

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): **May 20, 2021**

BOSTON PROPERTIES, INC.
BOSTON PROPERTIES LIMITED PARTNERSHIP

(Exact Name of Registrants As Specified in its Charter)

Boston Properties, Inc.

Delaware
(State or Other Jurisdiction
of Incorporation)

1-13087
(Commission File Number)

04-2473675
(IRS Employer
Identification No.)

**Boston Properties Limited
Partnership**

Delaware
(State or Other Jurisdiction
of Incorporation)

0-50209
(Commission File Number)

04-3372948
(IRS Employer
Identification No.)

800 Boylston Street, Suite 1900, Boston, Massachusetts 02199

(Address of Principal Executive Offices) (Zip Code)

(617) 236-3300

(Registrants' 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 registrants 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:

Registrant	Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Boston Properties, Inc.	Common Stock, par value \$0.01 per share	BXP	New York Stock Exchange

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).

Boston Properties, Inc.:

Emerging growth company

Boston Properties Limited Partnership:

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.

Boston Properties, Inc.

Boston Properties Limited Partnership

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

Boston Properties, Inc. (the "Company"), the sole general partner of Boston Properties Limited Partnership (the "Operating Partnership"), held its 2021 annual meeting of stockholders (the "2021 Annual Meeting") in a virtual meeting format via live audio webcast on May 20, 2021. At the 2021 Annual Meeting, the stockholders of the Company approved the Boston Properties, Inc. 2021 Stock Incentive Plan (the "2021 Plan"). The 2021 Plan replaces the 2012 Stock Option and Incentive Plan (the "Prior Plan").

The material features of the 2021 Plan are:

- The maximum number of shares of common stock reserved and available for issuance under the 2021 Plan is 5,400,000 shares less one (1) share for every one (1) share that was granted after March 4, 2021 under the Prior Plan. Following the effective date of the 2021 Plan, no awards may be granted under the Prior Plan;
- Shares of common stock underlying awards granted under the 2021 Plan or the Prior Plan that are forfeited, canceled or otherwise terminated (other than by exercise) will be added back to the shares of common stock available for issuance under the 2021 Plan and, with respect to "full-value" awards under the 2021 Plan or the Prior Plan, shares tendered or held back for taxes and shares previously reserved for issuance pursuant to such an award to the extent that such shares are not issued and are no longer issuable pursuant to such an award (e.g., in the event that a full-value award that may be settled in cash or by issuance of shares of common stock is settled in cash) will be added back to the shares available for issuance under the 2021 Plan;
- The award of stock options (both incentive and non-qualified options), stock appreciation rights, restricted stock units, restricted stock, unrestricted stock, dividend equivalent rights, cash-based awards and other equity-based awards (including LTIP Units, as defined in the agreement of limited partnership of the Operating Partnership) is permitted;
- Stock options may not be repriced and "underwater" stock options may not be exchanged for another award or cash without stockholder approval; and
- The term of the 2021 Plan is for ten years from the date of stockholder approval.

A description of the 2021 Plan can be found in the Company's definitive proxy statement on Schedule 14A for the 2021 Annual Meeting that was filed with the Securities and Exchange Commission on April 5, 2021 (the "Proxy Statement") in the section entitled "Proposal 3: Approval of the Boston Properties, Inc. 2021 Stock Incentive Plan," which is incorporated herein by reference. This description is qualified in its entirety by reference to the 2021 Plan filed as Exhibit 10.1 hereto and incorporated by reference herein.

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

At the 2021 Annual Meeting, the stockholders of the Company were asked to (1) elect Kelly A. Ayotte, Bruce W. Duncan, Karen E. Dykstra, Carol B. Einiger, Diane J. Hoskins, Joel I. Klein, Douglas T. Linde, Matthew J. Lustig, Owen D. Thomas, David A. Twardock and William H. Walton, III to the Company's Board of Directors, (2) cast a non-binding, advisory vote on named executive officer compensation, as disclosed in the Proxy Statement pursuant to Item 402 of Regulation S-K, (3) approve the 2021 Plan and (4) ratify the Audit Committee's appointment of PricewaterhouseCoopers LLP ("PWC") as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2021.

At the 2021 Annual Meeting, the stockholders elected all eleven director nominees, approved the advisory resolution on the compensation of the Company's named executive officers, approved the 2021 Plan and ratified the appointment of PWC as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2021.

The following is a statement of the number of votes cast for and against each director nominee and each other matter voted upon, as applicable. In addition, the following sets forth the number of abstentions and broker non-votes with respect to each director nominee and each other matter, as applicable.

