terms of the Plan:

- (a) to select the Eligible Individuals to whom Awards may from time to time be granted, provided that Outside Directors of the Company shall receive Outside Director Awards pursuant to **Sections 8 and 9**;
- (b) to determine whether and to what extent Stock Options, Stock Appreciation Rights, Stock Awards or any combination thereof are to be granted hereunder;
- (c) to determine the number of shares of Stock to be covered by each Award granted hereunder;
- (d) to approve forms of agreement for use under the Plan;
- (e) to determine the terms and conditions, not inconsistent with the terms of this Plan, of any Award granted hereunder (including, but not limited to, the option price, any vesting restriction or limitation, any vesting acceleration or waiver of forfeiture, and any right of repurchase, right of first refusal or other transfer restriction regarding any Award and the shares of Stock relating thereto, based on such factors or criteria as the Administrator shall determine);

- (f) to modify, amend or adjust the terms and conditions of any Award, at any time or from time to time, including, but not limited to, with respect to performance goals and targets applicable to performance based Awards pursuant to the terms of the Plan;
- (g) to determine the Fair Market Value; and
- (h) to determine the type and amount of consideration to be received by the Company for any Stock Award issued under **Section 6**.

The Administrator shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall, from time to time, deem advisable, to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan.

In order to assure the viability of Awards granted to Participants employed in foreign countries who are not subject to U.S. tax law, the Administrator may provide for such special terms as it may consider necessary or appropriate to accommodate differences in local law, tax policy, or custom. Moreover, the Administrator may approve such supplements to, or amendments, restatements, or alternative versions of, the Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of the Plan as in effect for any other purpose; provided, however, that no such supplements, amendments, restatements, or alternative versions shall increase the share limitations contained in **Section 3** of the Plan.

Except to the extent prohibited by applicable law, the Administrator may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any portion of its responsibilities and powers to any other person or persons selected by it. Any such allocation or delegation may be revoked by the Administrator at any time. The Administrator may authorize any one or more of their members or any officer of the Company to execute and deliver documents on behalf of the Administrator.

Any determination made by the Administrator or pursuant to delegated authority pursuant to the provisions of the Plan with respect to any Award shall be made in the sole discretion of the Administrator or such delegate at the time of the grant of the Award or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Administrator or any appropriately delegated officer pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company and Participants.

No member of the Administrator, and no officer of the Company, shall be liable for any action taken or omitted to be taken by such individual or by any other member of the Administrator or officer of the Company in connection with the performance of duties under this Plan, except for such individual's own willful misconduct or as expressly provided by law.

3. STOCK SUBJECT TO PLAN.

Subject to adjustment as provided in this **Section 3**, the aggregate number of shares of Stock which may be delivered under the Plan shall not exceed 12,000,000 shares.

To the extent any shares of Stock covered by an Award are not delivered to a Participant or beneficiary thereof because the Award expires, is forfeited, lapses without exercise, canceled or otherwise terminated, or any shares of Restricted Stock (as defined in **Section 9**) are forfeited, such shares shall not be deemed to have been delivered for purposes of determining the maximum number of shares of Stock available for delivery under the Plan with respect to, and shall be available for, future grants of Awards. Notwithstanding the preceding sentence, shares of stock used to pay the exercise price or withholding taxes related to an outstanding Award shall be treated as issued under the Plan and may not again be made available for issuance as Awards under the Plan. Any Stock Appreciation Right awarded under the Plan will count as granted and not as settled if settled in Stock.

In the event of any Company stock dividend, special cash dividend, stock split, combination or exchange of shares, recapitalization or other change in the capital structure of the Company, corporate separation or division of the Company (including, but not limited to, a split-up, spin-off, split-off or other distribution to Company stockholders, other than a normal cash dividend), sale by the Company of all or a substantial portion of its assets (measured on either a stand-alone or consolidated basis), reorganization, rights offering, partial or complete liquidation, merger or consolidation in which the Company is the surviving corporation, or any other corporate transaction, Company share offering or other event involving the Company and having an effect similar to any of the foregoing, the Administrator may make such substitution or adjustments in the (a) number and kind of shares that may be delivered under the Plan, (b) number and kind of shares subject to outstanding Awards, (c) exercise price of outstanding Stock Options, Outside Director Stock Options, and Stock Appreciation Rights and (d) other characteristics or terms of the Awards as it may determine appropriate in its sole discretion to equitably reflect such corporate transaction, share offering or other event; provided, however, that the number of shares subject to any Award shall always be a whole number and any fractional share resulting from an adjustment or substitution provided for hereunder shall be rounded up to the nearest whole share.

In the event of the dissolution or liquidation of the Company, or a merger, reorganization or consolidation in which the Company is not the surviving corporation, then, except as otherwise provided herein and/or in the discretion of the Administrator, each Stock Option and Outside Director Stock Option, to the extent not theretofore exercised, shall terminate forthwith.

Notwithstanding the foregoing, no adjustment shall be made pursuant to this **Section 3** to the extent that such adjustment would violate Section 409A of the Code.

4. STOCK OPTIONS.

Stock Options may be granted alone or in addition to other Awards granted under the Plan and may be of two types: Incentive Stock Options and Non-Qualified Stock Options. Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

The Administrator shall have the authority to grant any Participant Incentive Stock Options, Non-Qualified Stock Options or both types of Stock Options. Incentive Stock Options may be granted only to associates of the Company and its subsidiaries (within the meaning of Section 424(f) of the Code). To the extent that any Stock Option is not designated as an Incentive Stock Option or, even if so designated, does not qualify as an Incentive Stock Option, it shall constitute a Non-Qualified Stock Option. Incentive Stock Options may be granted only within 10 years from the date the Plan is adopted, or the date the Plan is approved by the Company's stockholders, whichever is earlier.

Stock Options shall be evidenced by option agreements, each in a form approved by the Administrator. An option agreement shall indicate on its face whether it is intended to be an agreement for an Incentive Stock Option or a Non-Qualified Stock Option. The grant of a Stock Option shall occur as of the date the Administrator determines, subject to FASB Statement 123(R) and guidance thereunder.

Anything in the Plan to the contrary notwithstanding, no term of the Plan relating to Incentive Stock Options shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify the Plan under Section 422 of the Code or, without the consent of the Optionee affected, to disqualify any Incentive Stock Option under Section 422 of the Code.

To the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company and its subsidiaries within the meaning of Section 424(f) of the Code) exceeds \$100,000, such Stock Options shall be treated as Non-Qualified Stock Options.

