



**NOTICE OF ANNUAL MEETING  
OF SHAREHOLDERS OF  
THE GARDEN CITY COMPANY**

**To be held on October 20, 2025**

**TO THE SHAREHOLDERS:**

**NOTICE IS HEREBY GIVEN** that the Annual Meeting of Shareholders for 2025 (the “*Annual Meeting*”) of The Garden City Company, a Colorado corporation (the “*Company*”), will be held at the offices of the Company at 10 Lake Circle, Colorado Springs, CO 80906, and by video conference, on Monday, October 20, 2025, at 11:30 A.M. Mountain Time for the purpose of considering and acting upon the following proposals:

1. To elect nine members to the Board of Directors (the “*Board*”) to serve until the next Annual Meeting of Shareholders and until their successors are elected and qualified;
2. To approve the 2025 Equity Incentive Plan (the “*Plan*”) and the reservation of 1,000 shares of Common Stock for issuance thereunder;
3. For management and the Board to present the following:
  - A financial status report,
  - A land status report;
  - An oil and gas update;
  - A farm update;
  - A water issues update; and
  - A crop review.

Only shareholders of record at the close of business on September 5, 2025 (the “*Record Date*”) are entitled to receive notice of and to vote at the Annual Meeting in accordance with the number of shares of record held in the name of each shareholder on that date.

All shareholders are cordially invited to attend the meeting in person or by video conference. However, to assure your representation at the meeting, you are urged to sign and return the enclosed Proxy as promptly as possible in the postage-prepaid envelope that has been enclosed for that purpose. If you attend the meeting in person or by video conference, you may vote in person or by video conference even though you returned a Proxy. Shareholders participating in the Annual Meeting by video conference be will be deemed present and may vote at such a meeting, but will be asked to verify that the person participating remotely is the shareholder or a duly authorized representative of the shareholder.

If you wish to attend by video conference please contact Connie Rickard below for the link.

Connie M. Rickard, Officer  
The Garden City Company  
10 Lake Circle  
Colorado Springs, CO 80906,  
Office: (719) 577-5745  
Shareholderservices@gardencityco.com

BY ORDER OF THE BOARD OF DIRECTORS

September 12, 2025

R. Thayer Tutt, Jr., President and CEO



**PROXY STATEMENT FOR  
ANNUAL MEETING OF SHAREHOLDERS OF  
THE GARDEN CITY COMPANY**

DATED AS OF SEPTEMBER 12, 2025

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The enclosed Proxy is solicited on behalf of the Board of Directors (the “*Board*”) of The Garden City Company, a Colorado corporation (the “*Company*”), for use at the Annual Meeting of Shareholders to be held on October 20, 2025 at 11:30 A.M. Mountain Time or at any adjournment or postponement of that meeting, for the purposes set forth herein and in an accompanying Notice of Annual Meeting of Shareholders (the “*Notice*”). The Annual Meeting will be held at the offices of the Company, located at 10 Lake Circle, Colorado Springs, CO 80906, and by video conference.

If you wish to attend by video conference please contact Chris Sohn as set forth in the Notice.

Record Date and Share Ownership

The Board has fixed September 5, 2025 (the “*Record Date*”) as the record date for the determination of shareholders entitled to vote at the Annual Meeting of Shareholders. On the Record Date, the outstanding shares entitled to vote are as follows:

<b>Class</b>	<b>Outstanding Shares</b>
Common Stock	34,865

The following description of the capital stock is a summary of the rights of our capital stock and certain provisions of our amended and restated articles of incorporation and amended and restated bylaws currently in effect. This summary does not purport to be complete and is qualified in its entirety by the provisions of the full articles and bylaws, copies of which are available upon request.

The Company has only one class of stock, Common Stock with no specified par value. A majority of the outstanding shares of Common Stock entitled to vote, represented in person or by proxy, constitutes a quorum of a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders. All outstanding shares of Common Stock are entitled to vote on all matters.

As of the Record Date, there were 82 stockholders of record. The number of record holders does not include beneficial holders who hold their shares in “street name,” meaning that the shares are held for their accounts by a broker or other nominee.