Proposal 1 - Election of Directors

	For	Against	Abstain	Broker Non-Votes
Joel I. Klein	131,917,048	3,634,522	269,413	4,964,082
Kelly A. Ayotte	123,163,048	12,389,075	268,860	4,964,082
Bruce W. Duncan	133,350,682	2,200,221	270,080	4,964,082
Karen E. Dykstra	135,212,022	339,105	269,856	4,964,082
Carol B. Einiger	132,023,502	3,527,782	269,699	4,964,082
Diane J. Hoskins	134,908,171	642,584	270,228	4,964,082
Douglas T. Linde	134,024,686	1,526,912	269,385	4,964,082
Matthew J. Lustig	133,700,265	1,850,646	270,072	4,964,082
Owen D. Thomas	134,958,759	592,378	269,846	4,964,082
David A. Twardock	129,902,112	5,648,455	270,416	4,964,082
William H. Walton, III	135,077,725	473,253	270,005	4,964,082

Proposal 2 - Non-binding, Advisory Vote on Named Executive Officer Compensation

For	Against	Abstain	Broker Non-Votes
121,376,006	14,061,508	383,469	4,964,082

Proposal 3 - Boston Properties, Inc. 2021 Stock Incentive Plan

For	Against	Abstain	Broker Non-Votes
129,617,853	5,847,853	355,277	4,964,082

Proposal 4 - Ratification of Appointment of PWC

For	Against	Abstain	Broker Non-Votes
135,479,702	5,111,718	193,645	0

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

Item No.	Description
SCH	Boston Properties, Inc. 2021 Stock Incentive Plan.
CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document. Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibits 101.*).

*Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

BOSTON PROPERTIES, INC.

By: MICHAEL E. LABELLE

Michael E. LaBelle

Executive Vice President, Chief Financial Officer and Treasurer

BOSTON PROPERTIES LIMITED PARTNERSHIP

By: Boston Properties, Inc., its General Partner

By: MICHAEL E. LABELLE

Michael E. LaBelle

Executive Vice President, Chief Financial Officer and Treasurer

Date: May 20, 2021

**BOSTON PROPERTIES, INC.
2021 STOCK INCENTIVE PLAN**

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the Boston Properties, Inc. 2021 Stock Incentive Plan (the "Plan"). The purpose of the Plan is to encourage and enable the officers, employees, Non-Employee Directors, Consultants and other key persons of Boston Properties, Inc. (the "Company") and the employees and other key persons of Boston Properties Limited Partnership (the "Operating Partnership") and the Company's other Subsidiaries, upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company and its stockholders, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

"Administrator" means either the Board or the compensation committee of the Board or a similar committee performing the functions of the compensation committee that is designated by the Board as the administrator of the Plan.

"Award" or "Awards," means an award under the Plan and, except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Unit Awards, Unrestricted Stock Awards, Dividend Equivalent Rights, Cash-Based Awards and other equity-based awards as contemplated herein.

"Award Certificate" means a written or electronic agreement or document setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Certificate is subject to the terms and conditions of the Plan.

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

"Cash-Based Award" means an Award granted pursuant to Section 12 entitling the recipient to receive a cash denominated payment.

"Change in Control" means the occurrence of any one of the following events:

- (i) any "person," as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, any of its Subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Exchange Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 25 percent or more of the combined voting power of the Company's then-outstanding securities having the right to vote in an election of the Board ("Voting Securities") (other than as a result of an acquisition of securities directly from the Company);
- (ii) persons who, as of the Effective Date, constitute the Board (the "Incumbent Directors") cease for any reason, including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board, provided that any person becoming a director of the Company subsequent to such date shall be considered an Incumbent Director if such person's election was approved by or such person was nominated for election by either (A) a vote of at least two-thirds of the Incumbent Directors or (B) a vote of at least a majority of the Incumbent Directors who are members of a nominating committee comprised, in the majority, of Incumbent Directors;
- (iii) the consummation of (A) any consolidation or merger of the Company as a result of which the Voting Securities outstanding immediately prior to the consolidation or merger do not either (x) continue to represent 60 percent or more of the outstanding stock or other equity interests having the right to vote in an election of the board of directors (or other equivalent governing body) of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction or (y) convert into, or become immediately exchangeable for, 60 percent or more of the outstanding stock or other equity interest having the right to vote in an election of the board of directors (or other equivalent governing body) of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction, or

- (B) any sale, lease, exchange or other transfer to an unrelated party (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company; or
- (iv) the stockholders of the Company shall approve any plan or proposal for the liquidation or dissolution of the Company.
- Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of shares of Voting Securities beneficially owned by any person (as defined in the foregoing clause (i)) to 25 percent or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if such person shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company), then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (i).