Stock Options granted under this **Section 4** shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Administrator shall deem desirable:

- (a) *Exercise Price.* The exercise price per share of Stock purchasable under a Stock Option shall be determined by the Administrator at the time of grant and set forth in the applicable option agreement; provided, however, that the exercise price per share shall be not less than the Fair Market Value per share on the date the Stock Option is granted, or in the case of an Incentive Stock Option granted to an individual who is a Ten Percent Holder, not less than 110% of such Fair Market Value per share on the date the Stock Option is granted.
- (b) *Option Term.* The term of a Stock Option shall be determined by the Administrator at the time of grant and set forth in the applicable option agreement, provided, however, that no Stock Option shall be exercisable more than 10 years after the date that the Stock Option is granted (or more than five years after the date that the Stock Option is granted in the case of an Incentive Stock Option granted to an individual who is a Ten Percent Holder).
- (c) *Vesting.* A Stock Option shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable option agreement, provided that no Stock Option shall become vested earlier than the first anniversary of the date of grant of such Stock Option; and provided, further, that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date.
- (d) *Exercisability.* Stock Options shall be exercisable to the extent vested; provided that the exercise of a Stock Option shall be subject to such additional terms and conditions, performance requirements, restrictions, forfeiture provisions, contingencies and limitations, if any, as shall be determined by the Administrator and listed in the applicable option agreement.
- (e) *Method of Exercise.* Stock Options may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Stock Option to be purchased.

The option price of any Stock Option shall be paid in full in cash (by certified or bank check or such other instrument as the Company may accept) or, unless otherwise provided in the applicable award agreement, by one or more of the following: (i) in the form of shares of unrestricted and vested Stock already owned by the Optionee, based on the Fair Market Value of the Stock on the date the Stock Option is exercised; (ii) by certifying ownership of shares of Stock owned by the Optionee to the satisfaction of the Administrator for later delivery to the Company as specified by the Company; (iii) unless otherwise prohibited by law for either the Company or the Optionee, by irrevocably authorizing a third party to sell shares of Stock (or a sufficient portion of the shares) acquired upon exercise of the Stock Option and remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise; or (iv) by any combination of cash and/or any one or more of the methods specified in clauses (i), (ii) and (iii). Notwithstanding the foregoing, a form of payment shall not be permitted to the extent it would cause the Company to recognize a compensation expense (or additional compensation expense) with respect to the Stock Option for financial reporting purposes.

Unless otherwise determined by the Administrator, if payment of the option exercise price of a Non-Qualified Stock Option is made in whole or in part in the form of stock that is subject to restrictions on transfer and/or forfeiture provisions, some or all of the Stock received upon such exercise shall be subject to the same restrictions as such Stock. The number of shares of Stock received upon such exercise that shall be subject to such restrictions shall equal the number of shares of Stock used for payment of the option exercise price.

No shares of Stock shall be issued upon exercise of a Stock Option until full payment therefor has been made. Upon exercise of a Stock Option (or a portion thereof), the Company shall have a reasonable time to issue the Stock for which the Stock Option has been exercised, and the Optionee shall not be treated as a stockholder for any purposes whatsoever prior to such issuance. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date such Stock is recorded as issued and transferred in the Company's official stockholder records, except as otherwise provided herein or in the applicable option agreement.

- (f) *Transferability of Stock Options.* Except as otherwise provided in the applicable award agreement, a Non-Qualified Stock Option (i) shall be transferable by the Optionee to a Family Member of the Optionee, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Stock Option shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. An Incentive Stock Option shall not be transferable except by will or the laws of descent and distribution. A Stock Option shall be exercisable, during the Optionee's lifetime, only by the Optionee or by the guardian or legal representative of the Optionee, it being understood that the terms "holder" and "Optionee" include the guardian and legal representative of the Optionee named in the applicable option agreement and any person to whom the Stock Option is transferred (X) pursuant to the first sentence of this **Section 4(f)** or pursuant to the applicable option agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of an Optionee's employment or provision of services shall mean the termination of employment or provision of services of the person to whom the Stock Option was originally granted.
- (g) *Termination by Death or Disability.* Except as otherwise provided in the applicable award agreement, if an Optionee's employment or provision of services terminates by reason of death or Disability, any Stock Option held by such Optionee shall be fully vested upon such death or termination of employment or provision of services and may thereafter be exercised for a period of one year from the date of such death, Disability or until the expiration of the stated term of such Stock Option, whichever period is shorter.
- (h) *Termination by Reason of Retirement.* Except as otherwise provided in the applicable award agreement, if an Optionee's employment or provision of services terminates by reason of Retirement, any Stock Option held by such Optionee, to the extent it was exercisable at the time of termination, may thereafter be exercised by the Optionee for a period of six months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (i) *Involuntary Termination Without Cause.* Except as otherwise provided in the applicable award agreement, if an Optionee's employment or provision of services terminates involuntarily without Cause, and for reasons other than death, Disability or Retirement, any Stock Option held by such Optionee may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (j) *Involuntary Termination for Cause.* Except as otherwise provided in the applicable award agreement, if an Optionee's employment or provision of services terminates involuntarily for Cause, all Stock Options held by such Optionee, whether or not then vested and exercisable, shall thereupon terminate.
- (k) *Other Termination.* Except as otherwise provided in the applicable award agreement, if an Optionee's employment or provision of services is terminated by the Optionee for any reason other than those listed in Sections 4(g) and 4(h) noted previously, any Stock Option held by such Optionee may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Option, whichever period is shorter, and any Stock Option that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (l) *Exception to Termination.* If employment or provision of services by the Optionee to the Company or an Affiliate ceases as a result of a transfer of such Optionee from the Company to an Affiliate, or from an Affiliate to the Company, or from one classification of Eligible Individual to another classification of Eligible Individual, such transfer shall not be a termination of employment or provision of services for purposes of this Plan, unless expressly determined otherwise by the Administrator. A termination of employment or provision of services shall occur for an Optionee who is employed by, or provides services to, an Affiliate of the Company if the Affiliate shall cease to be an Affiliate and the Optionee shall not immediately thereafter be employed by, or provide services to, the Company or an Affiliate.

(m) Notwithstanding the foregoing, to the extent permitted under Section 409A of the Code, the exercise period following a termination described in subsection (g), (h), (i), (j) or (k) above shall be tolled for any applicable window/blackout period restrictions under the Company's insider trading policy.

5. STOCK APPRECIATION RIGHTS.

Stock Appreciation Rights may be granted under the Plan on a stand-alone basis only. The Administrator shall have the authority to grant Stock Appreciation Rights to any Participant. Stock Appreciation Rights shall be evidenced by award agreements, each in a form approved by the Administrator. The grant of a Stock Appreciation Right shall occur as of the date the Administrator determines, subject to FASB Statement 123(R) and guidance thereunder.

A Stock Appreciation Right may be exercised by a Participant as determined by the Administrator in accordance with this **Section 5**. Upon such exercise, the Participant shall be entitled to receive an amount determined in the manner prescribed in this **Section 5**.

Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined by the Administrator, including the following:

- (a) *Exercise Price.* The exercise price per share of Stock Appreciation Right shall be determined by the Administrator at the time of grant and set forth in the applicable stock appreciation right agreement; provided, however, that the exercise price per share shall be not less than the Fair Market Value per share on the date the Stock Appreciation Right is granted.
- (b) *Stock Appreciation Right Term.* The term of a Stock Appreciation Right shall be determined by the Administrator at the time of grant and set forth in the applicable award agreement, provided, however, that no Stock Appreciation Right shall be exercisable more than 10 years after the date that the Stock Appreciation Right is granted.
- (c) *Vesting.* A Stock Appreciation Right shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable award agreement, provided that no Stock Appreciation Right shall become vested earlier than the first anniversary of the date of grant of such Stock Appreciation Right; and provided, further, that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date.
- (d) *Exercisability.* Stock Appreciation Rights shall be exercisable to the extent vested; provided that the exercise of a Stock Appreciation Right shall be subject to such additional terms and conditions, performance requirements, restrictions, forfeiture provisions, contingencies and limitations, if any, as shall be determined by the Administrator and listed in the applicable award agreement.
- (e) *Method of Exercise.* Subject to the provisions of this **Section 5**, Stock Appreciation Rights may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares with respect to which the Stock Appreciation Right is being exercised.
- (f) Upon the exercise of a Stock Appreciation Right, a Participant shall be entitled to receive an amount in cash or in shares of Stock, as set forth in the award agreement, which in the aggregate are equal in value to the excess of the Fair Market Value of one share of Stock on the date of exercise over the Fair Market Value of one share of Stock on the date of grant, multiplied by the number of shares in respect of which the Stock Appreciation Right shall have been exercised.

- (g) *Transferability of Stock Appreciation Rights.* Except as otherwise provided in the applicable award agreement, a Stock Appreciation Right (i) shall be transferable by the Participant to a Family Member of the Participant, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Stock Appreciation Right shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. A Stock Appreciation Right shall be exercisable, during the Participant's lifetime, only by the Participant or by the guardian or legal representative of the Participant, it being understood that the terms "holder" and "Participant" include the guardian and legal representative of the Participant named in the applicable award agreement and any person to whom the Stock Appreciation Right is transferred (X) pursuant to the first sentence of this **Section 5(g)** or pursuant to the applicable stock appreciation rights agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of a Participant's employment or provision of services shall mean the termination of employment or provision of services of the person to whom the Stock Appreciation Right was originally granted.
- (h) *Termination by Death or Disability.* Except as otherwise provided in the applicable stock appreciation rights agreement, if a Participant's employment or provision of services terminates by reason of death or Disability, any Stock Appreciation Right held by such Participant shall be fully vested upon such death or termination of employment or provision of services and may thereafter be exercised for a period of one year from the date of such death, Disability or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter.
- (i) *Termination by Reason of Retirement.* Except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services terminates by reason of Retirement, any Stock Appreciation Right held by such Participant, to the extent it was exercisable at the time of termination, may thereafter be exercised by the Participant for a period of six months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (j) *Involuntary Termination Without Cause.* Except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services terminates involuntarily without Cause, and for reasons other than death, Disability or Retirement, any Stock Appreciation Right held by such Participant may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter, and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (k) *Involuntary Termination for Cause.* Except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services terminates involuntarily for Cause, Stock Appreciation Rights held by such Participant, whether or not then vested and exercisable, shall thereupon terminate.
- (l) *Other Termination.* Except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services is terminated by the Participant for any reason other than those listed in Sections 5(h) and 5(i), any Stock Appreciation Right held by such Participant may thereafter be exercised, to the extent it was exercisable at the time of termination, for a period of three months from the date of such termination of employment or provision of services or until the expiration of the stated term of such Stock Appreciation Right, whichever period is shorter, and any Stock Appreciation Right that is unvested or unexercisable at the date of termination shall thereupon terminate.
- (m) *Exception to Termination.* If provision of services by the Participant to the Company or an Affiliate ceases as a result of a transfer of such Participant from the Company or an Affiliate, or from an Affiliate to the Company, or from one classification of Eligible Individual to another classification of Eligible Individual, such transfer shall not be a termination of employment or provision of services for purposes of this Plan, unless expressly determined otherwise by the Administrator. A termination of employment or provision of services shall occur for a Participant who is employed by, or provides services to, an Affiliate of the Company if the Affiliate shall cease to be an Affiliate and the Participant shall not immediately thereafter be employed by, or provide services to, the Company or an Affiliate.

(n) Notwithstanding the foregoing, to the extent permitted under Section 409A of the Code, the exercise period following a termination described in subsection (h), (i), (j), or (l) above shall be tolled for any applicable window/blackout period restrictions under the Company's insider trading policy.

6. STOCK AWARDS.

Stock Awards may be directly issued under the Plan, subject to such terms, conditions, performance requirements, restrictions, forfeiture provisions, contingencies and limitations as shall be determined by the Administrator and set forth in the applicable award agreement. Subject to the provisions of this **Section 6**, Stock Awards may be issued which vest in one or more installments over the Participant's period of employment and/or other service to the Company and/or upon the attainment of specified performance objectives, and/or the Company may issue Stock Awards which entitle the Participant to receive a specified number of vested shares of Stock upon the attainment of one or more performance goals and/or service requirements established by the Administrator at the time of grant and set forth in the applicable award agreement. A Stock Award that is subject to restrictions on transfer and/or forfeiture provisions may be referred to as an award of "Restricted Stock" or "Restricted Stock Units". Except as otherwise provided below, no Stock Award shall become vested earlier than the first anniversary of the date of such Stock Award; and provided, further, that the Participant shall have continuously remained in the active employment of the Company or an Affiliate until the applicable vesting date. Notwithstanding the above vesting requirement, up to five percent (5%) of the shares of Stock in the aggregate reserved under the Plan may be granted pursuant to Stock Awards that are not subject to restrictions on transfer and/or forfeiture provisions.

Shares representing a Stock Award shall be evidenced in such manner as the Administrator may deem appropriate, including book-entry registration or issuance of one or more certificates (which may bear appropriate legends referring to the terms, conditions and restrictions applicable to such Award). The Administrator may require that any such certificates be held in custody by the Company until any restrictions thereon shall have lapsed and that the Participant deliver a stock power, endorsed in blank, relating to the Stock covered by such Award. Restricted Stock Units shall be evidenced by a book entry in a notional account maintained under the Participant's name in the Company's books and records.

A Stock Award may be issued in exchange for any consideration which the Administrator may deem appropriate in each individual instance, including, without limitation:

- (a) cash or cash equivalents;
- (b) past services rendered to the Company or any Affiliate; or
- (c) future services to be rendered to the Company or any Affiliate (provided that, in such case, the par value of the stock subject to such Stock Award shall be paid in cash or cash equivalents, unless the Administrator provides otherwise).

With respect to a Restricted Stock Award, a Participant, at his or her option, will be entitled to make the election permitted under Section 83(b) of the Code, to include in gross income in the taxable year in which the Restricted Stock Award is transferred to him or her, the fair market value of such shares at the time of transfer, notwithstanding that such shares are subject to a substantial risk of forfeiture within the meaning of the Code, or he or she may elect to include in gross income the Fair Market Value of the Restricted Stock Award as of the date or date on which such restrictions lapse. Notwithstanding the foregoing, the Administrator shall adopt, from time to time, such rules with respect to the return of executed award agreements as it deems appropriate and failure by a Participant to comply with such rules shall, without limitation, terminate the grant of such Restricted Stock Award to such Participant and/or cause the forfeiture of any Restricted Stock Award as to which restrictions have not yet lapsed.

