

**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): November 7, 2023**



**Hostess Brands, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-37540**  
(Commission  
File Number)

**47-4168492**  
(IRS Employer  
Identification No.)

**7905 Quivira Road**  
**Lenexa, KS**  
(Address of principal executive offices)

**66215**  
(Zip Code)

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

**Not Applicable**  
(Former name or former address, if changed since last report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common Stock, \$0.0001 par value per share	TWNK	The Nasdaq Stock Market LLC

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

Emerging growth company

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

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**Item 2.01 Completion of Acquisition or Disposition of Assets.**

As previously disclosed in the Current Report on Form 8-K (the "Signing Form 8-K") filed with the Securities and Exchange Commission (the "SEC") on September 12, 2023 by Hostess Brands, Inc., a Delaware corporation (the "Company"), on September 10, 2023, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") with The J. M. Smucker Company, an Ohio corporation ("Smucker"), and Smucker's wholly owned subsidiary, SSF Holdings, Inc., a Delaware corporation ("Purchaser"). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions thereof, on October 10, 2023, Purchaser commenced an exchange offer (the "Offer") to purchase any and all of the issued and outstanding shares (the "Shares") of Class A Common Stock, par value \$0.0001 per share (the "Company Common Stock"), of the Company in exchange for (i) \$30.00 in cash (the "Cash Consideration") and (ii) 0.03002 Smucker common shares, no par value (together with the Cash Consideration, the "Offer Consideration"), plus cash in lieu of fractional shares, in each case, without interest, subject to reduction for any applicable tax withholding and subject to adjustment in accordance with the terms of the Merger Agreement.

At 12:00 Noon, Eastern Time (the "Expiration Time"), on November 7, 2023, the Offer expired. Computershare Trust Company, N.A., in its capacity as depository and exchange agent for the Offer, advised that, as of the expiration of the Offer, a total of 69,250,307 Shares were validly tendered and not validly withdrawn pursuant to the Offer, representing 52.10% of the issued and outstanding Shares as of the Expiration Time, and an additional 22,117,606 Shares were tendered pursuant to guaranteed delivery procedures, representing approximately an additional 16.64% of the issued and outstanding Shares as of the Expiration Time. This number of Shares validly tendered and not validly withdrawn satisfied the Minimum Condition (as defined in the Merger Agreement). As each condition to the Offer was satisfied or waived, Purchaser irrevocably accepted for exchange all Shares that were validly tendered and not validly withdrawn pursuant to the Offer.

On November 7, 2023 (the "Closing Date"), following consummation of the Offer, Purchaser merged with and into the Company (the "Merger"), with the Company continuing as the surviving corporation. The Merger was completed pursuant to Section 251(h) of the General Corporation Law of the State of Delaware.

At the effective time of the Merger (the "Effective Time"), each issued and outstanding Share (other than any shares that were excluded pursuant to the terms of the Merger Agreement) was converted into the right to receive the Offer Consideration.

The foregoing descriptions of the Offer, the Merger, and the Merger Agreement in this Item 2.01 do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, a copy of which was filed as Exhibit 2.1 to the Signing Form 8-K, and is incorporated herein by reference.

The information set forth in Items 3.03, 5.01, and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continuing Listing Rule or Standard; Transfer of Listing.**

In connection with the consummation of the Merger, on November 7, 2023, the Company notified The Nasdaq Stock Market LLC ("Nasdaq") of the consummation of the Merger and all shares of Company Common Stock ceased trading on Nasdaq, and the Company requested that Nasdaq file with the SEC a Notification of Removal from Listing and/or Registration on Form 25 to effect the delisting of all Shares from Nasdaq and the deregistration of such Shares under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company intends to file with the SEC a Certification and Notice of Termination of Registration on Form 15 under the Exchange Act, requesting that the Company's reporting obligations under Sections 13 and 15(d) of the Exchange Act be suspended.

The information set forth in Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.01.

**Item 3.03. Material Modification to Rights of Security Holders.**

As a result of the Merger, each Share that was issued and outstanding immediately prior to the Effective Time (other than any shares that were excluded pursuant to the terms of the Merger Agreement and other than Shares tendered

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into the Offer and accepted by Purchaser) at the Effective Time was converted into the right to receive the Offer Consideration. Accordingly, at the Effective Time, the Company's stockholders immediately before the Effective Time ceased to have any rights in the Company as stockholders, other than their right to receive the Offer Consideration.

The information set forth in Item 2.01 of this Current Report on Form8-K is incorporated by reference into this Item 3.03.