"Code" means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

"Common Units" shall have the meaning set forth in the Partnership Agreement.

"Consultant" means any natural person that provides bona fide services to the Company, and such services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities.

"Dividend Equivalent Right" means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

"Effective Date" means the date on which the Plan becomes effective as set forth in Section 20.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Fair Market Value" on any given date means the last reported sale price at which Stock is traded on such date or, if no Stock is traded on such date, the next preceding date on which Stock was traded, as reflected on the principal stock exchange or, if applicable, any other national stock exchange on which the Stock is traded or admitted to trading.

"Family Member" of a grantee means a grantee's 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, including adoptive relationships, any person sharing the grantee's household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50% of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50% of the voting interests.

"Incentive Stock Option" means any Stock Option designated and qualified as an "incentive stock option" as defined in Section 422 of the Code.

"LTIP Units" shall have the meaning set forth in the Partnership Agreement.

"Non-Employee Director" means a member of the Board who is not also an employee of the Company or any Subsidiary.

"Non-Qualified Stock Option" means any Stock Option that is not an Incentive Stock Option.

"Operating Partnership" means Boston Properties Limited Partnership, a Delaware limited partnership, and any successor thereto.

"Partnership Agreement" means the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated as of June 29, 1998, among the Company, as general partner, and the limited partners who are parties thereto, as amended, restated or supplemented from time to time.

"Performance Criteria" means the performance objectives that the Administrator selects for purposes of earning or attaining an Award for a Performance Cycle. The Performance Criteria which shall be applicable to the organizational level specified by the Administrator, including, but not limited to, the Company or a unit, division, group, region, or Subsidiary of the Company, may include, but will not be limited to, any one or more of the following as selected by the Administrator: funds from operations ("FFO"), adjusted FFO, growth in FFO per share, leasing, rent growth, occupancy or percentage

leased, operating income and/or net annual recurring revenue, net operating income, total stockholder return, revenue, earnings per share, earnings before interest, taxes, depreciation and amortization for real estate ("EBITDAre"), cash flow (including, but not limited to, operating cash flow and free cash flow), balance sheet management, ratios of net debt to EBITDAre and ratios of market capitalization, net income (loss) (either before or after interest, taxes, depreciation and/or amortization), stock price, economic value-added, acquisitions, dispositions, strategic transactions, portfolio or regional occupancy rates, return on capital, assets, equity, development, re-development, investment, capital deployment, development milestones or any other operational, financial or other performance metric selected by the Administrator, any of which may be (A) measured in absolute terms or compared to any incremental increase, (B) measured in terms of rate of change, (C) compared to another company or companies or to results of a peer group, (D) measured against the market as a whole and/or as compared to applicable market indices, (E) measured on an adjusted basis, by including or excluding categories of items specifically identified in advance by the Compensation Committee or, if not so specified, items that the Compensation Committee determines, in its discretion, are appropriate to include or exclude whether or not specifically identified in advance, (F) measured on a pre-tax or post-tax basis (if applicable), (G) measured on an annualized basis, and/or (H) measured for all or a portion of the Company's portfolio, including on a same property basis and/or relating to "BXP's share" (calculated as the consolidated amount calculated in accordance with GAAP, plus the Company's share of the amount from the Company's unconsolidated joint ventures (calculated based upon the Company's percentage ownership interest and, in some cases, after priority allocations), minus the Company's partners' share of the amount from the Company's consolidated joint ventures (calculated based upon the partners' percentage ownership interests and, in some cases, after income allocation to private REIT shareholders and their share of fees due to the Company)).

"*Performance Cycle*" means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Criteria will be measured.

"*Person*" means any natural person, corporation, partnership, association, limited liability company, estate, trust, joint venture, any federal, state or municipal government or any bureau, department or agency thereof, any other legal entity, or a "group" as that term is used for purposes of Rule 13d-5(b) or Section 13(d) of the Exchange Act and any fiduciary acting in such capacity on behalf of the foregoing.

"*Restricted Stock*" means the shares of Stock underlying a Restricted Stock Award that remain subject to a risk of forfeiture or the Company's right of repurchase.

"*Restricted Stock Award*" means an Award of Restricted Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant.