Notwithstanding anything herein to the contrary and except as otherwise provided in the applicable award agreement, if a Participant's employment and provision of services is terminated (A) by the Company for any reason other than Cause or (B) by reason of the Participant's death or Disability, all Stock underlying a Stock Award, to the extent unvested at the time of termination, shall become fully vested and non-forfeitable.

Notwithstanding anything herein to the contrary and except as otherwise provided in the applicable award agreement, if a Participant's employment or provision of services is terminated (A) by the Company for Cause or (B) by the Participant for any reason other than death or Disability, all Stock underlying a Stock Award, to the extent unvested at the time of termination, shall be forfeited.

7. PERFORMANCE AWARDS.

- (a) *Performance Conditions.* The right of a Participant to exercise or receive a Performance Award, and its timing, may be subject to performance conditions specified by the Administrator at the time of grant (except as provided in this **Section 7**). The Administrator may use business criteria and other measures of performance it deems appropriate in establishing any performance conditions, and may exercise its discretion to reduce or increase amounts payable under any Award subject to performance conditions, except as limited under **Section 7(b)** hereof in the case of a Performance Award intended to qualify under Section 162(m) of the Code.
- (b) *Performance Awards Granted to Designated Covered Employees.* If the Administrator determines that a Performance Award to be granted to a person the Administrator regards as likely to be a Covered Employee should qualify as "performance-based compensation" for purposes of Section 162(m) of the Code, the grant and/or settlement of such Performance Award shall comply with the requirements set forth in this **Section 7(b)**.
 - (i) *Performance Goals Generally.* The performance goals for such Performance Awards shall be based on one or more of the business criteria set forth in **Section 7(b)(ii)** and a targeted level or levels of performance with respect to such criteria, as specified by the Administrator consistent with this **Section 7(b)**. Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) of the Code, including the requirement that the level or levels of performance targeted by the Administrator result in the performance goals being "substantially uncertain." The Administrator may determine that more than one performance goal must be achieved as a condition to settlement of such Performance Awards.
 - (ii) *Business Criteria.* Unless and until the Company proposes for stockholder vote, and stockholders approve, a change in the business criteria set forth in this **Section 7(b)(ii)**, Awards (other than Stock Options and Stock Appreciation Rights) designed to qualify as "performance-based compensation" for purposes of Section 162(m) of the Code shall be based on one or more of the following business criteria, which shall be set forth in the applicable Performance Award agreement:
 - (A) Earnings before any or all of interest, tax, depreciation or amortization (actual and adjusted and either in the aggregate or on a per-share basis);
 - (B) Earnings (either in the aggregate or on a per-share basis);
 - (C) Net income or loss (either in the aggregate or on a per-share basis);
 - (D) Operating profit;
 - (E) Cash flow (either in the aggregate or on a per-share basis);
 - (F) Free cash flow (either in the aggregate on a per-share basis);
 - (G) Non-interest expense;
 - (H) Costs;
 - (I) Gross revenues;
 - (J) Reductions in expense levels;
 - (K) Operating and maintenance cost management and employee productivity;
 - (L) Share price or total stockholder return (including growth measures and total stockholder return or attainment by the shares of specified value for a specified period of time);
 - (M) Net economic value;

- (N) Economic value added or economic value added momentum;
 - (O) Strategic business criteria, consisting of one or more objectives based on meeting specified revenue, sales, market share, market penetration, geographic business expansion goals, objectively identified project milestones, production volume levels, cost targets and goals relating to acquisitions or divestitures;
 - (P) Return on average assets or average equity;
 - (Q) Achievement of objectives relating to diversity, employee turnover or other human capital metrics;
 - (R) Results of customer satisfaction surveys or other objective measures of customer experience; and/or
 - (S) Debt ratings, debt leverage, debt service, financings and refinancings; provided, however, that (I) the foregoing business criteria may be applied on a pre- or post-tax basis; and (II) the Administrator may, on the grant date of an Award intended to qualify as "performance-based compensation," provide that the formula for such Award may include or exclude items to measure specific objectives, such as losses from discontinued operations, extraordinary gains or losses, the cumulative effect of accounting changes, acquisitions or divestitures, foreign exchange impacts and any unusual, non-recurring gain or loss.
- (iii) *Performance Period; Timing For Establishing Performance Goals.* Achievement of performance goals in respect of such Performance Awards shall be measured over such periods of at least 12 months' duration as may be specified by the Administrator. Performance goals shall be established on or before the dates that are required or permitted for "performance-based compensation" under Section 162(m) of the Code. The levels of performance required with respect to any performance goals may be expressed in absolute or relative levels and may be based upon a set increase, set positive result, maintenance of the status quo, set decrease or set negative result. Performance goals may differ for Awards to different Participants. The Administrator shall specify the weighting (which may be the same or different for multiple performance goals) to be given to each performance goal for purposes of determining the final amount payable with respect to any such Performance Award. Any one or more of the performance goals or the business criteria on which they are based may apply to the Participant, a department, unit, division or function within the Company (except for total stockholder return or earnings per share criteria) or any one or more Subsidiaries, and may apply either alone or relative to the performance of other businesses or individuals (including industry or general market indices).
- (iv) *Settlement of Performance Awards; Other Terms.* Settlement of Performance Awards may be in cash or Stock as specified in the award agreement, or other Awards, or other property, in the discretion of the Administrator. Any Performance Award based on shares of Stock that is settled in cash will be based on the Fair Market Value of the shares of Stock subject to such Performance Award. The Administrator may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Performance Awards, but may not exercise discretion to increase any such amount payable in respect of a Performance Award subject to this **Section 7(b)**. All determinations of the Administrator as to the achievement of the performance goals applicable to a Performance Award subject to this **Section 7(b)** shall be in writing prior to the payment of the Award.

8. OUTSIDE DIRECTOR STOCK OPTIONS.

Outside Director Stock Options shall be evidenced by award agreements, each in a form approved by the Administrator.

Outside Director Stock Options granted under this **Section 8** shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Administrator shall deem desirable:

- (a) *Exercise Price.* The exercise price per share of Stock purchasable under an Outside Director Stock Option shall be the Fair Market Value per share on the date the Outside Director Stock Option is granted.
- (b) *Option Term.* No Outside Director Stock Option shall be exercisable more than ten years after the date that the Outside Director Stock Option is granted.

- (c) *Vesting.* An Outside Director Stock Option shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable option agreement, provided that no Outside Director Stock Option shall become vested earlier than the first anniversary of the date of grant of such Outside Director Stock Option; provided further, that, the Outside Director shall have continuously remained a Director of the Company until the applicable vesting date.
- (d) *Exercisability.* Outside Director Stock Options shall be exercisable to the extent vested.
- (e) *Method of Exercise.* Outside Director Stock Options may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Outside Director Stock Option to be purchased.