**Item 5.01 Change in Control of Registrant.**

At the Effective Time, the Purchaser merged with and into the Company, with the Company continuing as the surviving corporation and a wholly owned subsidiary of Smucker. As a result, a change of control of the Company occurred.

The information contained in Item 2.01 of this Current Report on Form8-K is incorporated by reference into this Item 5.01.

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

*Directors*

In accordance with the Merger Agreement, at the Effective Time, each of the directors of the Company (Jerry D. Kaminski, Andrew P. Callahan, Olu Beck, Laurence Bodner, Gretchen R. Crist, Rachel P. Cullen, Hugh G. Dineen, Ioannis Skoufalos, and Craig D. Steeneck) resigned as directors of the Company. These resignations were in connection with the Merger and not as a result of any disagreements between the Company and the resigning individuals on any matters related to the Company's operations, policies, or practices.

As of the Effective Time, in accordance with the Merger Agreement, John P. Brase, Jeannette L. Knudsen, and Tucker H. Marshall, the directors of Purchaser immediately prior to the Effective Time, became directors of the Company.

*Officers*

In accordance with the Merger Agreement, at the Effective Time, each of the executive officers of the Company (Andrew P. Callahan, Travis E. Leonard, Arist R. Mastorides, Daniel J. O'Leary, Adrian A. Poretti, Darryl P. Riley, Jolyn J. Sebree, and Robert C. Weber) were replaced in their respective positions as the executive officers of the Company. These replacements were in connection with the Merger and not as a result of any disagreements between the Company and the resigning individuals on any matters related to the Company's operations, policies, or practices.

As of the Effective Time, in accordance with the Merger Agreement, John P. Brase as President, Jeannette L. Knudsen as Chief Legal Officer and Secretary, Tucker H. Marshall as Chief Financial Officer, Nadeem S. Ali as Vice President and Treasurer, and Peter O. Farah as Vice President and Assistant Secretary, the executive officers of Purchaser immediately prior to the Effective Time, became the executive officers of the Company.

The information set forth in Item 2.01 of this Current Report on Form8-K is incorporated by reference into this Item 5.02.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

At the Effective Time, in connection with the consummation of the Merger, the certificate of incorporation and by-laws attached as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K became the certificate of incorporation and bylaws of the Company.

The information set forth in Item 2.01 of this Current Report on Form8-K is incorporated by reference into this Item 5.03.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
2.1	<a href="#"><u>Agreement and Plan of Merger, dated as of September 10, 2023, among Hostess Brands, Inc., The J. M. Smucker Company, and SSF Holdings, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Hostess Brands, Inc. with the Securities and Exchange Commission on September 12, 2023).</u></a>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of Hostess Brands, Inc.</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws of Hostess Brands, Inc.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

**HOSTESS BRANDS, INC.**

By: /s/ Jeannette L. Knudsen

Name: Jeannette L. Knudsen

Title: Chief Legal Officer and Secretary

Date: November 7, 2023

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
HOSTESS BRANDS, INC.**

**ARTICLE I**

The name of the corporation (which is hereinafter referred to as the "Corporation") is: Hostess Brands, Inc.

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware (the "DGCL").

**ARTICLE IV**

Section 1. The Corporation shall be authorized to issue 100 shares of capital stock, of which 100 shares shall be shares of Common Stock, par value \$0.01 per share ("Common Stock").

Section 2. Except as otherwise provided by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. Each share of Common Stock shall have one vote, and the Common Stock shall vote together as a single class.

**ARTICLE V**

Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

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ARTICLE VI

In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Corporation (the "Board") is expressly authorized and empowered to make, alter and repeal the By-Laws of the Corporation at any regular or special meeting of the Board or by written consent, subject to the power of the stockholders of the Corporation to alter or repeal any By-Laws made by the Board.

ARTICLE VII

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

ARTICLE VIII

Section 1. Elimination of Certain Liability of Directors A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

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Section 2. Indemnification and Advance of Expenses

(a) Right to Indemnification. To the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation to procure a judgment in its favor (each, a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees and disbursements, judgments, fines, ERISA excise taxes, damages, claims and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section 2 of this Article VIII or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 2 of this



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Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 2(a) of this Article VIII, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) Non-Exclusivity of Rights. The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 2 of this Article VIII shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Amended and Restated Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Repeal; Amendment. Any repeal or amendment of this Article VIII by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Amended and Restated Certificate inconsistent with this Section 2 of this Article VIII, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

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(d) No Limitation. Section 2 of this Article VIII shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

(e) Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Section 2 of this Article VIII or otherwise.