"*Restricted Stock Units*" means the units underlying a Restricted Stock Unit Award, each of which represents the right to receive one share of Stock or a cash payment equal to the Fair Market Value of one share of Stock at the time and upon the conditions applicable to the Restricted Stock Unit Award.

"*Restricted Stock Unit Award*" means an Award of Restricted Stock Units subject to such restrictions and conditions as the Administrator may determine at the time of grant.

"*Section 409A*" means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

"*Service Relationship*" means any relationship as an employee, director or Consultant of the Company or any Subsidiary; provided, however, a change in an individual's status from a full-time employee or director to part-time employee or Consultant or from a director or Consultant to an employee shall be deemed to continue the Service Relationship.

"*Stock*" means the Common Stock, par value \$0.01 per share, of the Company, subject to adjustments pursuant to Section 3.

"*Stock Appreciation Right*" means an Award entitling the recipient to receive shares of Stock (or cash, to the extent explicitly provided for in the applicable Award Certificate) having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

"*Stock Option*" means any option to purchase shares of Stock granted pursuant to Section 5.

"*Subsidiary*" means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

"*Ten Percent Owner*" means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

"Unit" means units of partnership interest in the Operating Partnership, including, without limitation, Common Units, LTIP Units or one or more other classes of units that are convertible into Common Units or LTIP Units on a specified date or at the election of the recipient based on appreciation in the value of the Stock, appreciation in the value of the assets of the Operating Partnership, total return generated by a specified number of shares of Stock or Common Units or such other basis as may be determined by the Administrator. Units may include units of partnership interest in the Operating Partnership that are intended to constitute profits interests for U.S. federal income tax purposes.

"Unrestricted Stock Award" means an Award of shares of Stock free of any restrictions.

SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

- (a) Administration of Plan. The Plan shall be administered by the Administrator.
- (b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan and otherwise administer the Plan and the Awards granted hereunder, including, without limitation, the power and authority:
 - (i) to select the individuals to whom Awards may from time to time be granted;
 - (ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Unit Awards, Unrestricted Stock Awards, Dividend Equivalent Rights and other equity-based awards, or any combination of the foregoing, granted to any one or more grantees;
 - (iii) to determine the number of shares of Stock to be covered by any Award;
 - (iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the forms of Award Certificates; provided, however, that except as otherwise provided in Section 3(b), the Administrator is not permitted to reduce the exercise price of Stock Options through cancellation and re-grants or cancellation in exchange for cash;
 - (v) to accelerate at any time the exercisability or vesting of all or any portion of any Award;
 - (vi) subject to the provisions of Section 5(c), to extend at any time the period in which Stock Options may be exercised;
 - (vii) to determine at any time whether, to what extent, and under what circumstances Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the participant and whether and to what extent the Company shall pay or credit amounts constituting deemed interest, dividends, distributions or other earnings; and
 - (viii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be made in the Administrator's sole and absolute discretion and shall be binding and conclusive on all persons, including the Company, the Operating Partnership, the Company's other Subsidiaries and Plan grantees.

- (c) Delegation of Authority to Grant Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Administrator's authority and duties with respect to the granting of Awards to individuals who are not subject to the reporting and other provisions of Section 16 of the Exchange Act. Any such delegation by the Administrator shall include a limitation as to the amount of Stock underlying Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.
- (d) Award Certificate. Awards under the Plan shall be evidenced by Award Certificates that set forth the terms, conditions and limitations for each Award, which may include, without limitation, the term of an Award, and the provisions applicable in the event employment or service terminates.

- (e) **Foreign Award Recipients.** Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries may from time to time operate or have employees or other individuals eligible for Awards, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable (and such subplans and/or modifications shall be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3(a) hereof; and (v) take any action, before or after an Award is made, that the Administrator determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