The option price of any Outside Director Stock Option shall be paid in full in cash (by certified or bank check or such other instrument as the Company may accept) or, unless otherwise provided in the applicable option agreement, by one or more of the following: (i) in the form of shares of unrestricted and vested Stock already owned by the Outside Director, based on the Fair Market Value of the Stock on the date the Outside Director Stock Option is exercised; (ii) by certifying ownership of shares of Stock owned by the Outside Director to the satisfaction of the Administrator for later delivery to the Company as specified by the Company; (iii) unless otherwise prohibited by law for either the Company or the Outside Director, by irrevocably authorizing a third party to sell shares of Stock (or a sufficient portion of the shares) acquired upon exercise of the Outside Director Stock Option and remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise; or (iv) by any combination of cash and/or any one or more of the methods specified in clauses (i), (ii) and (iii). Notwithstanding the foregoing, a form of payment shall not be permitted to the extent it would cause the Company to recognize a compensation expense (or additional compensation expense) with respect to the Outside Director Stock Option for financial reporting purposes.

If payment of the option exercise price of an Outside Director Stock Option is made in whole or in part in the form of Stock, some or all of the Stock received upon such exercise shall be subject to the same restrictions as such Stock. The number of shares of Stock received upon such exercise that shall be subject to such restrictions shall equal the number of shares of Stock used for payment of the option exercise price.

No shares of Stock shall be issued upon exercise of an Outside Director Stock Option until full payment therefor has been made. Upon exercise of an Outside Director Stock Option (or a portion thereof), the Company shall have a reasonable time to issue the Stock for which the Outside Director Stock Option has been exercised, and the Outside Director shall not be treated as a stockholder for any purposes whatsoever prior to such issuance. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date such Stock is recorded as issued and transferred in the Company's official stockholder records, except as otherwise provided herein or in the applicable option agreement.

- (f) *Transferability of Outside Director Stock Options.* An Outside Director Stock Option (i) shall be transferable by the Outside Director to a Family Member of the Outside Director, provided that (A) any such transfer shall be by gift with no consideration and (B) no subsequent transfer of such Outside Director Stock Option shall be permitted other than by will or the laws of descent and distribution, and (ii) shall not otherwise be transferable except by will or the laws of descent and distribution. An Outside Director Stock Option shall be exercisable, during the Outside Director's lifetime, only by the Outside Director or by the guardian or legal representative of the Outside Director, it being understood that the terms "holder" and "Outside Director" include the guardian and legal representative of the Outside Director named in the applicable option agreement and any person to whom the Outside Director Stock Option is transferred (X) pursuant to the first sentence of this **Section 8(f)** or pursuant to the applicable option agreement or (Y) by will or the laws of descent and distribution. Notwithstanding the foregoing, references herein to the termination of an Outside Director's provision of services shall mean the termination or cessation of the Outside Director's status as an Eligible Individual.

9. OUTSIDE DIRECTOR STOCK AWARDS.

Outside Director Stock Awards shall be granted pursuant to this **Section 9** as determined by the Administrator at the time of grant and as set forth in the applicable Outside Director Stock award agreement.

The Stock subject to Outside Director Stock Awards granted under this **Section 9** shall vest and become nonforfeitable based on the Outside Director's provision of services as a Director, and is therefore an award of "Restricted Stock."

An Outside Director Stock Award shall become vested and nonforfeitable as determined by the Administrator at the time of grant and set forth in the applicable award agreement, provided that no Outside Stock Director Award shall become vested and nonforfeitable earlier than the first anniversary of the date of such Outside Director Stock Award; provided further that, the Outside Director shall have continuously remained a Director of the Company until the applicable vesting date.

Shares representing an Outside Director Stock Award shall be evidenced in such manner as the Administrator may deem appropriate, including book-entry registration or issuance of one or more certificates (which may bear appropriate legends referring to the terms, conditions and restrictions applicable to such Award). The Administrator may require that any such certificates be held in custody by the Company until any restrictions thereon shall have lapsed and that the Outside Director deliver a stock power, endorsed in blank, relating to the Stock covered by such Award.

With respect to an Outside Director Stock Award, an Outside Director, at his or her option, will be entitled to make the election permitted under Section 83(b) of the Code, to include in gross income in the taxable year in which the Outside Director Stock Award is transferred to him or her, the fair market value of such shares at the time of transfer, notwithstanding that such shares are subject to a substantial risk of forfeiture within the meaning of the Code, or he or she may elect to include in gross income the Fair Market Value of the Outside Director Stock Award as of the date or date on which such restrictions lapse. Notwithstanding the foregoing, the Administrator shall adopt, from time to time, such rules with respect to the return of executed award agreements as it deems appropriate and failure by an Outside Director to comply with such rules shall, without limitation, terminate the grant of such Outside Director Stock Award to such Outside Director and/or cause the forfeiture of any Outside Director Stock Award (or any portion thereof) as to which restrictions have not yet lapsed.

10. CHANGE IN CONTROL PROVISIONS.

- (a) *Change in Control.* Notwithstanding any other provision of the Plan to the contrary and unless otherwise provided in an Award Agreement, upon the occurrence of a Change in Control, the Administrator may, in its sole and absolute discretion, provide on a case by case basis that (i) all Awards shall terminate, provided that Participants shall have the right, immediately prior to the occurrence of such Change in Control and during such reasonable period as the Administrator in its sole discretion shall determine and designate, to exercise any Award, (ii) all Awards shall terminate, provided that Participants shall be entitled to a cash payment equal to the Change in Control Price with respect to shares subject to the vested portion of the Award net of the Exercise Price thereof, if applicable, (iii) in connection with a liquidation or dissolution of the Company, the Awards, to the extent vested, shall convert into the right to receive liquidation proceeds net of the Exercise Price (if applicable), (iv) accelerate the vesting of Awards or (v) any combination of the foregoing. In the event that the Administrator does not terminate or convert an Award upon a Change in Control of the Company, then the Award shall be assumed, or substantially equivalent Awards shall be substituted, by the acquiring, or succeeding corporation (or an affiliate thereof).

(b) *Change in Status of a Subsidiary or Affiliate.* Notwithstanding any other provision of the Plan to the contrary and unless otherwise provided in an Award Agreement or otherwise determined by the Administrator, in the event that a Subsidiary or an Affiliate ceases to be a Subsidiary or Affiliate of the Company, the Administrator may, in its sole and absolute discretion: (i) provide on a case by case basis that some or all outstanding Awards held by a Participant employed by or performing service for such entity or business unit may become immediately exercisable or vested, without regard to any limitation imposed pursuant to this Plan; (ii) provide on a case by case basis that some or all outstanding Awards held by a Participant employed by or performing services for such entity or business unit may remain outstanding, may continue to vest, and/or may remain exercisable for a period not exceeding one (1) year, subject to the terms of the Award Agreement and this Plan; and/or (iii) treat the employment or other services of a Participant performing services for such entity or business unit as terminated, if such Participant is not employed by the Company or any Subsidiary or Affiliate, immediately after such event.