**BY-LAWS**  
**OF**  
**HOSTESS BRANDS, INC.**  
**A Delaware Corporation**  
**ARTICLE I - GENERAL**

**Section 1.1. Offices.** The registered office of Hostess Brands, Inc. (the “Corporation”) in the State of Delaware shall be located at 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the Corporation’s registered agent at such address shall be The Corporation Trust Company. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors (the “Board”) may from time to time determine or the business of the Corporation may require.

**Section 1.2. Seal.** The seal of the Corporation shall be in the form approved by the Board.

**Section 1.3. Fiscal Year.** The fiscal year of the Corporation shall end on April 30<sup>h</sup> of each year.

**ARTICLE II - STOCKHOLDERS**

**Section 2.1. Place of Meetings.** All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board or the President or, if not so designated, at the registered office of the Corporation.

**Section 2.2. Annual Meeting.** The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Board, the Chairman of the Board, if any, or the President (which date shall not be a legal holiday in the place where the meeting is to be held) at the time and place to be fixed by the Board, the Chairman of the Board, if any, or the President and stated in the notice of the meeting. If no annual meeting is held in accordance with the foregoing provisions, the Board shall cause the meeting to be held as soon thereafter as convenient.

**Section 2.3. Quorum.** At all meetings of the stockholders the holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum requisite for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws. If, however, a quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat, present in person or by proxy, by a majority vote, shall have the power to adjourn the meeting from time to time.

**Section 2.4. Right to Vote; Proxies.** Each stockholder entitled to vote at any meeting shall be entitled to one vote for each share of stock held by him. Every stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy by executing an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting.

**Section 2.5 Voting.** At all meetings of stockholders all questions, except as otherwise expressly provided for by statute, the Certificate of Incorporation or these By-Laws, shall be determined by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter. Except as otherwise expressly provided by law, the Certificate of Incorporation or these By-Laws, at all meetings of stockholders the voting shall be by voice vote, but any stockholder qualified to vote on the matter in question may demand that the vote shall be taken by ballot, each of which shall state the name of the stockholder voting and the number of shares voted by him, and, if such ballot be cast by a proxy, it shall also state the name of the proxy. All elections of directors shall be determined by a plurality of the votes cast, except as otherwise required by law or the Certificate of Incorporation.

**Section 2.6. Notice of Annual Meetings.** Written notice of the annual meeting of the stockholders of the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting shall be given to each stockholder entitled to vote thereat not less than ten (10) days nor more than sixty (60) days before the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. It shall be the duty of every stockholder to furnish to the Secretary of the Corporation or to the transfer agent, if any, of the class of stock owned by him, his post office address and to notify said Secretary or transfer agent of any change therein.

**Section 2.7. Stockholders' List.** A complete list of the stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law.

The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

**Section 2.8. Special Meetings.** Special meetings of the stockholders for any purpose or purposes, unless otherwise provided by statute, may be called by the Board, the Chairman of the Board, if any, the President or any Vice President.

**Section 2.9. Notice of Special Meetings.** Written notice of a special meeting of stockholders, stating the place, if any, date and hour of the meeting, the purpose or purposes for which the meeting is called, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting shall be given not less than ten (10) nor more than sixty (60) days before such meeting, to each stockholder entitled to vote thereat. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. No business may be transacted at such meeting except that referred to in said notice, or in a supplemental notice given also in compliance with the provisions hereof, or such other business as may be germane or supplementary to that stated in said notice or notices.

**Section 2.10. Inspectors.** One or more inspectors may be appointed by the Board in advance of any meeting of stockholders. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer may make such appointment at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. At the meeting for which the inspector or inspectors are appointed, he or they shall perform all duties required by Section 231 of the Delaware General Corporation Law.

**Section 2.11. Stockholders' Action by Consent.** Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

### **ARTICLE III - DIRECTORS**

**Section 3.1. Number of Directors.** Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the Board shall consist of no less than one (1) person. The exact number of directors shall initially be three (3) and may thereafter be fixed from time to time by resolution of the Board or by the stockholders. Directors need not be stockholders, residents of Delaware or citizens of the United States. A director shall be elected to serve until his or her successor is elected or qualified or until his earlier resignation or removal, except as otherwise provided herein or required by law. If the office of any director becomes vacant by reason of death, resignation, disqualification, removal, failure to elect, or otherwise, the remaining directors, although more or less than a quorum, by a majority vote of such remaining directors may elect a successor who shall hold office until his or her successor is elected and qualified.

**Section 3.2. Newly Created Directorships.** If the number of directors is increased by action of the Board or of the stockholders or otherwise, then the additional directors may be elected in the manner provided above for the filling of vacancies in the Board.

**Section 3.3. Resignation.** Any director of this Corporation may resign at any time by giving written notice to the Chairman of the Board, if any, the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, at the time of receipt if no time is specified therein and at the time of acceptance if the effectiveness of such resignation is conditioned upon its acceptance. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 3.4. Removal.** Any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

**Section 3.5. Place of Meetings and Books.** Except as otherwise required by law, the Board may hold their meetings and keep the books of the Corporation outside the State of Delaware, at such places as they may from time to time determine.

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**Section 3.6. General Powers.** In addition to the powers and authority expressly conferred upon them by these By-Laws, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

**Section 3.7. Other Committees.** The Board may designate one or more committees by resolution or resolutions passed by a majority of the whole Board; such committee or committees shall consist of one or more directors of the Corporation, and to the extent provided in the resolution or resolutions designating them, shall have and may exercise specific powers of the Board in the management of the business and affairs of the Corporation to the extent permitted by statute and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board.

**Section 3.8. Annual Meeting.** The newly elected Board may meet at such place and time as shall be fixed and announced by the presiding officer at the annual meeting of stockholders, for the purpose of organization or otherwise, and no further notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such place and time as shall be stated in a notice given to such directors two (2) days prior to such meeting.

**Section 3.9. Regular Meetings.** Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

**Section 3.10. Special Meetings.** Special meetings of the Board may be called by the Chairman of the Board, if any, or the President, on two (2) days' notice to each director, or such shorter period of time before the meeting as will nonetheless be sufficient for the convenient assembly of the directors so notified; special meetings shall be called by the Secretary in like manner and on like notice, on the written request of two or more directors.

**Section 3.11. Quorum.** At all meetings of the Board, a majority of the whole Board shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise required by statute, or by the Certificate of Incorporation, or by these By-Laws. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at said meeting which shall be so adjourned.

**Section 3.12. Telephonic Participation in Meetings.** Members of the Board or any committee designated by such Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

**Section 3.13. Action by Consent.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if written consent thereto is signed by all members of the Board or of such committee as the case may be and such written consent is filed with the minutes of proceedings of the Board or committee.

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#### ARTICLE IV - OFFICERS

**Section 4.1. Selection; Statutory Officers.** The officers of the Corporation shall be chosen by the Board. There shall be a President, a Secretary and a Treasurer, and there may be a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers, as the Board may elect. Any number of offices may be held by the same person.

**Section 4.2. Additional Officers.** The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

**Section 4.3. Terms of Office.** Each officer of the Corporation shall hold office until his successor is chosen and qualified, or until his earlier resignation or removal. Any officer elected or appointed by the Board may be removed at any time by the Board.

**Section 4.4. Compensation of Officers.** The Board shall have the power to fix the compensation of all officers of the Corporation. It may authorize any officer, upon whom the power of appointing subordinate officers may have been conferred, to fix the compensation of such subordinate officers.

**Section 4.5. Chairman of the Board.** The Chairman of the Board, if any, shall preside at all meetings of the stockholders and directors, and shall have such other duties as may be assigned to him from time to time by the Board.

**Section 4.6. President.** Unless the Board otherwise determines, the President shall be the chief executive officer and head of the Corporation. Unless there is a Chairman of the Board, the President shall preside at all meetings of directors and stockholders. Under the supervision of the Board, the President shall have the general control and management of the Corporation's business and affairs, subject, however, to the right of the Board to confer any specific power, except such as may be by statute exclusively conferred on the President, upon any other officer or officers of the Corporation. The President shall perform and do all acts and things incident to the position of President and such other duties as may be assigned to him from time to time by the Board.

**Section 4.7. Vice-Presidents.** The Vice-Presidents shall perform such of the duties of the President on behalf of the Corporation as may be respectively assigned to them from time to time by the Board or by the President.

**Section 4.8. Treasurer.** The Treasurer shall have the care and custody of all the funds and securities of the Corporation which may come into his hands as Treasurer, and the power and authority to endorse checks, drafts and other instruments for the payment of money for deposit or collection when necessary or proper and to deposit the same to the credit of the Corporation in such bank or banks or depository as the Board or the officers or agents to whom the Board may delegate such authority, may designate, and he may endorse all commercial documents requiring endorsements for or on behalf of the Corporation. He may sign all receipts and vouchers for the payments made to the Corporation.