- (a) **Stock Issuable.** The maximum number of shares of Stock reserved and available for issuance under the Plan shall be (i) 5,400,000 shares less (ii) one share for every one share of Stock underlying awards granted under the Company's 2012 Stock Option and Incentive Plan (the "Prior Plan") after March 4, 2021, subject to adjustment as provided in this Section 3. For purposes of this limitation, the following shares of Stock shall be added back to the shares of Stock available for issuance under the Plan and, to the extent permitted under Section 422 of the Code and the regulations promulgated thereunder, the shares of Stock that may be issued as Incentive Stock Options: (i) the shares of Stock underlying any Awards under the Plan and any awards under the Prior Plan that are forfeited, canceled or otherwise terminated (other than by exercise) and (ii) with respect to a full-value award under the Plan or the Prior Plan (*i.e.*, an award other than a stock option, stock appreciation right or Unit with an economic structure similar to that of a stock option or stock appreciation right), (A) any shares tendered, held back or otherwise reacquired from the grantee to cover tax withholding owed upon vesting, settlement or the occurrence of any other event with respect to such an award that results in amounts being includable in the gross income of the grantee for income tax purposes and (B) any shares previously reserved for issuance pursuant to such an award to the extent that such shares are not issued and are no longer issuable pursuant to such an award (*e.g.*, in the event that a full-value award that may be settled in cash or by issuance of shares of Stock is settled in cash). Notwithstanding the foregoing, the following shares shall not be added to the shares authorized for grant under the Plan: (x) shares tendered or held back upon exercise of a Stock Option to cover the exercise price or tax withholding, and (y) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right upon exercise thereof. In the event the Company repurchases shares of Stock on the open market, such shares shall not be added to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that no more than 5,400,000 shares of the Stock may be issued in the form of Incentive Stock Options. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.
- (b) **Changes in Stock.** Subject to Section 3(c) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make appropriate equitable adjustments to the Plan and any outstanding Awards, which may include, without limitation, appropriate or proportionate adjustments in (i) the maximum number and kind of shares reserved for issuance under the Plan, including the maximum number and kind of shares that may be issued in the form of Incentive Stock Options, (ii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iii) the repurchase price, if any, per share of Restricted Stock subject to each outstanding Restricted Stock Award, (iv) the exercise price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (*i.e.*, the exercise price multiplied by the number of shares subject to Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable and (v) other applicable terms of the Plan and any outstanding Awards.

The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration cash dividends paid other than in the ordinary course or any other extraordinary corporate event. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

- (c) **Mergers.** In contemplation of and subject to the consummation of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of Stock are exchanged for securities, cash or other property of an unrelated corporation or business entity or in the event of a liquidation of the Company (in each case, a "Transaction"), the Board, or the board of directors of any corporation assuming the obligations of the Company, may, in its discretion, take any one or more of the following actions, as to outstanding Awards: (i) provide that such Awards shall be assumed or equivalent awards shall be substituted, by the acquiring or succeeding corporation (or an affiliate thereof), and/or (ii) upon written notice to the participants, provide that all Awards will terminate upon the consummation of the Transaction. In the event that, pursuant to clause (ii) above, Awards will terminate upon the consummation of the Transaction, all Awards shall become vested and fully exercisable as of the effective time of such Transaction (unless otherwise specified in the applicable Award Certificate or other agreement between the holder of such Award and the Company) and vested Awards, other than Stock Options, shall be fully settled in cash or in kind at such appropriate consideration as determined by the Administrator in its sole discretion after taking into account the consideration payable per share of Stock pursuant to the business combination (the "Merger Price") and all Stock Options shall be fully settled, in cash or in kind, in an amount equal to the difference between (A) the Merger Price times the number of shares of Stock subject to such outstanding Stock Options (to the extent then exercisable at prices not in excess of the Merger Price) and (B) the aggregate exercise price of all such outstanding Stock Options; provided, however, that each participant may be permitted, within a specified period determined by the Administrator prior to the consummation of the Transaction, to exercise all outstanding Stock Options, including those that are not then exercisable, subject to the consummation of the Transaction.
- (d) **Substitute Awards.** The Administrator may grant Awards under the Plan in substitution for stock and stock based awards issued by another corporation or other entity that is acquired by the Company or a Subsidiary; provided that the recipient of such substituted Award is eligible to be granted an Award under the Plan. The Administrator may direct that the substitute Awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances. Substitute Awards will not reduce the number of shares of Stock authorized for grant under the Plan.

SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full- or part-time officers and other employees, Non-Employee Directors and Consultants of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion and such other Persons (to the extent the issuance of shares of Stock to such Person under the Plan may be registered by the Company on Form S-8 and would be permitted in an "employee benefit plan" as defined in Rule 405 under the Securities Act of 1933, as amended) as are selected from time to time by the Administrator in its sole discretion. For avoidance of doubt, no Award may be granted under the Plan to a Person unless the issuance of shares of Stock to such Person under the Plan may be registered by the Company on Form S-8 and such Person is permitted to participate in an "employee benefit plan" as defined in Rule 405 under the Securities Act of 1933, as amended.

SECTION 5. STOCK OPTIONS

- (a) **Award of Stock Options.** The Administrator may grant Stock Options under the Plan. Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.
Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a "subsidiary corporation" within the meaning of Section 424(f) of the Code. To the extent that any Stock Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.
Stock Options granted pursuant to this Section 5 shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the optionee's election, subject to such terms and conditions as the Administrator may establish.