(c) *Definition of Change in Control.*

(i) For purposes of the Plan, a "Change in Control" shall occur or be deemed to have occurred only if any of the following events occur:

(A) The acquisition, directly or indirectly, by any person or group (as those terms are defined in Sections 3(a)(9), 13(d) and 14(d) of the Exchange Act and the rules thereunder) of beneficial ownership (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the election of directors (voting securities) of the Company that represent **50%** or more of the combined voting power of the Company's then outstanding voting securities, other than:

(1) An acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company; or

(2) An acquisition of voting securities by the Company or a corporation owned, directly or indirectly by all of the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company. Notwithstanding the foregoing, the following event shall not constitute an acquisition by any person or group for purposes of this subsection (a): an acquisition of the Company's securities by the Company which causes the Company's voting securities beneficially owned by a person or group to represent 50% or more of the combined voting power of the Company's then outstanding voting securities; provided, however, that if a person or group shall become the beneficial owner of 50% or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change in Control; or

(B) Individuals who, as of Effective Date, constitute the Board of Directors of the Company (as of the Effective Date, the "Incumbent Board") cease for any reason to constitute at least a majority of the Board during any two year period, provided that any person becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least two-thirds of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of directors on the Board) shall be, for purposes of this Plan, considered as though such person were a member of the Incumbent Board; or

(C) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) the acquisition of assets or stock of another entity, in each case other than a transaction:

- (1) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by the remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity") directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction; and
 - (2) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this clause (2) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or
- (D) A sale or disposition of all or substantially all of the Company's assets; or
- (E) The Company's stockholders approve a liquidation or dissolution of the Company.

The Administrator shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

(ii) For purposes of **Section 10(b)**, stock ownership is determined under Section 409A of the Code.

- (d) *Change in Control Price*. For purposes of the Plan, "Change in Control Price" means the Fair Market Value (which may be the amount of consideration per share of Stock received by the holder of Stock in connection with the Change in Control transaction or, in the case of a tender or exchange offer, the highest price per share of Stock paid in such tender or exchange offer, in each case, as determined by the Administrator in accordance with **Section 12(n)** hereunder) of a share of Stock on the date of a Change in Control. To the extent that the consideration paid in any such transaction described above consists all or in part of securities or other non-cash consideration, the value of such securities or other non-cash consideration shall be determined in the sole discretion of the Board. The Participant shall receive the same form of consideration as holders of common stock, subject to the same restrictions and limitations and indemnification obligations as the holders of common stock and will execute any and all documents required by the Administrator to evidence the same.

11. MISCELLANEOUS.

- (a) *Repricing.* Notwithstanding any provisions in this Plan or an Award to the contrary, unless such action is approved by the Company's stockholders in accordance with applicable law: (i) no outstanding Stock Option, Outside Director Stock Option or Stock Appreciation Right granted under the Plan may be amended to provide an exercise Price that is lower than the then-current exercise price of such outstanding Award (other than adjustments to the exercise price pursuant to Section 3); (ii) the Administrator may not cancel any outstanding Stock Option, Outside Director Stock Option or Stock Appreciation Right and grant in substitution therefore new Awards under the Plan covering the same or a different number of shares of Stock and having an exercise price lower than the then-current exercise price of the cancelled Awards (other than adjustments to the exercise Price pursuant to Sections 3); and (iii) the Administrator may not authorize the repurchase of an outstanding Stock Option, Outside Director Stock Option or Stock Appreciation Right which has an exercise price that is higher than the then-current fair market value of the Stock (other than adjustments to the exercise price pursuant to Section 3). This paragraph shall not be construed to apply to "issuing or assuming a stock option in a transaction to which section 424(a) applies," within the meaning of Section 424 of the Code.
- (b) *Amendment.* The Board may at any time terminate, amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would adversely affect the rights of a Participant under an Award theretofore granted without the Participant's consent, except such an amendment (i) made to avoid an expense charge to the Company or an Affiliate under applicable law or regulation, (ii) made to permit the Company or an Affiliate a deduction under the Code, or (iii) made to avoid the violation of Section 409A of the Code. No such amendment or alteration shall be made without the approval of a majority vote of the Company's shareholders, present in person or by proxy at any special or annual meeting of the shareholders to the extent such approval is required by law, agreement or the rules of any stock exchange or market on which the Stock is listed.
- The Administrator may amend the terms of any Stock Option or other Award theretofore granted, prospectively or retroactively, but except as provided in **Section 3** hereof no such amendment shall adversely affect the rights of a Participant without the Participant's consent.
- (c) *Unfunded Status of Plan.* It is intended that this Plan be an "unfunded" plan for incentive and deferred compensation. The Administrator may authorize the creation of trusts or other arrangements to meet the obligations created under this Plan to deliver Stock or make payments, provided that, unless the Administrator otherwise determines, the existence of such trusts or other arrangements is consistent with the "unfunded" status of this Plan.
- (d) *General Provisions.*
- (i) Unless the shares to be issued in connection with an Award are registered prior to the issuance thereof under the Securities Act of 1933, as amended, the Administrator may require each person purchasing or receiving shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares for his or her own account as an investment without a view to or for sale in connection with, the distribution thereof. The certificates for such shares may include any legend which the Administrator deems appropriate to reflect any restrictions on transfer.

All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders and other restrictions as the Administrator may deem advisable under the rules, regulations and other requirements of the Commission, any stock exchange or market on which the Stock is then listed and any applicable Federal or state securities law, and the Administrator may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

- (ii) Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting other or additional compensation arrangements for its employees.
- (iii) The adoption of the Plan shall not confer upon any employee, director, associate, consultant or advisor any right to continued employment, directorship or service, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment or service of any employee, consultant or advisor at any time.

(iv) No later than the date as of which an amount first becomes includible in the gross income of the Participant for Federal income tax purposes with respect to any Award under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any Federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Administrator, withholding obligations may be settled with Stock, including Stock that is part of the Award that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company, its Subsidiaries and its Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant. The Administrator may establish such procedures as it deems appropriate for the settlement of withholding obligations with Stock.

- (v) The Administrator shall establish such procedures as it deems appropriate for a Participant to designate a beneficiary to whom any amounts payable in the event of the Participant's death are to be paid. In the event of the death of a Participant, a condition of exercising any Award shall be the delivery to the Company of such tax waivers and other documents as the Administrator shall determine.
- (vi) Neither any Participant nor his or her legal representatives, legatees or distributees shall be or be deemed to be the holder of any share of Stock covered hereby unless and until a certificate for such share has been issued. Upon payment of the purchase price thereof, a share shall be fully paid and non-assessable.
- (vii) The grant of an Award shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets, or issue bonds, debentures, preferred or prior preference stock ahead of or affecting the Stock, or take any other corporate act or proceeding whether of a similar character or otherwise.
- (viii) Reserved.
- (ix) To the extent that the Administrator determines that the restrictions imposed by the Plan preclude the achievement of the material purposes of the Awards in jurisdictions outside the United States, the Administrator in its discretion may modify those restrictions as it determines to be necessary or appropriate to conform to applicable requirements or practices of jurisdictions outside of the United States.
- (x) The headings contained in this Plan are for reference purposes only and shall not affect the meaning or interpretation of this Plan.
- (xi) If any provision of this Plan shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not effect any other provision hereby, and this Plan shall be construed as if such invalid or unenforceable provision were omitted.
- (xii) This Plan shall inure to the benefit of and be binding upon each successor and assign of the Company. All obligations imposed upon a Participant, and all rights granted to the Company hereunder, shall be binding upon the Participant's heirs, legal representatives and successors.
- (xiii) This Plan and each agreement granting an Award constitute the entire agreement with respect to the subject matter hereof and thereof, provided that in the event of any inconsistency between this Plan and such agreement, the terms and conditions of the Plan shall control.
- (xiv) None of the Company, an Affiliate or the Administrator shall have any duty or obligation to disclose affirmatively to a record or beneficial holder of Stock or an Award, and such holder shall have no right to be advised of, any material information regarding the Company or any Affiliate at any time prior to, upon or in connection with receipt or the exercise of an Award or the Company's purchase of Stock or an Award from such holder in accordance with the terms hereof.
- (xv) This Plan, and all Awards, agreements and actions hereunder, shall be governed by, and construed in accordance with, the laws of the state of Delaware (other than its law respecting choice of law).
- (xvi) In the event any Award granted under this Plan becomes subject to Section 409A of the Code, the provisions of Section 409A of the Code and the regulations issued thereunder shall be incorporated herein by reference to the extent necessary for the Award to comply therewith. In such event, the provisions of this Plan and the Award shall be interpreted in a manner that satisfies the requirements of Section 409A of the Code and the related regulations, and this Plan and the Award shall be administered accordingly. If any term or condition of this Plan or Award would otherwise frustrate or conflict with this intent, the provision, term or condition will be interpreted and deemed amended so as to avoid this conflict. Notwithstanding any provisions in this Plan or Award to the contrary, to the extent that Section 409A of the Code would cause an adverse tax consequence to the Participant, then with respect to such Participant: (i) a Change in Control shall not be deemed to occur unless the Change in Control meets the definition ascribed to the phrase "Change in the Ownership or Effective Control of a Corporation or in the Ownership of a Substantial Portion of the Assets of a Corporation" under Treasury Department Regulation 1.409A-3(i)(5), (ii) a Disability shall not be deemed to occur unless the Disability meets the definition ascribed to the phrase "disability"

under Treasury Department Regulation 1.409A-3(i)(4), (iii) a termination of employment shall mean a "separation from service" under Section 409A of the Code, and (iv) if the Participant is deemed to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B), then with regard to any payment that is considered non-qualified deferred compensation under Section 409A of the Code payable on account of a "separation from service," such payment shall be made or at the date which is the earlier of (A) the expiration of the six (6)-month period measured from the date of such "separation from service" of the Participant, and (B) the date of the Participant's death. Notwithstanding the foregoing, the Company makes no representations that any payments and benefits provided under the Plan are exempt from or comply with Section 409A of the Code, and in no event will the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by a Participant on account of non-compliance with Section 409A of the Code.

- (e) *Clawback; Forfeiture.* Any Award granted pursuant to the Plan on or after June 18, 2021 will be subject to potential recovery by the Administrator to the extent the Participant is, or in the future becomes, subject to (i) the Company's Incentive Compensation Clawback Policy or any similar Company "clawback" or recoupment policy or policies that may be adopted by the Board or the Compensation Committee from time to time, or (ii) any law, rule or regulation which imposes mandatory recoupment, under the circumstances set forth in any such law, rule or regulation.
- (f) *Dividends and Dividend Equivalents.* For any Award granted pursuant to the Plan on or after June 16, 2023, a Participant shall not be entitled to receive cash or stock dividends, Dividend Equivalents, or cash payments in amounts equivalent to cash or stock dividends on shares of Stock covered by an Award which has not vested. Notwithstanding the foregoing, for any Award granted pursuant to the Plan on or after June 16, 2023, the Administrator in its absolute and sole discretion may credit a Participant's Award with cash or stock dividends, Dividend Equivalents, or cash payments with respect to any unvested Awards, provided that such cash or stock dividends, Dividend Equivalents, or cash payments are held in escrow by the Company (subject to the same restrictions as the Award) until all restrictions on the respective Award have lapsed.

12. DEFINITIONS.

For purposes of this Plan, the following terms are defined as set forth below:

- (a) "*Affiliate*" means a corporation or other entity (i) controlled by the Company and which, in the case of grants of Stock Options, Outside Director Stock Options and Stock Appreciation Rights would, together with the Company, be classified as the "service recipient" (as defined in the regulations under Section 409A of the Code) with respect to an Eligible Individual, and (ii) is designated by the Administrator as such.
- (b) "*Award*" means a Stock Appreciation Right, Stock Option, Stock Award, Outside Director Stock Option or Outside Director Stock Award.
- (c) "*Board*" means the Board of Directors of the Company.
- (d) "*Board Meeting*" means meeting of the Board of Directors of the Company.
- (e) "*Cause*" means (i) the commission by the Participant of any act or omission that would constitute a felony or any crime of moral turpitude under Federal law or the law of the state or foreign law in which such action occurred, (ii) dishonesty, disloyalty, fraud, embezzlement, theft, disclosure of trade secrets or confidential information or other acts or omissions that result in a breach of fiduciary or other material duty to the Company and/or a Subsidiary, (iii) continued reporting to work or working under the influence of alcohol, an illegal drug, an intoxicant or a controlled substance which renders Participant incapable of performing his or her material duties to the satisfaction of the Company and/or its Subsidiaries, or (iv) the Participant's substantial disregard in the performance of the Participant's duties and/or responsibilities with respect to the Company and/or a Subsidiary, which disregard shall continue after notice to the Participant and a reasonable opportunity to cure such behavior. Notwithstanding the foregoing, if the Participant and the Company or the Affiliate have entered into an employment or services agreement which defines the term "Cause" (or a similar term), such definition shall govern for purposes of determining whether such Participant has been terminated for Cause for purposes of this Plan. The determination of Cause shall be made by the Administrator, in its sole discretion.
- (f) "*Code*" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