The following are the rights and privileges of our Common Stock:

- Dividends. Holders of Common Stock are entitled to receive dividends and distributions out of funds legally available at the times and in the amounts which our Board may determine.
- Voting Rights. Holders of Common Stock are entitled to one vote per share. Cumulative voting is not permitted under the Amended and Restated Articles of Incorporation.
- Redemption Rights. Our Common Stock has no redemption rights or mandatory obligations of the Company to conduct a redemption.
- Conversion. Our Common Stock is not convertible into any other shares of our capital stock.
- Preemptive Rights. Upon shareholder approval, there are no preemptive rights for any awards or shares issued under the 2025 Equity Incentive Plan.

#### Majority Stockholder

The El Pomar Foundation, a Colorado non-profit corporation (“*El Pomar*”), owns 24,145 shares of Common Stock, which is approximately 60.65% of the outstanding shares of Common Stock. The Company expects El Pomar to attend the meeting. Constituting a majority of Common Stock, the presence of El Pomar at the Annual Meeting will constitute a quorum. El Pomar has the voting power to approve or disapprove any matter up for consideration at the Annual Meeting.

#### Revocability of Proxies

Any proxies given pursuant to this solicitation may be revoked by the person giving it at any time before its use either (i) by delivering to the Company (address: 10 Lake Circle, Colorado Springs, CO 80906) a written or electronic notice of revocation or a duly executed proxy bearing a later date or (ii) by attending the meeting and voting in person.

#### Voting

Each share of Common Stock entitles its holder to one vote on matters to be acted upon at the meeting, including the election of directors. All proxies will be voted in accordance with the instructions contained in the proxy. If no choice is made on proxies signed and returned to the Company, such proxies will be voted in favor of the proposals set forth in the Notice of Annual Meeting attached to this Proxy Statement.

### **PROPOSAL NO. 1: ELECTION OF DIRECTORS**

At the Annual Meeting, the Board will be elected to serve until the next Annual Meeting of Shareholders or until their successors are duly elected and qualified. Shares represented by executed proxies will be voted for the election of nominees listed below, unless otherwise specified by the stockholder on the proxy. In the event that one or more of such nominees is unable or declines to serve as a director at the time of the Annual Meeting, the proxy holder[s] will vote in their discretion for a substitute nominee. It is not expected that any nominee will be unavailable or will decline to serve as a director.

Candidates for the nine director positions nominated by the Board upon the recommendation of the Governance Committee are as follows:

Name	Age	Title	Director Since
William J. Hybl	83	Director, Chairman	1977
R. Thayer Tutt, Jr	70	Director, President, CEO	1983
Troy J. Dumler	51	Director, Senior Vice President, General Manager	2015
Kyle H. Hybl	54	Director, Vice President	2013
William J. Hybl, Jr.	57	Director	1998
David J. Palenchar	77	Director	1999
Robba Moran	66	Independent Director	2023
Lt. Gen. Michael Gould (Ret.)	71	Independent Director	2017
Russell T. Tutt, IV	36	Director	2024

Set forth below are descriptions of the backgrounds and principal occupations of each of our directors.

**William J. “Bill” Hybl.** Bill Hybl has been on the board of the Company since 1977 and currently serves as Chairman (48 years). He is Chair Emeritus of El Pomar, after serving 30 years as Chairman and CEO. He is Chair of the Colorado State Fair Authority and Chair of its Jr. Livestock Building capital campaign. In 2008 he was confirmed by the United States Senate as Chairman of the U.S. Commission on Public Diplomacy, a position he was appointed to by President George W. Bush. He was reappointed by President Barack Obama and currently serves as Vice Chairman. He serves as Chairman of the U.S. Olympic Endowment and is President Emeritus of the United States Olympic Committee (USOC). He was a member of the International Olympic Committee from 2000-2002. He has also been engaged in a variety of public service activities. Bill Hybl is Civilian Aide to the Secretary of the Army (Senior). In 2001, President George W. Bush appointed him as U.S. Representative to the 56th General Assembly of the United Nations. He serves as vice chair for the Fund for American Studies. In addition, Bill Hybl currently serves as Chairman Emeritus of the International Foundation for Electoral Systems (IFES). Bill Hybl is a graduate of Colorado College and earned his juris doctor at the University of Colorado School of Law. Directors William J. Hybl Jr. and Kyle H. Hybl are his sons.

**R. Thayer Tutt, Jr.** Thayer Tutt has been on the board of the Company since 1983 and currently serves as President and CEO of the Company (42 years). He has been employed at El Pomar Foundation for the past 42 years, currently serving as Vice Chairman and Chief Investment Officer. He serves on the Board of Trustees of The Colorado College, Geological Society of America, and Fund for American Studies. He is on the Board of Directors for Broadmoor World Arena, Pikes Peak or Bust Foundation, Colorado Springs Fine Arts Center Foundation, Colorado Springs Philharmonic Foundation, and Cheyenne Mountain Zoo Endowment. Other board service includes UMB Bank of Colorado, Children’s Hospital Colorado, Care and Share Foundation and United States Olympic and Paralympic Museum. In 2009, he received the Business Citizen of the Year Award from the Colorado Springs Chamber of Commerce. Mr. Tutt is a graduate of Princeton University with a bachelor’s degree in geological and geophysical sciences and earned his master’s degree from Duke University in business administration. He was born in Garden City. Director Russell T. Tutt, IV, is his son.

**Troy J. Dumler.** Troy Dumler is Senior Vice President and General Manager of the Company, which he joined in 2013. He has been on the board of the Company since 2015 (10 years). Prior to his role with the company, he served for 15 years as an Extension Agricultural Economist with Kansas State University. In 2018, Troy was appointed by Governor Jeff Colyer to be a Kansas representative on the Arkansas River Compact Administration. He was reappointed by Governor Laura Kelly in 2022. Troy

also serves as board member or officer in several water organizations and associations in southwest Kansas. He recently finished a term as a board member of the Kansas Agricultural and Rural Leadership (KARL) program. He graduated with bachelor's and master's degrees in agricultural economics from Kansas State University.

**Kyle H. Hybl.** Kyle Hybl served the Company as General Counsel from 2013-2019, then Vice President since 2020 (12 years) and serves as President and Chief Executive Officer for El Pomar Foundation. Kyle is Chairman Emeritus of the University of Colorado System, a board he served on from 2007-2018. He currently serves as Chairman of National Cybersecurity Center, Chairman of Colorado Thirty Group, and Corporate Secretary for Junior Achievement USA. In 2018, Kyle was appointed as a member of the Air Force Civic Leaders Program. He earned bachelor's and juris doctor degrees from the University of Colorado, Boulder. He is a former Air Force Captain and Judge Advocate. He is the son of the Chairman.

**William J. "BJ" Hybl, Jr.** BJ Hybl is President and Chief Operating Officer of Griffis/Blessing, Inc., a real estate investment and services firm headquartered in Colorado Springs, CO. He has been with Griffis/Blessing, Inc. since 1999. He has served on the Company's board since 1998 (27 years). He has had direct responsibility for over eleven million square feet of multi-family, office, industrial, and retail buildings whose market value totals more than \$1 billion. Prior to 1999, BJ Hybl was a vice president of the Company. He received his BA from Colorado College in Colorado Springs, Colorado and an MBA from Regis University in Denver, Colorado. BJ Hybl also served in the United States Air Force as a Missile Launch Officer and a Space Operations Officer. He is the son of the Chairman.

**David J. Palenchar.** David has been Assistant Treasurer of the Company since 1999 (26 years). He is also Chair of the Board of Directors of El Pomar. He is a graduate of the United States Air Force Academy. After a career in the Air Force, he returned to Colorado and joined El Pomar's program staff. In 2007, he was recognized as Colorado Springs Business Citizen of the Year by the Colorado Springs Chamber & EDC. He has been a Trustee of El Pomar since 1998 and retired as El Pomar's Chief Operating Officer in 2013. He has served in a variety of nonprofit leadership roles throughout Colorado Springs. Most recently he was President and Chief Executive Officer of the Broadmoor World Arena and Pikes Peak Center for the Performing Arts Board of Directors and Chair of the Colorado Springs Sports Corporation.

**Robba Moran.** Robba Moran serves as Chairman of the Board of The University of Kansas Health System. She has been on that board since 2016 and previously served as Chair of its Academic Medical Center Alignment and Physician Affairs Committee. She has been on the board of the Company since 2023 (2 years). She has chaired the Masonic Cancer Alliance Partners' Advisory Board of the KU Cancer Center. She was a member of the Kansas Board of Regents from 2011-2015, and the Washburn University Board of Regents. She is a former board member of Kansas Agriculture and Rural Leadership, Inc., and was President of the Kansas State Fair Board. Robba began her legal career at Stinson, Mag & Fizzell in Kansas City, Missouri, and later served as Assistant Professor of Business at Fort Hays State University. A native of Independence, Missouri, she holds a B.S. in Business Administration from William Jewell College and a J.D. from Duke University.

**Lt. Gen. Michael Gould (Ret.)** Lt. Gen. Gould is currently the President of The Gould Group, LLC, an independent consulting firm located in Colorado Springs. He has served on the Company's board since 2017 (8 years). He served as the 18th Superintendent of the U.S. Air Force Academy in Colorado Springs, Colo., from June 2009 to June 2013. He retired from the United States Air Force in July 2013, then served for four years as an El Pomar trustee. He earned his commission and a bachelor's degree in behavioral science from the U.S. Air Force Academy in 1976. He commanded seven Air Force organizations and served in a variety of operational and staff assignments including three tours at

Headquarters U.S. Air Force, along with duty as the Air Force aide to the President and senior military assistant to the Secretary of the Air Force. Lt. Gen. Gould holds an M.A. in Human Resource Development from Webster University and has completed graduate courses at the Air Command and Staff College, the National War College, the Kellogg Graduate School of Management at Northwestern University, and the John F. Kennedy School of Government at Harvard University.

**Russell T. “Tye” Tutt, IV.** Tye Tutt is President of Tutt Service Enterprise, a Colorado Springs, CO based civil construction and engineering firm specializing in water utility construction projects. He has served on the Company’s board since 2024 (1 year). Tutt Service Enterprise specializes in design-build and CM/GC contracting methods to partner with its private sector, government and agricultural clients to successfully deliver complex water and waste-water projects. Tutt is a licensed professional engineer (civil) in the State of Colorado, holds a general contractor’s class A license in multiple Colorado jurisdictions, and has passed the ICC National Standard Building Contractor (A) Exam. Mr. Tutt is a graduate of Carnegie Mellon University with a bachelor’s degree in civil engineering and a master’s degree in civil and environmental engineering with a focus on water resources engineering. He is the son of the President and CEO.

Below is a summary of the expertise areas of the Board nominees.

Qualification/Attribute/Skill	William J. Hybl (Chairman)	Lt. General Michael C. Gould, USAF (RET)	Troy J. Dumler	Kyle H. Hybl	R. Thayer Tutt, Jr.	William Hybl, Jr.	Robba Moran	David J. Palenchar	Russell T. Tutt, IV*
Board Experience	X	X	X	X	X	X	X	X	
Agriculture Industry Experience			X			X			
Business Management	X	X	X	X	X	X	X	X	X
Govt/Public Policy	X	X	X	X			X		
Finance/Capital	X		X	X	X	X		X	
Risk Mgmt.	X		X		X			X	
Corporate Governance	X	X		X	X		X	X	
Real Estate			X		X	X			
Water Resources			X						X

Two of the directors are independent (Moran and Gould) and the remainder are not independent as a result of employment with the Company, employment or affiliation with El Pomar or as a result of being an immediate family member of an employee.

The Governance Committee also received input from El Pomar in making the recommendations to the Board.

MANAGEMENT RECOMMENDS A VOTE FOR EACH NAMED NOMINEE.

**PROPOSAL NO. 2: TO APPROVE THE 2025 EQUITY INCENTIVE PLAN AND RESERVING 1,000 SHARES OF COMMON STOCK FOR ISSUANCE THEREUNDER**

On September 8, 2025, we adopted the 2025 Equity Incentive Plan (the “2025 Plan”), a copy of which is attached, for the purpose of granting stock options, restricted stock units (“RSUs”) and other awards to employees, directors and non-employees. One-Thousand shares of Common Stock are reserved for issuance thereunder.

The primary purpose of the 2025 Plan is to partially compensate executives and non-employees with stock based awards to align their interests more closely with those of the shareholders.

Subject to stockholder approval of the 2025 Plan, the Board intends to begin a review of equity compensation for senior management and the six non-employee directors. The board has not set a specific time frame to initiate and complete this review.

**OTHER MATTERS**

The Board knows of no other matters that may come before the Annual Meeting. If any other matters are properly presented at the Annual Meeting, then the person[s] named in the enclosed Proxy will vote the shares they represent in such manner as the Board may recommend.

September 12, 2025

BY ORDER OF THE BOARD OF DIRECTORS,  
R. Thayer Tutt, Jr., President

**THE BOARD HOPES THAT THE COMPANY’S SHAREHOLDERS WILL ATTEND THE ANNUAL MEETING. WHETHER OR NOT YOU PLAN TO ATTEND, HOWEVER, YOU ARE URGED TO COMPLETE, SIGN AND RETURN THE ENCLOSED PROXY IN THE ACCOMPANYING ENVELOPE.**

**EXHIBIT A**  
**2025 EQUITY INCENTIVE PLAN**

**THE GARDEN CITY COMPANY**  
**2025 EQUITY INCENTIVE PLAN**

**ADOPTED BY THE BOARD OF DIRECTORS: September 8, 2025**  
**APPROVED BY THE STOCKHOLDERS: [October 20, 2025]**

**1. GENERAL.**

**(a) Eligible Award Recipients.** Employees, Directors and Consultants are eligible to receive awards.

**(b) Available Awards.** The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Restricted Stock Awards, (iv) Restricted Stock Unit Awards, and (v) Other Stock Awards.

**(c) Purpose.** This Plan, through the granting of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

**2. ADMINISTRATION.**

**(a) Administration by Board.** The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

**(b) Powers of Board.** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) to determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) to construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

(iii) to settle all controversies regarding the Plan and Awards granted under it.

(iv) to accelerate, in whole or in part, the time at which an Award may be exercised or vest (or at which cash or shares of Common Stock may be issued).

(v) to suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or an Award Agreement, suspension or termination of the Plan will not materially impair a Participant's rights under his or her then-outstanding Award without his or her written consent.

(vi) to amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Awards available for issuance under the Plan. Except as otherwise provided in the Plan or an Award Agreement, no amendment of the Plan will materially impair that Participant's rights under an outstanding Award without his or her written consent.

(vii) to submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, or (B) Section 422 of the Code regarding "incentive stock options".

( ) to approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more outstanding Awards. Except with respect to amendments that disqualify or impair the status of an Incentive Stock Option or as otherwise provided in the Plan or an Award Agreement, no amendment of an outstanding Award will materially impair that Participant's rights under his or her outstanding Award without his or her written consent. To be clear, unless prohibited by applicable law, the Board may amend the terms of an Award without the affected Participant's consent if necessary (A) to maintain the qualified status of the Award as an Incentive Stock Option, (B) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code, or (C) to comply with other applicable laws.

(viii) generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(ix) to adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(x) to effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, and/or (5) award of other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed

by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revert in the Board some or all of the powers previously delegated.

**(d) Delegation to an Officer.** The Board may delegate to one (1) or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such rights and options, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority.

**(e) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

### **3.SHARES SUBJECT TO THE PLAN.**

**(a) Share Reserve.** Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards will not exceed 1,000 shares (the "*Share Reserve*").

**(b) Reversion of Shares to the Share Reserve.** If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

**(c) Incentive Stock Option Limit.** Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 400,000,000 shares of Common Stock.

**(d) Section 162(m) Limitations.** Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be a public company subject to the applicable provisions of Section 162(m), no Options or Other Stock Awards may be granted if the value would exceed the limitations in Section 162(m).

**(e) Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company.

#### **4. ELIGIBILITY.**

**(a) Eligibility for Specific Stock Awards.** Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405 of the Securities Act, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in connection with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in connection with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

**(b) Ten Percent Stockholders.** A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

#### **5. PROVISIONS RELATING TO OPTIONS.**

**(a) General.** Each Option will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options need not be identical; *provided, however*, that each Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(b) Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option will be exercisable after the expiration of ten years from the date of its grant or such shorter period specified in the Award Agreement.

**(c) Exercise Price.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option on the date the Award is granted. Notwithstanding the foregoing, an Option may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Award if such Award is granted pursuant to an assumption of or substitution for another option pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A and, if applicable, Section 424(a) of the Code.

**(d) Purchase Price for Options.** The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or

otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) Pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares impa121p upon exercise are reduced to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

**(e) Transferability of Options.** The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options will apply:

**(i) Restrictions on Transfer.** An Option will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided herein, an Option may not be transferred for consideration.

**(ii) Domestic Relations Orders.** Subject to the approval of the Board or a duly authorized Officer, an Option may be transferred pursuant to the terms of a domestic relations order or official marital settlement agreement. If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**(iii) Beneficiary Designation.** Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, on the death of the Participant, will thereafter be entitled to exercise the Option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate will be entitled to exercise the Option and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

**(f) Vesting Generally.** The total number of shares of Common Stock subject to an Option may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of criteria specified by the Board) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section 5(f) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

**(g) Termination of Continuous Service.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date three months following the termination of the Participant's Continuous Service and (ii) the expiration of the term of the Option as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option within the applicable time frame, the Option will terminate.

**(h) Extension of Termination Date.** If the exercise of an Option following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option will terminate on the earlier of (i) the expiration of a total period of three months (that need not be consecutive) after the termination of the Participant's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received on exercise of an Option following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option will terminate on the earlier of (i) the expiration of a period of months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option as set forth in the applicable Award Agreement.

**(i) Disability of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service and (ii) the expiration of the term of the Option as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option within the applicable time frame, the Option (as applicable) will terminate.

**(j) Death of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Participant was entitled to exercise such Option as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Participant's death, but only within the period ending on the earlier of (i) the date 18

months following the date of death and (ii) the expiration of the term of such Option as set forth in the Award Agreement. If, after the Participant's death, the Option is not exercised within the applicable time frame, the Option will terminate.

**(k) Termination for Cause.** Except as explicitly provided otherwise in a Participant's Award Agreement, if a Participant's Continuous Service is terminated for Cause, the Option will terminate upon the date on which the event giving rise to the termination for Cause first occurred, and the Participant will be prohibited from exercising his or her Option from and after the date on which the event giving rise to the termination for Cause first occurred (or, if required by law, the date of termination of Continuous Service).

**(l) Non-Exempt Employees.** If an Option is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option will not be first exercisable for any shares of Common Stock until at least six (6) months following the date of grant of the Option (although the Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option is not assumed, continued, or substituted, or (iii) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(1) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

## **6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.**

**(a) Restricted Stock Awards.** Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Participant's Continuous Service.** If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

**(v) Dividends.** A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

**(b) Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

**(iii) Payment.** A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

**(iv) Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

**(v) Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

**(vi) Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

**(c) Other Stock Awards.** Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

## **7. COVENANTS OF THE COMPANY.**

**(a) Availability of Shares.** The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Awards.

**(b) Securities Law Compliance.** The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

**(c) No Obligation to Notify or Minimize Taxes.** The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

## **8. MISCELLANEOUS.**

**(a) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

**(b) Corporate Action Constituting Grant of Stock Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement as a result of a

clerical error in the papering of the Award Agreement, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement.

**(c) Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

**(d) No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

- **(e) Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliate's is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced.

**(f) Incentive Stock Option Limitations.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with the rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(g) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by

counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(h) Withholding Obligations.** Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; *provided, however,* that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

**(i) Electronic Delivery.** Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at [www.sec.gov](http://www.sec.gov) (or any successor website thereto) or posted on the Company's intranet.

**(j) Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(k) Compliance with Section 409A.** Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six (6) months following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six (6) month period elapses, with the balance paid thereafter on the original schedule.

**(1) Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause.

## **9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS**

**(a) Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Sections 3(d), and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

**(b) Dissolution or Liquidation.** Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board will take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) Arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) Arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(i) Accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of

such Corporate Transaction as the Board will determine (or, if the Board will not determine such a date, to the date that is five days prior to the effective date of the Corporate Transaction), with the vested portion of such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iii) Arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award; and

(iv) Cancel or arrange for the cancellation of the Stock Award immediately prior to the effective time of the Corporate Transaction, in exchange for cash consideration or readily tradeable securities having a value equal to the value of the Stock Award if the Stock Award had been fully vested prior to the cancellation, with all performance goals or vesting criteria being achieved at 100% of target levels and the value of the Stock Award determined as the excess, if any, of (A) the value of the cash or property the Participant would have received upon the exercise or settlement of the fully vested Stock Award immediately prior to the cancellation, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. In advance of the Corporate Transaction, the Board will give adequate notice (as determined by the Board) to any affected Participant of the actions to be taken under this Section 9 with respect to that Participant's outstanding Awards.

#### **10. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.**

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of (i) the date the Plan is adopted by the Board (the "*Adoption Date*"), or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

#### **11. EXISTENCE OF THE PLAN; TIMING OF FIRST GRANT OR EXERCISE.**

The Plan will come into existence on the Adoption Date; *provided, however*, no Stock Award will be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award or Other Stock Award, will be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval will be within 12 months after the date the Plan is adopted by the Board.

#### **12. CHOICE OF LAW.**

The law of the State of Colorado will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

**13. DEFINITIONS.** As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

*"Affiliate"* means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

*"Award"* means a Stock Award.

**"Award Agreement"** means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

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

**"Capital Stock"** means each and every class of common stock of the Company, regardless of the number of votes per share.

**"Capitalization Adjustment"** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

**"Cause"** means (i) if a Participant is party to an agreement with the Company or an Affiliate that relates to equity awards and contains a definition of "Cause," the definition of "Cause" in the applicable agreement, or (ii) if a Participant is not party to any such agreement, such Participant's termination because of (A) any willful, material violation by the Participant of any law or regulation applicable to the business of the Company or an Affiliate, the Participant's conviction for, or guilty plea to, a felony or a crime involving moral turpitude, or any willful perpetration by the Participant of a common law fraud, (B) the Participant's commission of an act of personal dishonesty that involves personal profit in connection with the Company or any other entity having a business relationship with the Company, (C) any material breach by the Participant of any provision of any agreement or understanding between the Company or an Affiliate and the Participant regarding the terms of the Participant's service as an Employee, Officer, Director or Consultant to the Company or an Affiliate, including without limitation, the willful and continued failure or refusal of the Participant to perform the material duties required of such Participant as an Employee, Officer, Director or Consultant of the Company or an Affiliate, other than as a result of having a Disability, or a breach of any applicable invention assignment and confidentiality agreement or similar agreement between the Company or an Affiliate and the Participant, (D) the Participant's disregard of the policies of the Company or an Affiliate so as to cause loss, damage or injury to the property, reputation or employees of the Company or an Affiliate, or (E) any other misconduct by the Participant that is materially injurious to the financial condition or business reputation of, or is otherwise materially injurious to, the Company or an Affiliate.

**"Code"** means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

**"Committee"** means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

**"Common Stock"** means common stock of the Company, having 1 vote per

share. **"Company"** means The Garden City Company, a Delaware corporation.

**"Consultant"** means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However,

service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

**"Continuous Service"** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service ; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms, of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A of the Code, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of "separation from service" as defined under Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

**"Corporate Transaction"** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(v) the consummation of a sale or other disposition of at least 50% of the outstanding securities of the Company;

(vi) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(vii) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

To the extent required for compliance with Section 409A of the Code, in no event will an event be deemed a Corporate Transaction if such transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

**"Covered Employee"** will have the meaning provided in Section 162(m)(3) of the Code. **"Director"** means a member of the Board.

**"Disability"** means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

**"Employee"** means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

**"Entity"** means a corporation, partnership, limited liability company or other entity.

**"Fair Market Value"** means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock quoted on the OTC Market Place or traded on any established stock exchange or any established market, the Fair Market Value of a share of Common Stock will be, unless otherwise determined by the Board, **the closing sales price** for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) **as of the date of determination**, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

**"Incentive Stock Option"** means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

**"Nonstatutory Stock Option"** means any option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

**"Officer"** means a person who is an executive officer of the Company appointed by the Board of Directors.

**"Option"** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

**"Option Agreement"** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

**"Optionholder"** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

**"Other Stock Award"** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(c).

**"Other Stock Award Agreement"** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

**"Own," "Owned," "Owner," "Ownership"** A person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**"Participant"** means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

**"Plan"** means this The Garden City Company 2025 Equity Incentive Plan.

**"Restricted Stock Award"** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

**"Restricted Stock Award Agreement"** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

**"Restricted Stock Unit Award"** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

**"Restricted Stock Unit Award Agreement"** means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

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

**"Stock Award"** means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, or any Other Stock Award.

**"Stock Award Agreement"** means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

**"Subsidiary"** means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability

company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

***"Ten Percent Stockholder"*** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Affiliate.