- (b) **Exercise Price.** The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5 shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the exercise price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date. Notwithstanding the foregoing, Stock Options may be granted with an exercise price per share that is less than 100 percent of the Fair Market Value on the date of grant (i) pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code, (ii) to individuals who are not subject to U.S. income tax on the date of grant or (iii) the Stock Option is otherwise compliant with Section 409A.
- (c) **Stock Option Term.** The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date the Stock Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Stock Option shall be no more than five years from the date of grant.
- (d) **Exercisability; Rights of a Stockholder.** Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.
- (e) **Method of Exercise.** Stock Options may be exercised in whole or in part, by giving written or electronic notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods to the extent provided in the applicable Award Certificate:
- (i) In cash, by certified or bank check or other instrument acceptable to the Administrator;
 - (ii) Through the delivery (or attestation to the ownership following such procedures as the Company may prescribe) of shares of Stock that are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date;
 - (iii) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Company shall prescribe as a condition of such payment procedure; or
 - (iv) With respect to Stock Options that are not Incentive Stock Options, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price and the remainder of the aggregate exercise price to be paid by the optionee in cash or other method of payment permitted hereunder.
- Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the applicable Award Certificate or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of attested shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.
- (f) **Annual Limit on Incentive Stock Options.** To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

SECTION 6. STOCK APPRECIATION RIGHTS

- (a) **Award of Stock Appreciation Rights.** The Administrator may grant Stock Appreciation Rights under the Plan. A Stock Appreciation Right is an Award entitling the recipient to receive shares of Stock (or cash, to the extent explicitly provided for in the applicable Award Certificate) having a value equal to the excess of the Fair Market Value of a share of Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.
- (b) **Exercise Price of Stock Appreciation Rights.** The exercise price of a Stock Appreciation Right shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant. Notwithstanding the foregoing, Stock Appreciation Rights may be granted with an exercise price per share that is less than 100 percent of the Fair Market Value on the date of grant (i) pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code, (ii) to individuals who are not subject to U.S. income tax on the date of grant or (iii) the Stock Appreciation Right is otherwise compliant with, or is not subject to, Section 409A.
- (c) **Grant and Exercise of Stock Appreciation Rights.** Stock Appreciation Rights may be granted by the Administrator independently of any Stock Option granted pursuant to Section 5 of the Plan.
- (d) **Terms and Conditions of Stock Appreciation Rights.** Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined on the date of grant by the Administrator. The term of a Stock Appreciation Right may not exceed ten years. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

SECTION 7. RESTRICTED STOCK AWARDS

- (a) **Nature of Restricted Stock Awards.** The Administrator may grant Restricted Stock Awards under the Plan. A Restricted Stock Award is any Award of Restricted Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other Service Relationship) and/or achievement of pre-established performance goals and objectives.
- (b) **Rights as a Stockholder.** Upon the grant of a Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the Restricted Stock granted thereunder, including voting of the Restricted Stock and receipt of dividends; provided that if the lapse of restrictions with respect to the Restricted Stock Award is tied to the attainment of vesting conditions, the Administrator may require any cash dividends paid by the Company during the vesting period with respect to unvested Restricted Stock to be retained by, or repaid by the grantee to, the Company. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Stock shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Stock is vested as provided in Section 7(d) below, and (ii) certificated Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.
- (c) **Restrictions.** Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award Certificate. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, if a grantee's employment (or other Service Relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Stock that has not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price (if any) from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other Service Relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a stockholder. Following such deemed reacquisition of Restricted Stock that is represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.
- (d) **Vesting of Restricted Stock.** The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested."