- (g) "*Commission*" means the Securities and Exchange Commission or any successor agency.
- (h) "*Committee*" means a committee of Directors appointed by the Board to administer this Plan. Insofar as the Committee is responsible for granting Awards to Participants hereunder, it shall consist solely of two or more directors, each of whom is a "non-employee director" within the meaning of Rule 16b-3, an "outside director" under Section 162(m) of the Code, an "independent director" as defined by the Sarbanes-Oxley Act of 2002, and "independent" as defined by the rules of any stock exchange or market on which the Stock is listed.
- (i) "*Covered Employee*" means a person who is a "covered employee" within the meaning of Section 162(m) of the Code.
- (j) "*Director*" means a member of the Company's Board.
- (k) "*Disability*" means mental or physical illness that entitles the Participant to receive benefits under the long-term disability plan of the Company or an Affiliate, or if the Participant is not covered by such a plan or the Participant is not an employee of the Company or an Affiliate, a mental or physical illness that renders a Participant totally and permanently incapable of performing the Participant's duties for the Company or an Affiliate; provided, however, that a Disability shall not qualify under this Plan if it is the result of (i) a willfully self-inflicted injury or willfully self-induced sickness; or (ii) an injury or disease contracted, suffered or incurred while participating in a criminal offense. Notwithstanding the foregoing, if the Participant and the Company or an Affiliate have entered into an employment or services agreement which defines the term "Disability" (or a similar term), such definition shall govern for purposes of determining whether such Participant suffers a Disability for purposes of this Plan. The determination of Disability shall be made by the Administrator, in its sole discretion. The determination of Disability for purposes of this Plan shall not be construed to be an admission of disability for any other purpose.
- (l) "*Dividend Equivalents*" means an amount equal to the dividends paid by the Company on one share of Stock subject to an Award granted to a Participant under the Plan.
- (m) "*Effective Date*" means April 26, 2016.
- (n) "*Eligible Individual*" means any (i) officer, employee, associate or director of the Company or a Subsidiary or Affiliate, (ii) any consultant or advisor providing services to the Company or a Subsidiary or Affiliate, or (iii) employees of (x) a corporation or other business enterprise which has been acquired by the Company or a Subsidiary, which, in the case of grants of Stock Options and Stock Appreciation Rights would, together with the Company and, if applicable, the Subsidiary, be classified as the "service recipient" (as defined in the regulations under Section 409A of the Code) with respect to such employees and (y) who hold options with respect to the stock of such corporation which the Company has agreed to assume.
- (o) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

- (p) "*Fair Market Value*" means, as of any given date, the fair market value of the Stock, determined as follows: (i) if the Stock is listed on any established stock exchange or a national market system, including without limitation, the NASDAQ Global Market, its fair market value on such date shall be the reported closing selling price for the Stock on the principal securities exchange or national market system on which the Stock is at such date listed for trading; provided that if there are no sales of Stock on that date, then the reported closing selling price for the Stock on the next preceding date shall be determinative of fair market value; or (ii) if the Stock is listed on the OTC Electronic Bulletin Board, its fair market value on such date shall be the closing selling price on such date for the Stock as reported on the OTC Electronic Bulletin Board; provided that if there are no sales of the Stock on that date, then the reported closing selling price for the Stock on the next preceding date for which such closing selling price is quoted shall be determinative of fair market value; or, (iii) if the Stock is not traded on the OTC Electronic Bulletin Board, an exchange, or a national market system, or notwithstanding (i) and (ii) above, if a determination of Fair Market Value under (i) or (ii) above would violate the rules under Section 409A of the Code and the regulations thereunder with respect to the determination of fair market value, Fair Market Value of the Stock on such date shall be determined in good faith by the Administrator in accordance with Section 409A of the Code and the regulations issued thereunder, and such determination shall be conclusive and binding on all persons. In the event of a Change in Control, notwithstanding the foregoing provisions of this **Section 12(o)**, Fair Market Value of the Stock in connection with such Change in Control transaction shall be determined in good faith by the Administrator in accordance with Section 409A of the Code and the regulations issued thereunder, and such determination shall be conclusive and binding on all persons.
- (q) "*Family Member*" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a Participant (including adoptive relationships); any person sharing the Participant's household (other than a tenant or employee); any trust in which the Participant and any of these persons have all of the beneficial interest; any foundation in which the Participant and any of these persons control the management of the assets; any corporation, partnership, limited liability company or other entity in which the Participant and any of these other persons are the direct and beneficial owners of all of the equity interests (provided the Participant and these other persons agree in writing to remain the direct and beneficial owners of all such equity interests); and any personal representative of the Participant upon the Participant's death for purposes of administration of the Participant's estate or upon the Participant's incompetency for purposes of the protection and management of the assets of the Participant.
- (r) "*Incentive Stock Option*" means any Stock Option intended to be and designated as an "incentive stock option" within the meaning of Section 422 of the Code.
- (s) "*Non-Qualified Stock Option*" means any Stock Option that is not an Incentive Stock Option.
- (t) "*Optionee*" means a person who holds a Stock Option.
- (u) "*Outside Director*" means (i) if the Stock is listed for trading on any established stock exchange or national market system, a person who is an "independent" Director of the Company within the meaning of the rules then in effect governing the listing of securities (including, without limitation, the NASDAQ Marketplace Rule 4200) on the established stock exchange or national market system on which the Stock is then listed for trading (including, without limitation, the NASDAQ Global Market, or (ii) if the Stock is not listed for trading on an established stock exchange or national market system, a person who is a "non-employee director" of the Company within the meaning of Section 16 of the Exchange Act and the regulations promulgated thereunder (irrespective of whether Section 16 of the Exchange Act is applicable to the Company or such Director).
- (v) "*Outside Director Award*" means an Outside Director Stock Option or Outside Director Stock Award.
- (w) "*Outside Director Stock Award*" means an Award, other than a Stock Option, Stock Appreciation Right, Stock Award or Outside Director Stock Option, made in Stock or denominated in shares of Stock.
- (x) "*Outside Director Stock Option*" means an Option granted under **Section 8**.
- (y) "*Participant*" means a person granted an Award.

- (z) "*Performance Award*" means a right, granted to a Participant under **Section 7**, to receive Awards or cash settled payments based upon performance criteria specified by the Administrator.
- (aa) "*Representative*" means (i) the person or entity acting as the executor or administrator of a Participant's estate pursuant to the last will and testament of a Participant or pursuant to the laws of the jurisdiction in which the Participant had his or her primary residence at the date of the Participant's death; (ii) the person or entity acting as the guardian or temporary guardian of a Participant; (iii) the person or entity which is the beneficiary of the Participant upon or following the Participant's death; or (iv) any person to whom a Stock Option has been transferred with the permission of the Administrator or by operation of law; provided that only one of the foregoing shall be the Representative at any point in time as determined under applicable law and recognized by the Administrator.
- (ab) "*Retirement*" means termination of employment or provision of services without Cause, death or Disability on or after age 65 with 5 years of service.
- (ac) "*Stock*" means the common stock, par value \$.01 per share, of the Company.
- (ad) "*Stock Appreciation Right*" means a right granted under **Section 5**.
- (ae) "*Stock Award*" means an Award, other than a Stock Option, Outside Director Stock Option, Stock Appreciation Right or Outside Director Stock Award, made in Stock or denominated in shares of Stock.
- (af) "*Stock Option*" means an option granted under **Section 4**.
- (ag) "*Subsidiary*" means any company during any period in which it is a "subsidiary corporation" (as such term is defined in Section 424(f) of the Code) with respect to the Company.
- (ah) "*Ten Percent Holder*" means an individual who owns, or is deemed to own, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any parent or subsidiary corporation of the Company, determined pursuant to the rules applicable to Section 422(b)(6) of the Code.

In addition, certain other terms used herein have the definitions given to them in the places they are first used.