**Section 4.9. Secretary.** The Secretary shall keep the minutes of all meetings of the Board and of the stockholders; he shall attend to the giving and serving of all notices of the Corporation. He shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board, the Chairman of the Board or the President, and attest to the same. He shall have charge of the stock certificate book, transfer book and stock ledger, and such other books and papers as the Board may direct. He shall, in general, perform all the duties of Secretary, subject to the control of the Board.

**Section 4.10. Assistant Secretary.** The Board or any two of the officers of the Corporation acting jointly may appoint or remove one or more Assistant Secretaries of the Corporation. Any Assistant Secretary upon his appointment shall perform such duties of the Secretary, and also any and all such other duties as the Board or the President or the Treasurer or the Secretary may designate.

**Section 4.11. Assistant Treasurer.** The Board or any two of the officers of the Corporation acting jointly may appoint or remove one or more Assistant Treasurers of the Corporation. Any Assistant Treasurer upon his appointment shall perform such of the duties of the Treasurer, and also any and all such other duties as the Board or the President or the Treasurer or the Secretary may designate.

## **ARTICLE V - STOCK**

**Section 5.1. Stock.** Shares of the Corporation's stock may be certificated or uncertificated, provided that each holder of stock represented by certificates shall be entitled to a certificate signed by, or in the name of the Corporation by both of (a) the President or a Vice President, and (b) the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certifying the number of shares owned by him or her. Any or all of the signatures on the certificate may be by facsimile. In case any officer, transfer agent or registrar who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be an officer, transfer agent or registrar of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature shall have been used thereon had not ceased to be an officer, transfer agent or registrar of the Corporation.

**Section 5.2. Fractional Share Interests.** The Corporation may, but shall not be required to, issue fractions of a share.

**Section 5.3. Transfers of Stock.** Subject to any transfer restrictions then in force, the shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives and upon such transfer the old certificates, if one has been issued, shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers or to such other person as the directors may designate by whom they shall be cancelled and new certificates, if any, shall thereupon be issued. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof save as expressly provided by the laws of Delaware.

**Section 5.4. Record Date.** For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto.



A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

**Section 5.5. Transfer Agent and Registrar.** The Board may appoint one or more transfer agents or transfer clerks and one or more registrars and may require all certificates of stock to bear the signature or signatures of any of them.

**Section 5.6. Lost, Stolen, or Destroyed Certificates.** No certificates for shares of stock of the Corporation shall be issued in place of any certificate alleged to have been lost, stolen or destroyed, except upon production of such evidence of the loss, theft or destruction and upon indemnification of the Corporation and its agents to such extent and in such manner as the Board may from time to time prescribe.

## **ARTICLE VI - MISCELLANEOUS MANAGEMENT PROVISIONS**

### **Section 6.1. Notices.**

1. Notices to directors may, and notices to stockholders shall, be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the Corporation. Notice by mail shall be deemed to be given at the time when the same shall be mailed. Notice to directors may also be given by telegram or orally, by telephone or in person.

2. Whenever any notice is required to be given under the provisions of the laws of Delaware or of the Certificate of Incorporation of the Corporation or of these By-Laws, a written waiver of notice, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 6.2. Voting of Securities Owned by this Corporation.** Subject always to the specific directions of the Board, (a) any shares or other securities issued by any other corporation and owned or controlled by this Corporation may be voted in person at any meeting of security holders of such other corporation by the President of this Corporation if he is present at such meeting, or any other officer of this Corporation if he is present at such meeting, and (b) whenever, in the judgment of the President or any other officer of the Corporation, it is desirable for this Corporation to execute a proxy or written consent in respect to any shares or other securities issued by any other corporation and owned by this Corporation, such proxy or consent shall be executed in the name of this Corporation by the President or such other officer, without the necessity of any authorization by the Board, affixation of corporate seal or countersignature or attestation by another officer. Any person or persons designated in the manner above stated as the proxy or proxies of this Corporation shall have full right, power and authority to vote the shares or other securities issued by such other corporation and owned by this Corporation the same as such shares or other securities might be voted by this Corporation.

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**ARTICLE VII - INDEMNIFICATION**

**Section 7.1. Indemnification.** To the fullest extent permitted by the General Corporation Law of the State of Delaware, the Corporation shall indemnify any current or former director or officer of the Corporation and may, at the discretion of the Board, indemnify any current or former employee or agent of the Corporation against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding brought by or in the right of the Corporation or otherwise, to which he or she was or is a party or is threatened to be made a party by reason of his or her current or former position with the Corporation or by reason of the fact that he or she is or was serving, at the request of the Corporation, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**ARTICLE VIII - AMENDMENTS**

**Section 8.1. Amendments.** These By-Laws may be amended or repealed by the Board or by the stockholders.