SECTION 8. RESTRICTED STOCK UNIT AWARDS

- (a) **Nature of Restricted Stock Unit Awards.** The Administrator may grant Restricted Stock Unit Awards under the Plan. A Restricted Stock Unit Award is an Award of Restricted Stock Units that, subject to the terms and conditions of the applicable Award Certificate, may be settled in shares of Stock (or cash, to the extent explicitly provided for in the Award Certificate) upon the satisfaction of applicable restrictions and conditions at the time of grant. Conditions may be based on, among other things, continuing employment (or other Service Relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. To the extent permitted by the Administrator, the settlement of Restricted Stock Units may be deferred to one or more dates specified in the applicable Award Certificate or elected by the grantee. Restricted Stock Unit Awards with a deferred settlement date may be referred to as Deferred Stock Unit Awards. Each Restricted Stock Unit Award that is subject to Section 409A may contain such additional terms and conditions as the Administrator shall determine in its sole discretion in order to comply with the requirements of Section 409A.
- (b) **Election to Receive Restricted Stock Unit Awards in Lieu of Compensation.** The Administrator may, in its sole discretion, permit a grantee to elect to receive cash compensation otherwise due to such grantee in the form of a Restricted Stock Unit Award. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with such rules and procedures established by the Administrator, which shall include rules and procedures intended to ensure compliance with Section 409A. Unless provided by the Administrator, any such cash compensation that the grantee elects to receive in Restricted Stock Units shall be converted to a fixed number of Restricted Stock Units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee if such election had not been made. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate. Any Restricted Stock Units that are elected to be received in lieu of cash compensation shall be fully vested, unless otherwise provided in the Award Certificate.
- (c) **Rights as a Stockholder.** A grantee shall have the rights as a stockholder only as to shares of Stock acquired by the grantee upon settlement of Restricted Stock Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the stock units underlying his Restricted Stock Units, subject to the provisions of Section 10 and such terms and conditions as the Administrator may determine.
- (d) **Termination.** Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, a grantee's right in all Restricted Stock Units that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of Service Relationship) with the Company and its Subsidiaries for any reason.

SECTION 9. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. The Administrator may grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Stock Award under the Plan. An Unrestricted Stock Award is an Award of Stock free of any restrictions under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

SECTION 10. DIVIDEND EQUIVALENT RIGHTS

- (a) **Dividend Equivalent Rights.** The Administrator may grant Dividend Equivalent Rights under the Plan. A Dividend Equivalent Right is an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other Award to which it relates) if such shares had been issued to the grantee. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of an Award, including a Restricted Stock Unit Award, or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the applicable Award Certificate. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently, may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents, or may otherwise accrue. Unless otherwise provided in the Award Certificate or by the Administrator, any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments.

- (b) **Termination.** Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, a grantee's rights in all Dividend Equivalent Rights shall automatically terminate upon the grantee's termination of employment (or cessation of Service Relationship) with the Company and its Subsidiaries for any reason.

SECTION 11. OTHER EQUITY-BASED AWARDS

The Administrator shall have the right (i) to grant other Awards based upon the Stock having such terms and conditions as the Administrator may determine, including, without limitation, the grant of convertible preferred shares, convertible debentures and other exchangeable or redeemable securities or equity interests, (ii) to grant limited-partnership or any other membership or ownership interests (which may be expressed as units or otherwise) in a Subsidiary or operating or other partnership, including, without limitation, Units, with any Stock being issued in connection with the conversion of (or other distribution on account of) an interest granted under the authority of this clause (ii) to be subject, for the avoidance of doubt, to Section 3 and the other provisions of the Plan, and (iii) to grant Awards valued by reference to book value, fair value or performance parameters relative to the Company or any Subsidiary or group of Subsidiaries.

SECTION 12. CASH-BASED AWARDS

The Administrator may, in its sole discretion, grant Cash-Based Awards to any participant in such number or amount and upon such terms, and subject to such conditions, as the Administrator shall determine at the time of grant. The Administrator shall determine the Performance Cycle and Performance Criteria applicable to such Cash-Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash-Based Awards shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator, which may include either a "target" (100 percent attainment of the Performance Criteria) and/or a "minimum" hurdle and/or a "maximum" amount. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and may be made in cash or in shares of Stock, as the Administrator determines.

SECTION 13. TRANSFERABILITY OF AWARDS

- (a) **Transferability.** Unless otherwise provided in the Award Certificate or by the Administrator, during a grantee's lifetime, his or her Stock Options and Stock Appreciation Rights shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. Except as provided in Section 13(b) below and unless otherwise provided in the Award Certificate or by the Administrator, no Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or by the laws of descent and distribution or pursuant to a domestic relations order; provided that, for the avoidance of doubt, the foregoing shall not apply to shares of Stock issued pursuant to an Award following the date on which such shares are vested. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.
- (b) **Administrator Action.** Notwithstanding Section 13(a), the Administrator, in its discretion, may provide either in the Award Certificate regarding a given Award or by subsequent written approval that the grantee may transfer his or her Awards (other than Incentive Stock Options) to his or her Family Members for no value or consideration; provided that the transferee agrees in writing to be bound by all of the terms and conditions of this Plan and the applicable Award.
- (c) **Designation of Beneficiary.** To the extent permitted by the Company, each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Company and shall not be effective until received by the Company. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

SECTION 14. TAX WITHHOLDING

- (a) **Payment by Grantee.** Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any

Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

- (b) **Payment in Stock.** Subject to approval by the Administrator, a grantee may elect to have the Company's required tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award (or, in the case of a Restricted Stock Award, to reacquire shares of Stock previously issued pursuant such Restricted Stock Award) a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due; provided, however, that the amount withheld does not exceed the maximum statutory tax rate or such lesser amount as is necessary to avoid adverse accounting treatment or as determined by the Administrator. The Administrator may also require Awards to be subject to mandatory share withholding up to the required withholding amount. For purposes of share withholding, the Fair Market Value of withheld shares shall be determined in the same manner as the value of Stock includable in income of the grantees. The Administrator may also require the Company's tax withholding obligation to be satisfied, in whole or in part, by an arrangement whereby a certain number of shares of Stock issued pursuant to any Award are immediately sold and proceeds from such sale are remitted to the Company in an amount that would satisfy the withholding amount due.

SECTION 15. SECTION 409A AWARDS

Awards are intended to be exempt from Section 409A to the greatest extent possible and to otherwise comply with Section 409A. The Plan and all Awards shall be interpreted in accordance with such intent. To the extent that any Award is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A (a "409A Award"), the Award shall be subject to such additional rules and requirements as specified by the Administrator from time to time in order to comply with Section 409A. In this regard, if any amount under a 409A Award is payable upon a "separation from service" (within the meaning of Section 409A) to a grantee who is then considered a "specified employee" (within the meaning of Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee's separation from service, or (ii) the grantee's death, but only to the extent such delay is necessary to prevent such payment from being subject to interest, penalties and/or additional tax imposed pursuant to Section 409A. Further, the settlement of any 409A Award may not be accelerated except to the extent permitted by Section 409A.

SECTION 16. TERMINATION OF SERVICE RELATIONSHIP, TRANSFER, LEAVE OF ABSENCE, ETC.

- (a) **Termination of Service Relationship.** If the grantee's Service Relationship is with a Subsidiary and such Subsidiary ceases to be a Subsidiary, the grantee shall be deemed to have terminated his or her Service Relationship for purposes of the Plan.
- (b) For purposes of the Plan, the following events shall not be deemed a termination of a Service Relationship:
- (i) 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
 - (ii) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if 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 or if the Administrator otherwise so provides in writing.

SECTION 17. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall materially and adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(b), without prior stockholder approval, in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Stock Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Stock Appreciation Rights in exchange for cash or other Awards. The Board, in its discretion, may determine to make any Plan amendments subject to the approval of the Company's stockholders for purposes of complying with the rules of any securities exchange or market system on which the Stock is listed or ensuring that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code. Nothing in this Section 17 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(b).

SECTION 18. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 19. GENERAL PROVISIONS

- (a) **No Distribution.** The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.
- (b) **Delivery of Stock.** Notwithstanding anything herein to the contrary, the Company shall not be required to issue shares of Stock or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Administrator has determined, with advice of counsel (to the extent the Administrator deems such advice necessary or advisable), that the issuance and/or delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed, quoted or traded. All Stock delivered pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Stock is listed, quoted or traded. The Administrator may place legends on any Stock certificate or in the records of the Company or the transfer agent to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Administrator may require that an individual make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.
- (c) **Other Compensation Arrangements; No Employment Rights.** Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.
- (d) **Trading Policy Restrictions.** All actions taken with respect to Awards under the Plan shall be subject to the Company's insider trading policies and procedures, as in effect from time to time.
- (e) **Clawback Policy.** Awards under the Plan shall be subject to the Company's Policy for Recoupment of Incentive Compensation, as in effect from time to time, to the extent holders thereof are subject to such policy.
- (f) **No Further Awards Under the Prior Plan.** On and after the Effective Date, no further awards will be issued under the Prior Plan, but outstanding awards granted under the Prior Plan prior to the Effective Date shall continue to be governed by the terms and conditions of the Prior Plan.

SECTION 20. EFFECTIVE DATE OF PLAN

This Plan shall become effective upon stockholder approval in accordance with Delaware law and the Company's certificate of incorporation and bylaws, each as amended. No grants of Awards may be made hereunder after the tenth anniversary of the Effective Date and no grants of Incentive Stock Options may be made hereunder after the tenth anniversary of the date the Plan is approved by the Board.

SECTION 21. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: March 18, 2021

DATE APPROVED BY STOCKHOLDERS: