
Section 1: 8-K (8-K)

**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): **October 20, 2017 (October 17, 2017)**

GMS INC.

(Exact name of registrant as specified in charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-37784
(Commission
File Number)

46-2931287
(I.R.S. Employer
Identification No.)

100 Crescent Centre Parkway, Suite 800
Tucker, Georgia
(Address of Principal Executive Offices)

30084
(Zip Code)

Registrant's telephone number, including area code: **(800) 392-4619**

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

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

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

Emerging growth company

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

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

(e) On October 17, 2017, the Compensation Committee (the “Compensation Committee”) of the Board of Directors of GMS Inc. (the “Company”) approved a form of nonqualified stock option agreement (the “Option Agreement”) and a form of restricted stock unit agreement (the “RSU Agreement”) which will be used in connection with future grants to employees (including the named executive officers) and directors of the Company, under the GMS Inc. Equity Incentive Plan (the “Equity Incentive Plan”).

The Option Agreement provides that the grantee shall receive an option to purchase a number of shares of common stock of the Company, which shall be subject to the vesting schedule as determined by the Compensation Committee at the time such grantee’s award is approved. The Option Agreement provides that the option will vest in accordance with one of the following vesting schedule alternatives: (i) as to thirty-three and one-third percent (33 1/3%) on each of the first three anniversaries of the vesting commencement date (as set forth in the Option Agreement) such that the option shall become fully (100%) vested as of the third anniversary of the vesting commencement date, (ii) as to one hundred percent (100%) on the first anniversary of the vesting commencement date and (iii) such other vesting schedule as determined by the Compensation Committee. If the grantee’s employment is terminated for any reason, the portion of the option that has not vested as of such date shall terminate immediately and be deemed to have been forfeited by the grantee without consideration, and the portion of the option that has vested and not yet been exercised as of such date shall remain exercisable until, and shall terminate upon, the first to occur of (a) the end of the day that is forty-five (45) days after the date of the grantee’s termination of employment and (b) the expiration date of the option. Notwithstanding the foregoing, upon a grantee’s termination of employment by reason of death or disability, the vested portion of the option shall remain exercisable until, and shall terminate upon, the first to occur of (a) the end of the day that is one hundred and eighty (180) days after the date of the grantee’s termination of employment for death or disability, as applicable, and (b) the expiration date of the option.

The RSU Agreement provides that the grantee shall receive restricted stock units (“RSUs”) in the Company, which shall be subject to the vesting schedule as determined by the Compensation Committee at the time such grantee’s award is approved. The RSU Agreement provides that the RSUs will vest in accordance with one of the following vesting schedule alternatives: (i) as to thirty-three and one-third percent (33 1/3%) on each of the first three anniversaries of the vesting commencement date (as set forth in the RSU Agreement) such that the RSUs shall become fully (100%) vested as of the third anniversary of the vesting commencement date and (ii) as to one hundred percent (100%) on the first anniversary of the vesting commencement date. Vested RSUs will be settled within 30 days following vesting. If the grantee’s employment is terminated for any reason, whether voluntarily or involuntarily, then the portion of the RSUs that has not previously vested shall terminate as of the date of the grantee’s termination of employment. If the grantee incurs a termination of employment for cause, then the RSUs (whether or not vested) shall be forfeited and terminate immediately without consideration upon the effective date of such termination of employment for cause.

The foregoing descriptions of the Option Agreement and RSU Agreement are qualified in their entirety by reference to the full texts of the agreements, which are included as Exhibit 10.1 and Exhibit 10.2 to this Current Report on Form 8-K and are hereby incorporated herein by reference.

On October 18, 2017, the Company held its 2017 Annual Meeting of Stockholders (the “Annual Meeting”). As further described in Item 5.07 of this Current Report on Form 8-K, at the Annual Meeting, stockholders of the Company approved the adoption of the Equity Incentive Plan and the GMS Inc. Employee Stock Purchase Plan (the “ESPP”). A summary of the material terms of each of the Equity Incentive Plan and the ESPP is included in the Company’s Proxy Statement filed with the Securities and Exchange Commission on August 22, 2017 (the “Company’s Proxy Statement”). The summaries of the Equity Incentive Plan and the ESPP contained in the Company’s Proxy Statement are incorporated by reference in this Item 5.02(e) and qualified in their entirety by reference to the actual text of each of the Equity Incentive Plan and the ESPP, complete copies of which are filed as appendices to the Company’s Proxy Statement.

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

The 2017 Annual Meeting of Stockholders (the “Annual Meeting”) of GMS Inc. (the “Company”) was held on October 18, 2017. At the Company’s Annual Meeting, stockholders voted on the matters disclosed in the Company’s Proxy Statement filed with the Securities and Exchange Commission on August 22, 2017. A total of 40,970,905 shares of the Company’s common stock were entitled to vote as of August 21, 2017, the record date for the Annual Meeting. A total of 34,039,117 shares were present in person or represented by proxy at the Annual Meeting, representing approximately 83.08% of all shares entitled to vote at the Annual Meeting. The following is a summary of the final voting results for each matter presented to stockholders.

Proposal 1: The election of the three Class I director nominees each for a three-year term or until such earlier time as his or her successor is duly elected and qualified. The results of the vote were as follows:

<u>Nominee</u>	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
G. Michael Callahan, Jr.	24,723,649	8,282,904	1,032,564	0
Peter C. Browning	22,085,577	10,892,571	1,060,969	0
Theron I. Gilliam	26,921,292	6,059,385	1,058,440	0

Pursuant to the foregoing votes, the three Class I director nominees listed above were elected to serve on the Company's Board of Directors. There were no additional director nominations brought before the Annual Meeting.

Proposal 2: The approval, on an advisory basis, of the compensation of the Company's named executive officers, as described in the Company's Proxy Statement. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
33,770,243	243,402	25,472	0

Pursuant to the foregoing vote, the proposal regarding advisory approval of the Company's executive compensation program was approved.

Proposal 3: The proposal to recommend, on an advisory basis, whether stockholder votes on executive compensation shall be held every one, two or three years. The results of the vote were as follows:

<u>Every Year</u>	<u>Every Two Years</u>	<u>Every Three Years</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
31,863,228	209,760	1,931,710	34,419	0

Pursuant to the foregoing vote, the proposal regarding advisory approval for the stockholders to vote on executive compensation every year was approved.

Proposal 4: The approval of the Company's Equity Incentive Plan. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
32,932,141	1,091,768	15,208	0

Pursuant to the foregoing vote, the Company's Equity Incentive Plan was approved.

Proposal 5: The approval of the Company's Employee Stock Purchase Plan. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
34,028,680	6,666	3,771	0

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Pursuant to the foregoing vote, the Company's Employee Stock Purchase Plan was approved.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit</u>	<u>Description</u>
10.1	Form of Nonqualified Stock Option Agreement under the GMS Inc. Equity Incentive Plan.
10.2	Form of Restricted Stock Unit Agreement under the GMS Inc. Equity Incentive Plan.

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EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
10.1	Form of Nonqualified Stock Option Agreement under the GMS Inc. Equity Incentive Plan.
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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.

GMS INC.

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Section 2: EX-10.1 (EX-10.1)

Exhibit 10.1

GMS INC. EQUITY INCENTIVE PLAN NONSTATUTORY STOCK OPTION - NOTICE OF GRANT

GMS Inc. (the “Company”), a Delaware corporation, hereby grants to the Optionee set forth below (the “Optionee”) an option (the “Option”) to purchase the number of Shares of common stock of the Company (“Shares”) set forth below at the Option Price set forth below, pursuant to the terms and conditions of this Notice of Grant (the “Notice”), the Nonstatutory Stock Option Award Agreement attached hereto as Exhibit A (the “Award Agreement”), and the GMS Inc. Equity Incentive Plan (the “Plan”).

Date of Grant: [•]

Name of Optionee: [•]

Number of Shares Subject to Option: [•] Shares

Option Price (Price Per Share): \$[•](1) per Share

Expiration Date: 10 year anniversary of the Date of Grant.

Vesting: The Option shall vest pursuant to the terms and conditions set forth in Section 3 of the Award Agreement.

Vesting Start Date: [•]

The Option shall be subject to the execution and return of this Notice by the Optionee to the Company within 30 days of the date hereof (including by utilizing an electronic signature and/or web-based approval and notice process or any other process as may be authorized by the Company). This Option is a non-qualified stock option and is not intended by the parties hereto to be, and shall not be treated as, an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended. Capitalized terms used but not defined herein shall have the meaning attributed to such terms in the Award Agreement or, if not defined therein, in the Plan, unless the context requires otherwise. By executing this Notice, the Optionee acknowledges that his or her agreement to the covenants set forth in Section 7 of the Award Agreement is a material inducement to the Company in granting this Award to the Optionee.

This Notice may be executed by facsimile or electronic means (including, without limitation, PDF) and in one or more counterparts, each of which shall be considered an original instrument, but all of which together shall constitute one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to the other party hereto.

[Signature Page Follows]

(1) Option Price to equal fair market value per Share on Date of Grant.

IN WITNESS WHEREOF, the parties hereto have executed this Notice of Grant as of the Date of Grant set forth above.

GMS INC.

By: _____
Name:
Title:

OPTIONEE

By: _____
Name: _____

[SIGNATURE PAGE TO NOTICE OF GRANT FOR THE GMS INC. EQUITY INCENTIVE PLAN NONQUALIFIED STOCK OPTION]

Exhibit A

GMS INC. EQUITY INCENTIVE PLAN FORM OF NON-STATUTORY STOCK OPTION AWARD AGREEMENT

THIS NONSTATUTORY STOCK OPTION AWARD AGREEMENT (the “Award Agreement”) is entered into by and among GMS Inc. (the “Company”) and the individual set forth on the signature page to that certain Notice of Grant (the “Notice”) to which this Award Agreement is attached. The terms and conditions of the Option granted hereby, to the extent not controlled by the terms and conditions contained in the Plan, shall be as set forth in the Notice and this Award Agreement. Capitalized terms used but not defined herein shall have the meaning attributed to such terms in the Notice or, if not defined therein, in the Plan, unless the context requires otherwise.

1. No Right to Continued Employee Status or Consultant Service

Nothing contained in this Award Agreement shall confer upon the Optionee the right to the continuation of his or her Employee status, or, in the case of a Consultant or Director, to the continuation of his or her service arrangement, or in either case to interfere with the right of the Company or any of its Subsidiaries or other affiliates to Terminate the Optionee.

2. Term of Option

As a general matter, the Option will expire on the Expiration Date set forth in the Notice and be deemed to have been forfeited by the Optionee. As provided below, the Optionee’s right to exercise the Option may expire prior to the Expiration Date if the Optionee Terminates, including in the event of the Optionee’s Disability or death. This Award Agreement shall remain in effect until the Option has fully vested and been exercised or any unexercised portion thereof has been forfeited by the Optionee as provided in this Award Agreement. No portion of this Option shall be exercisable after the Expiration Date, or such earlier date as may be applicable, except as provided herein.

3. Vesting of Option

[Option 1: Subject to the remainder of this Section 3, the Option will vest as to thirty-three and one-third percent (33 1/3%) on each of the first three anniversaries of the Vesting Start Date, such that the Option shall become fully (100%) vested as of the third anniversary of the Vesting Start Date, subject to the Optionee not having Terminated as of the applicable vesting date.]

[Option 2: Subject to the remainder of this Section 3, the Option shall become fully (100%) vested upon the first anniversary of the Vesting Start Date, subject to the Optionee not having Terminated prior to such anniversary.]

[Option 3: Subject to the remainder of this Section 3, the Option will vest as to _____ percent (%) immediately upon the Vesting Start Date and thereafter as to _____ percent (%) on each of the first _____ anniversaries of the Vesting Start Date, such that the Option shall become fully (100%) vested as of the _____ anniversary of the Vesting Start Date, subject to the Optionee not having Terminated as of the applicable vesting date.]

If the Optionee Terminates for any reason, the portion of the Option that has not vested as of such date shall terminate upon such Termination and be deemed to have been forfeited by the Optionee without consideration.

4. Exercise

Prior to the Expiration Date and at any time prior to the Optionee’s Termination, the Optionee may exercise all or a portion of the Option, to the extent vested, by giving notice in the form, to the person, and using the administrative method and the exercise procedures established by the Committee from time to time (including any procedures utilizing an electronic signature and/or web-based approval and notice process), specifying the number of Shares to be acquired. The Optionee’s right to exercise the vested portion of the Option following the date that of the Optionee’s Termination will depend on the reason for such Termination, as described in Sections 5 and 6 below.

The Optionee must pay to the Company at the time of exercise the amount of the Option Price for the number of Shares covered by the notice to exercise (“Aggregate Option Price”). The Aggregate Option Price for any Shares purchased pursuant to the exercise of an Option shall be paid in any or any combination of the following forms: (w) cash or its equivalent (e.g., a check); (x) by making arrangements through a registered broker-dealer pursuant to cashless exercise procedures established by the Committee from time to time; (y) if permitted by the Committee in its sole discretion, the transfer, either actually or by attestation, to the Company of Shares that have been held by the Optionee for at least six (6) months (or such lesser period as may be permitted by the Committee) prior to the exercise of the Option, such transfer to be upon such terms and conditions as determined by the Committee; or (z) in the form of other property as determined by the Committee in its sole discretion. Any Shares

transferred to the Company as payment of the Aggregate Option Price shall be valued at their Fair Market Value on the last business day preceding the date of exercise of such Option. In addition, at the discretion of the Committee in its sole discretion at the time of exercise, the Optionee may provide for the payment of the Aggregate Option Price through Share withholding as a result of which the number of Shares issued upon exercise of an Option would be reduced by a number of Shares having a Fair Market Value equal to the Aggregate Option Price. If requested by the Committee, the Optionee shall deliver this Award Agreement to the Company, which shall endorse thereon a notation of such exercise and return such Award Agreement to the Optionee. No fractional Shares (or cash in lieu thereof) shall be issued upon exercise of an Option and the number of Shares that may be purchased upon exercise shall be rounded down to the nearest number of whole Shares.

5. Termination of Service

If the Optionee incurs a Termination for any reason, whether voluntarily or involuntarily, without Cause, other than as a result of the Optionee's death or Disability, then the portion of this Option that has previously vested but has not been exercised shall remain exercisable until, and shall terminate upon, the first to occur of (a) the end of the day that is forty-five (45) days following the date of the Optionee's Termination or (b) the Expiration Date. If the Optionee incurs a Termination for Cause, then this Option and all rights attached hereto shall be forfeited and terminate immediately upon the effective date of such Termination for Cause.

6. Death or Disability of the Optionee

Upon the Optionee's Termination by reason of death or Disability, the vested portion of the Option shall remain exercisable until, and shall terminate upon, the first to occur of (a) the end of the day that is one hundred and eighty (180) days after the date of the Optionee's Termination for death or Disability, as applicable, or (b) the Expiration Date of the Option. Until such termination of the Option, the vested portion of the Option may, to the extent that this Option has not previously been exercised by the Optionee, be exercised by the Optionee in the case of his or her Disability, or, in the case of death, by the Optionee's personal representative or the person entitled to the Optionee's rights under this Award Agreement.

7. Prohibited Activities

(a) **No Sale or Transfer.** Unless otherwise required by law, this Option shall not be (i) sold, transferred or otherwise disposed of, (ii) pledged or otherwise hypothecated or (iii) subject to attachment, execution or levy of any kind, other than by will or by the laws of descent or distribution; provided, however, that any transferred Option will be subject to all of the same terms and conditions as provided in the Plan and this Award Agreement and the Optionee's estate or beneficiary appointed in accordance with the Plan will remain liable for any withholding tax that may be imposed by any federal, state or local tax authority.

(b) **Right to Terminate Option and Recovery.** The Optionee understands and agrees that the Company has granted this Option to the Optionee to reward the Optionee for the Optionee's future efforts and loyalty to the Company and its affiliates by giving the Optionee the opportunity to participate in the potential future appreciation of the Company. Accordingly, if (a) the Optionee materially violates the Optionee's obligations relating to the non-disclosure or non-use of confidential or proprietary information under any Restrictive Agreement to which the Optionee is a party, or (b) the Optionee materially breaches or violates the Optionee's obligations relating to non-disparagement under any Restrictive Agreement to which the Optionee is a party, or (c) the Optionee engages in any activity prohibited by this Section 7 of this Award Agreement, or (d) the Optionee materially breaches or violates any non-solicitation obligations under any Restrictive Agreement to which the Optionee is a party, or (e) the Optionee breaches or violates any non-competition obligations under any Restrictive Agreement to which the Optionee is a party, or (f) the Optionee is convicted of a felony against the Company or any of its affiliates, then, in addition to any other rights and remedies available to the Company, the Company shall be entitled, at its option, exercisable by written notice, to

terminate the Option (including the vested portion of the Option), or any unexercised portion thereof, which shall be of no further force and effect. "Restrictive Agreement" shall mean any agreement between the Company or any Subsidiary and the Optionee (including any prior option agreement) that contains non-competition, non-solicitation, non-hire, non-disparagement, or confidentiality restrictions applicable to the Optionee.

(c) **Other Remedies.** The Optionee specifically acknowledges and agrees that its remedies under this Section 7 shall not prevent the Company or any Subsidiary from seeking injunctive or other equitable relief in connection with the Optionee's breach of any Restrictive Agreement. In the event that the provisions of this Section 7 should ever be deemed to exceed the limitation provided by applicable law, then the Optionee and the Company agree that such provisions shall be reformed to set forth the maximum limitations permitted.

8. No Rights as Stockholder

The Optionee shall have no rights as a stockholder with respect to the Shares covered by any exercise of this Option until the effective date of issuance of the Shares and the entry of the Optionee's name as a shareholder of record on the books of the Company following exercise of this Option.

9. Taxation Upon Exercise of Option; Tax Withholding; Parachute Tax Provisions

The Optionee understands that, upon exercise of this Option, the Optionee will recognize income, for Federal, state and local income tax purposes, as applicable, in an amount equal to the amount by which the Fair Market Value of the Shares, determined as of the date of exercise, exceeds the Option Price. The acceptance of the Shares by the Optionee shall constitute an agreement by the Optionee to report such income in accordance with then applicable law and to cooperate with Company and its subsidiaries in establishing the amount of such income and corresponding

deduction to the Company and/or its subsidiaries for its income tax purposes.

The Optionee is responsible for all tax obligations that arise as a result of the exercise of this Option. The Company may withhold from any amount payable to the Optionee an amount sufficient to cover any Federal, state or local withholding taxes which may become required with respect to such exercise or take any other action it deems necessary to satisfy any income or other tax withholding requirements as a result of the exercise of this Option. The Company shall have the right to require the payment of any such taxes and require that the Optionee, or the Optionee's beneficiary, to furnish information deemed necessary by the Company to meet any tax reporting obligation as a condition to exercise or before the issuance of any Shares pursuant to this Option. The Optionee may pay his or her withholding tax obligation in connection with the exercise of the Option, by making (w) a cash payment to the Company, or (x) arrangements through a registered broker-dealer pursuant to cashless exercise procedures established by the Committee from time to time. In addition, the Committee, in its sole discretion, may allow the Optionee, to pay his or her withholding tax obligation in connection with the exercise of the Option, by (y) having withheld a portion of the Shares then issuable to him or her upon exercise of the Option or (z) surrendering Shares that have been held by the Optionee for at least six (6)

months (or such lesser period as may be permitted by the Committee) prior to the exercise of the Award, in each case having an aggregate Fair Market Value equal to the withholding taxes.

In connection with the grant of this Option, the parties wish to memorialize their agreement regarding the treatment of any potential golden parachute payments as set forth in Exhibit A attached hereto.

10. Securities Laws; Tolling of Exercise Period Expiration

(a) Upon the acquisition of any Shares pursuant to the exercise of the Option, the Optionee will make such written representations, warranties, and agreements as the Committee may reasonably request in order to comply with securities laws or with this Award Agreement. Optionee hereby agrees not to offer, sell or otherwise attempt to dispose of any Shares issued to the Optionee upon exercise of the Option in any way which would: (x) require the Company to file any registration statement with the Securities and Exchange Commission (or any similar filing under state law or the laws of any other county) or to amend or supplement any such filing or (y) violate or cause the Company to violate the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, or any other Federal, state or local law, or the laws of any other country. The Company reserves the right to place restrictions on any Shares the Optionee may receive as a result of the exercise of the Option.

(b) Notwithstanding any provision contained in this Award Agreement or the Plan to the contrary,

(i) if, following the Optionee's Termination, all or a portion of the exercise period applicable to the Option occurs during a time when the Optionee cannot exercise the Option without violating (w) an applicable Federal, state or local law, (x) the rules related to a blackout period declared by the Company, (y) any agreed to lock-up arrangement, or (z) other similar circumstance, in each case, the exercise period applicable to the Option will be tolled for the number of days that such prohibitions or restrictions apply, such that the exercise period will be extended by the same number of days as were subject to the prohibitions or restrictions; provided, however, that the exercise period may not be extended due to such tolling past the Expiration Date of the Option as set forth above; and

(ii) if the Expiration Date is set to occur during a time that the Optionee cannot exercise the Option without violating an applicable Federal, state or local law (and the Option has not previously been exercised or otherwise terminated), the exercise period will be tolled until such time as the violation would no longer apply; provided, however, that the exercise period applicable to the Option in this event will be fifteen (15) days from the date such potential violation is longer applicable.

11. Modification, Extension and Renewal of Options

This Award Agreement may not be modified, amended, terminated and no provision hereof may be waived in whole or in part except by a written agreement signed by the Company and the

Optionee and no modification shall, without the consent of the Optionee, alter to the Optionee's material detriment or materially impair any rights of the Optionee under this Award Agreement except to the extent permitted under the Plan.

12. Notices

Unless otherwise provided herein, any notices or other communication given or made pursuant to the Notice, this Award Agreement or the Plan shall be in writing and shall be deemed to have been duly given (i) as of the date delivered, if personally delivered (including receipted courier service) or overnight delivery service, with confirmation of receipt; (ii) on the date the delivering party receives confirmation, if delivered by facsimile to the number indicated or by email to the address indicated or through an electronic administrative system designated by the Company; (iii) one (1) business day after being sent by reputable commercial overnight delivery service courier, with confirmation of receipt; or (iv) three (3) business days after being mailed by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

(a) If to the Company at the address below:

GMS Inc.
100 Crescent Centre Parkway, Suite 800
Tucker, Georgia 30084
Phone: (800) 392-4619
Attention: General Counsel

- (b) If to the Optionee, at the most recent address, facsimile number or email contained in the Company's records.

13. Award Agreement Subject to Plan and Applicable Law

This Option is made pursuant to the Plan and shall be interpreted to comply therewith. A copy of the Plan is attached hereto. Any provision of this Option inconsistent with the Plan shall be considered void and replaced with the applicable provision of the Plan. The Plan shall control in the event there shall be any conflict between the Plan, the Notice, and this Award Agreement, and it shall control as to any matters not contained in this Award Agreement. The Committee shall have authority to make constructions of this Award Agreement, and to correct any defect or supply any omission or reconcile any inconsistency in this Award Agreement, and to prescribe rules and regulations relating to the administration of this Award and other Awards granted under the Plan.

This Option shall be governed by the laws of the State of Delaware, without regard to the conflicts of law principles thereof, and subject to the exclusive jurisdiction of the courts therein. The Optionee hereby consents to personal jurisdiction in any action brought in any court, federal or state, within the State of Delaware having subject matter jurisdiction in the matter.

14. Headings and Capitalized Terms

Unless otherwise provided herein, capitalized terms used herein that are defined in the Plan and not defined herein shall have the meanings set forth in the Plan. Headings are for convenience only and are not deemed to be part of this Award Agreement. Unless otherwise indicated, any reference to a Section herein is a reference to a Section of this Award Agreement.

15. Severability and Reformation

If any provision of this Award Agreement shall be determined by a court of law of competent jurisdiction to be unenforceable for any reason, such unenforceability shall not affect the enforceability of any of the remaining provisions hereof; and this Award Agreement, to the fullest extent lawful, shall be reformed and construed as if such unenforceable provision, or part thereof, had never been contained herein, and such provision or part thereof shall be reformed or construed so that it would be enforceable to the maximum extent legally possible.

16. Binding Effect

This Award Agreement shall be binding upon the parties hereto, together with their personal executors, administrator, successors, personal representatives, heirs and permitted assigns.

17. Entire Agreement

This Award Agreement, together with the Plan, supersedes all prior written and oral agreements and understandings among the parties as to its subject matter and constitutes the entire agreement of the parties with respect to the subject matter hereof. If there is any conflict between the Notice, this Award Agreement and the Plan, then the applicable terms of the Plan shall govern.

18. Waiver

Waiver by any party of any breach of this Award Agreement or failure to exercise any right hereunder shall not be deemed to be a waiver of any other breach or right whether or not of the same or a similar nature. The failure of any party to take action by reason of such breach or to exercise any such right shall not deprive the party of the right to take action at any time while or after such breach or condition giving rise to such rights continues.

Exhibit A

PARACHUTE TAX PROVISIONS

This Exhibit A sets forth the terms and provisions applicable to the Optionee pursuant to the provisions of Section 9 of the Award Agreement. This Exhibit A shall be subject in all respects to the terms and conditions of the Award Agreement.

(a) To the extent that the Optionee, would otherwise be eligible to receive a payment or benefit pursuant to the terms of this Award Agreement, any employment or other agreement with the Company or any Subsidiary or otherwise in connection with, or arising out of, the Optionee's employment with the Company or a change in ownership or effective control of the Company or of a substantial portion of its assets (any such payment or benefit, a "Parachute Payment"), that a nationally recognized United States public accounting firm selected by the Company (the "Accountants") determines, but for this sentence would be subject to excise tax imposed by Section 4999 of the Code (the "Excise Tax"), subject to clause (c) below, then the Company shall pay to the Optionee whichever of the following two alternative forms of payment would result

in the Optionee's receipt, on an after-tax basis, of the greater amount of the Parachute Payment notwithstanding that all or some portion of the Parachute Payment may be subject to the Excise Tax: (1) payment in full of the entire amount of the Parachute Payment (a "Full Payment"), or (2) payment of only a part of the Parachute Payment so that the Optionee receives the largest payment possible without the imposition of the Excise Tax (a "Reduced Payment").

(b) If a reduction in the Parachute Payment is necessary pursuant to clause (a), then the reduction shall occur in the following order: (1) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; (2) reduction of cash payments (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); and (3) cancellation of acceleration of vesting of equity awards not covered under (1) above; provided, however, that in the event that acceleration of vesting of equity awards is to be cancelled, acceleration of vesting of full value awards shall be cancelled before acceleration of options and stock appreciation rights and within each class such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards; and provided, further, that to the extent permitted by Code Section 409A and Sections 280G and 4999 of the Code, if a different reduction procedure would be permitted without violating Code Section 409A or losing the benefit of the reduction under Sections 280G and 4999 of the Code, the Optionee may designate a different order of reduction.

(c) For purposes of determining whether any of the Parachute Payments (collectively the "Total Payments") will be subject to the Excise Tax and the amount of such Excise Tax, (i) the Total Payments shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "parachute payments" in excess of the "base amount" (as defined under Section 280G(b)(3) of the Code) shall be treated as subject to the Excise Tax, unless and except to the extent that, in the opinion of the Accountants, such Total Payments (in

whole or in part): (1) do not constitute "parachute payments," including giving effect to the recalculation of stock options in accordance with Treasury Regulation Section 1.280G-1, Q&A 33, (2) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code in excess of the "base amount" or (3) are otherwise not subject to the Excise Tax, and (ii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by the Accountants in accordance with the principles of Section 280G of the Code.

(d) All determinations hereunder shall be made by the Accountants, which determinations shall be final and binding upon the Company and the Optionee.

(e) The federal tax returns filed by the Optionee (and any filing made by a consolidated tax group which includes the Company) shall be prepared and filed on a basis consistent with the determination of the Accountants with respect to the Excise Tax payable by the Optionee. The Optionee shall make proper payment of the amount of any Excise Tax, and at the request of the Company, provide to the Company true and correct copies (with any amendments) of his or her federal income tax return as filed with the Internal Revenue Service, and such other documents reasonably requested by the Company, evidencing such payment (provided that the Optionee may delete information unrelated to the Parachute Payment or Excise Tax and provided, further that the Company at all times shall treat such returns as confidential and use such return only for purpose contemplated by this paragraph).

(f) In the event of any controversy with the Internal Revenue Service (or other taxing authority) with regard to the Excise Tax, the Optionee shall permit the Company to control issues related to the Excise Tax (at its expense), provided that such issues do not potentially materially adversely affect the Optionee but the Optionee shall control any other issues. In the event that the issues are interrelated, the Optionee and the Company shall in good faith cooperate so as not to jeopardize resolution of either issue. In the event of any conference with any taxing authority as to the Excise Tax or associated income taxes, the Optionee shall permit the representative of the Company to accompany the Optionee, and the Optionee and his representative shall cooperate with the Company and its representative.

(g) The Company shall be responsible for all charges of the Accountants.

(h) The Company and the Optionee shall promptly deliver to each other copies of any written communications, and summaries of any verbal communications, with any taxing authority regarding the Excise Tax covered by this Exhibit A.

(i) Nothing in this Exhibit A is intended to violate the Sarbanes-Oxley Act of 2002 and to the extent that any advance or repayment obligation hereunder would do so, such obligation shall be modified so as to make the advance a nonrefundable payment to the Optionee and the repayment obligation null and void.

(j) Notwithstanding the foregoing, any payment or reimbursement made pursuant to this Exhibit A shall be paid to the Optionee promptly and in no event later than the end of the calendar year next following the calendar year in which the related tax is paid by the Optionee or

where no taxes are required to be remitted, the end of the Optionee's calendar year following the Optionee's calendar year in which the audit is completed or there is a final and nonappealable settlement or other resolution of the litigation.

(k) The provisions of this Exhibit A shall survive the termination of the Optionee's employment with the Company for any reason and the termination of the Award Agreement.

Section 3: EX-10.2 (EX-10.2)

Exhibit 10.2

GMS INC. EQUITY INCENTIVE PLAN RESTRICTED STOCK UNIT - NOTICE OF GRANT

GMS Inc. (the “Company”), a Delaware corporation, hereby grants to the Grantee set forth below (the “Grantee”) Restricted Stock Units (the “Restricted Stock Units”), pursuant to the terms and conditions of this Notice of Grant (the “Notice”), the Restricted Stock Unit Award Agreement attached hereto as Exhibit A (the “Award Agreement”), and the GMS Inc. Equity Incentive Plan (the “Plan”). Capitalized terms used but not defined herein shall have the meaning attributed to such terms in the Award Agreement or, if not defined therein, in the Plan, unless the context requires otherwise. Each Restricted Stock Unit represents the right to receive one (1) Share at the time and in the manner set forth in Section 4 of the Award Agreement.

Date of Grant: [•]

Name of Grantee: [•]

Number of Restricted Stock Units: [•] Shares

Vesting: The Restricted Stock Units shall vest pursuant to the terms and conditions set forth in Section 3 of the Award Agreement.

Vesting Start Date [•]

The Restricted Stock Units shall be subject to the execution and return of this Notice by the Grantee to the Company within 30 days of the date hereof (including by utilizing an electronic signature and/or web-based approval and notice process or any other process as may be authorized by the Company). By executing this Notice, the Grantee acknowledges that his or her agreement to the covenants set forth in Section 6 of the Award Agreement is a material inducement to the Company in granting this Award to the Grantee.

This Notice may be executed by facsimile or electronic means (including, without limitation, PDF) and in one or more counterparts, each of which shall be considered an original instrument, but all of which together shall constitute one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to the other party hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Notice of Grant as of the Date of Grant set forth above.

GMS INC.

By: _____
Name: _____
Title: _____

GRANTEE

By: _____
Name: [•] _____

[SIGNATURE PAGE TO NOTICE OF RESTRICTED STOCK UNIT GRANT FOR THE GMS INC. EQUITY INCENTIVE PLAN]

Exhibit A

GMS INC.
EQUITY INCENTIVE PLAN
FORM OF RESTRICTED STOCK UNIT
AWARD AGREEMENT

THIS RESTRICTED STOCK UNIT AWARD AGREEMENT (the “Award Agreement”) is entered into by and among GMS Inc. (the “Company”) and the individual set forth on the signature page to that certain Notice of Grant (the “Notice”) to which this Award Agreement is attached. The terms and conditions of the Restricted Stock Units granted hereby, to the extent not controlled by the terms and conditions contained in the Plan, shall be as set forth in the Notice and this Award Agreement. Capitalized terms used but not defined herein shall have the meaning attributed to such terms in the Notice or, if not defined therein, in the Plan, unless the context requires otherwise.

1. No Right to Continued Employee Status or Consultant Service

Nothing contained in this Award Agreement shall confer upon the Grantee the right to the continuation of his or her Employee status, or, in the case of a Consultant or Director, to the continuation of his or her service arrangement, or in either case to interfere with the right of the Company or any of its Subsidiaries or other affiliates to Terminate the Grantee.

2. Term of Restricted Stock Units

This Award Agreement shall remain in effect until the Restricted Stock Units have fully vested and been settled or been forfeited by the Grantee as provided in this Award Agreement.

3. Vesting of Restricted Stock Units.

[Option 1: Subject to the remainder of this Section 3, the Restricted Stock Units will vest as to thirty-three and one-third percent (33 1/3%) on each of the first three anniversaries of the Vesting Start Date, such that the Restricted Stock Units shall become fully (100%) vested as of the third anniversary of the Vesting Start Date, subject to the Grantee not having Terminated as of the applicable vesting date.]

[Option 2: Subject to the remainder of this Section 3, the Restricted Stock Units shall become fully (100%) vested upon the first anniversary of the Vesting Start Date, subject to the Grantee not having Terminated prior to such anniversary.]

If the Grantee Terminates for any reason, the portion of the Restricted Stock Units that has not vested as of such date shall terminate upon such Termination and be deemed to have been forfeited by the Grantee without consideration.

4. Settlement

Within thirty (30) days following the date on which any portion of the Restricted Stock Units vest pursuant to Section 3 of this Award Agreement, the Company shall deliver to the Grantee one (1) Share in settlement of each Restricted Stock Unit that becomes vested on such vesting date.

5. Termination of Service

If the Grantee incurs a Termination for any reason, whether voluntarily or involuntarily, then the portion of the Restricted Stock Units that have not previously vested shall terminate as of the date of the Grantee’s Termination. If the Grantee incurs a Termination for Cause, then the Restricted Stock Units (whether or not vested) shall be forfeited and terminate immediately without consideration upon the effective date of such Termination for Cause.

6. Prohibited Activities

(a) **No Sale or Transfer.** Unless otherwise required by law, the Restricted Stock Units shall not be (i) sold, transferred or otherwise disposed of, (ii) pledged or otherwise hypothecated or (iii) subject to attachment, execution or levy of any kind, other than by will or by the laws of descent or distribution; provided, however, that any transferred Restricted Stock Units will be subject to all of the same terms and conditions as provided in the Plan and this Award Agreement and the Grantee’s estate or beneficiary appointed in accordance with the Plan will remain liable for any withholding tax that may be imposed by any federal, state or local tax authority.

(b) **Right to Terminate Restricted Stock Units and Recovery.** The Grantee understands and agrees that the Company has granted the Restricted Stock Units to the Grantee to reward the Grantee for the Grantee’s future efforts and loyalty to the Company and its affiliates by giving the Grantee the opportunity to participate in the potential future appreciation of the Company. Accordingly, if (a) the Grantee materially violates the Grantee’s obligations relating to the non-disclosure or non-use of confidential or proprietary information under any Restrictive Agreement to which the Grantee is a party, or (b) the Grantee materially breaches or violates the Grantee’s obligations relating to non-disparagement under any Restrictive Agreement to which the Grantee is a party, or (c) the Grantee engages in any activity prohibited by this Section 6 of this Award Agreement, or (d) the Grantee materially breaches or violates any non-solicitation obligations under any Restrictive Agreement to which the Grantee is a party, or (e) the Grantee breaches or violates any non-competition obligations under any Restrictive Agreement to which the Grantee is a party, or (f) the Grantee is convicted of a felony against the Company or any of its affiliates, then, in addition to any other rights and remedies available to the Company, the Company shall be entitled, at its option, exercisable by written notice, to terminate the Restricted Stock Units (including the vested portion of the Restricted Stock Units) without consideration, which shall be of no further force and effect. “Restrictive Agreement” shall mean any agreement between the Company or any Subsidiary and the Grantee that contains

non-competition, non-solicitation, non-hire, non-disparagement, or confidentiality restrictions applicable to the Grantee.

(c) **Other Remedies.** The Grantee specifically acknowledges and agrees that its remedies under this Section 6 shall not

prevent the Company or any Subsidiary from seeking injunctive or other equitable relief in connection with the Grantee's breach of any Restrictive Agreement. In the event that the provisions of this Section 6 should ever be deemed to exceed the limitation provided by applicable law, then the Grantee and the Company agree that such provisions shall be reformed to set forth the maximum limitations permitted.

7. No Rights as Stockholder

The Grantee shall have no rights as a stockholder with respect to the Shares covered by the Restricted Stock Units until the effective date of issuance of the Shares and the entry of the Grantee's name as a shareholder of record on the books of the Company following delivery of the Shares in settlement of the Restricted Stock Units.

8. Taxation Upon Settlement of the Restricted Stock Units; Tax Withholding; Parachute Tax Provisions

The Grantee understands that the Grantee will recognize income, for Federal, state and local income tax purposes, as applicable, in respect of the vesting and/or settlement of the Restricted Stock Units. The acceptance of the Shares by the Grantee shall constitute an agreement by the Grantee to report such income in accordance with then applicable law and to cooperate with Company and its subsidiaries in establishing the amount of such income and corresponding deduction to the Company and/or its subsidiaries for its income tax purposes.

The Grantee is responsible for all tax obligations that arise as a result of the vesting and settlement of the Restricted Stock Units. The Company may withhold from any amount payable to the Grantee an amount sufficient to cover any Federal, state or local withholding taxes which may become required with respect to such vesting and settlement or take any other action it deems necessary to satisfy any income or other tax withholding requirements as a result of the vesting and settlement of the Restricted Stock Units. The Company shall have the right to require the payment of any such taxes and require that the Grantee, or the Grantee's beneficiary, to furnish information deemed necessary by the Company to meet any tax reporting obligation as a condition to delivery of any Shares pursuant to settlement of the Restricted Stock Units. The Grantee may pay his or her withholding tax obligation in connection with the vesting and settlement of the Restricted Stock Units, by making a cash payment to the Company. In addition, the Committee, in its sole discretion, may allow the Grantee, to pay his or her withholding tax obligation in connection with the vesting and settlement of the Restricted Stock Units, by (x) having withheld a portion of the Shares then issuable to him or her upon settlement of the Restricted Stock Units or (z) surrendering Shares that have been held by the Grantee for at least six (6) months (or such lesser period as may be permitted by the Committee) prior to the settlement of the Restricted Stock Units, in each case having an aggregate Fair Market Value equal to the withholding taxes.

In connection with the grant of the Restricted Stock Units, the parties wish to memorialize their agreement regarding the treatment of any potential golden parachute payments as set forth in Exhibit A attached hereto.

9. Securities Laws

Upon the acquisition of any Shares pursuant to the settlement of the Restricted Stock Units, the Grantee will make such written representations, warranties, and agreements as the Committee may reasonably request in order to comply with securities laws or with this Award Agreement. Grantee hereby agrees not to offer, sell or otherwise attempt to dispose of any Shares issued to the Grantee upon settlement of the Restricted Stock Units in any way which would: (x) require the Company to file any registration statement with the Securities and Exchange Commission (or any similar filing under state law or the laws of any other county) or to amend or supplement any such filing or (y) violate or cause the Company to violate the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, or any other Federal, state or local law, or the laws of any other country. The Company reserves the right to place restrictions on any Shares the Grantee may receive as a result of the settlement of the Restricted Stock Units.

10. Modification, Amendment, and Termination of Restricted Stock Units

This Award Agreement may not be modified, amended, terminated and no provision hereof may be waived in whole or in part except by a written agreement signed by the Company and the Grantee and no modification shall, without the consent of the Grantee, alter to the Grantee's material detriment or materially impair any rights of the Grantee under this Award Agreement except to the extent permitted under the Plan.

11. Notices

Unless otherwise provided herein, any notices or other communication given or made pursuant to the Notice, this Award Agreement or the Plan shall be in writing and shall be deemed to have been duly given (i) as of the date delivered, if personally delivered (including receipted courier service) or overnight delivery service, with confirmation of receipt; (ii) on the date the delivering party receives confirmation, if delivered by facsimile to the number indicated or by email to the address indicated or through an electronic administrative system designated by the Company; (iii) one (1) business day after being sent by reputable commercial overnight delivery service courier, with confirmation of receipt; or (iv) three (3) business days after being mailed by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

- (a) If to the Company at the address below:

GMS Inc.
100 Crescent Centre Parkway, Suite 800
Tucker, Georgia 30084

- (b) If to the Grantee, at the most recent address, facsimile number or email contained in the Company's records.

12. Award Agreement Subject to Plan and Applicable Law

This Award Agreement is made pursuant to the Plan and shall be interpreted to comply therewith. A copy of the Plan is attached hereto. Any provision of this Award Agreement inconsistent with the Plan shall be considered void and replaced with the applicable provision of the Plan. The Plan shall control in the event there shall be any conflict between the Plan, the Notice, and this Award Agreement, and it shall control as to any matters not contained in this Award Agreement. The Committee shall have authority to make constructions of this Award Agreement, and to correct any defect or supply any omission or reconcile any inconsistency in this Award Agreement, and to prescribe rules and regulations relating to the administration of this Award and other Awards granted under the Plan.

This Award Agreement shall be governed by the laws of the State of Delaware, without regard to the conflicts of law principles thereof, and subject to the exclusive jurisdiction of the courts therein. The Grantee hereby consents to personal jurisdiction in any action brought in any court, federal or state, within the State of Delaware having subject matter jurisdiction in the matter.

13. Section 409A

The Restricted Stock Units are intended to be exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and, accordingly, to the maximum extent permitted, this Award Agreement shall be interpreted to be exempt from Section 409A of the Code or, if not exempt, in compliance therewith. Nothing contained herein shall constitute any representation or warranty by the Company regarding compliance with Section 409A of the Code. The Company shall have no obligation to take any action to prevent the assessment of any additional income tax, interest or penalties under Section 409A of the Code on any Person and the Company, its Subsidiaries and affiliates, and each of their respective employees and representatives, shall have no liability to the Grantee with respect thereto.

14. Headings and Capitalized Terms

Unless otherwise provided herein, capitalized terms used herein that are defined in the Plan and not defined herein shall have the meanings set forth in the Plan. Headings are for convenience only and are not deemed to be part of this Award Agreement. Unless otherwise indicated, any reference to a Section herein is a reference to a Section of this Award Agreement.

15. Severability and Reformation

If any provision of this Award Agreement shall be determined by a court of law of competent jurisdiction to be unenforceable for any reason, such unenforceability shall not affect the enforceability of any of the remaining provisions hereof; and this Award Agreement, to the fullest extent lawful, shall be reformed and construed as if such unenforceable provision, or part thereof, had never been contained herein, and such provision or part thereof shall be reformed or construed so that it would be enforceable to the maximum extent legally possible.

16. Binding Effect

This Award Agreement shall be binding upon the parties hereto, together with their personal executors, administrator, successors, personal representatives, heirs and permitted assigns.

17. Entire Agreement

This Award Agreement, together with the Plan, supersedes all prior written and oral agreements and understandings among the parties as to its subject matter and constitutes the entire agreement of the parties with respect to the subject matter hereof. If there is any conflict between the Notice, this Award Agreement and the Plan, then the applicable terms of the Plan shall govern.

18. Waiver

Waiver by any party of any breach of this Award Agreement or failure to exercise any right hereunder shall not be deemed to be a waiver of any other breach or right whether or not of the same or a similar nature. The failure of any party to take action by reason of such breach or to exercise any such right shall not deprive the party of the right to take action at any time while or after such breach or condition giving rise to such rights continues.

Exhibit A

PARACHUTE TAX PROVISIONS

This Exhibit A sets forth the terms and provisions applicable to the Grantee pursuant to the provisions of Section 8 of the Award Agreement. This Exhibit A shall be subject in all respects to the terms and conditions of the Award Agreement.

(a) To the extent that the Grantee, would otherwise be eligible to receive a payment or benefit pursuant to the terms of this Award Agreement, any employment or other agreement with the Company or any Subsidiary or otherwise in connection with, or arising out of, the Grantee's employment with the Company or a change in ownership or effective control of the Company or of a substantial portion of its assets (any such payment or benefit, a "Parachute Payment"), that a nationally recognized United States public accounting firm selected by the Company (the "Accountants") determines, but for this sentence would be subject to excise tax imposed by Section 4999 of the Code (the "Excise Tax"), subject to clause (c) below, then the Company shall pay to the Grantee whichever of the following two alternative forms of payment would result in the Grantee's receipt, on an after-tax basis, of the greater amount of the Parachute Payment notwithstanding that all or some portion of the Parachute Payment may be subject to the Excise Tax: (1) payment in full of the entire amount of the Parachute Payment (a "Full Payment"), or (2) payment of only a part of the Parachute Payment so that the Grantee receives the largest payment possible without the imposition of the Excise Tax (a "Reduced Payment").

(b) If a reduction in the Parachute Payment is necessary pursuant to clause (a), then the reduction shall occur in the following order: (1) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; (2) reduction of cash payments (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); and (3) cancellation of acceleration of vesting of equity awards not covered under (1) above; provided, however, that in the event that acceleration of vesting of equity awards is to be cancelled, acceleration of vesting of full value awards shall be cancelled before acceleration of options and stock appreciation rights and within each class such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards; and provided, further, that to the extent permitted by Code Section 409A and Sections 280G and 4999 of the Code, if a different reduction procedure would be permitted without violating Code Section 409A or losing the benefit of the reduction under Sections 280G and 4999 of the Code, the Grantee may designate a different order of reduction.

(c) For purposes of determining whether any of the Parachute Payments (collectively the "Total Payments") will be subject to the Excise Tax and the amount of such Excise Tax, (i) the Total Payments shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "parachute payments" in excess of the "base amount" (as defined under Section 280G(b)(3) of the Code) shall be treated as subject to the Excise Tax, unless and except to the extent that, in the opinion of the Accountants, such Total Payments (in whole or in

part): (1) do not constitute "parachute payments," including giving effect to the recalculation of stock options in accordance with Treasury Regulation Section 1.280G-1, Q&A 33, (2) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code in excess of the "base amount" or (3) are otherwise not subject to the Excise Tax, and (ii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by the Accountants in accordance with the principles of Section 280G of the Code.

(d) All determinations hereunder shall be made by the Accountants, which determinations shall be final and binding upon the Company and the Grantee.

(e) The federal tax returns filed by the Grantee (and any filing made by a consolidated tax group which includes the Company) shall be prepared and filed on a basis consistent with the determination of the Accountants with respect to the Excise Tax payable by the Grantee. The Grantee shall make proper payment of the amount of any Excise Tax, and at the request of the Company, provide to the Company true and correct copies (with any amendments) of his or her federal income tax return as filed with the Internal Revenue Service, and such other documents reasonably requested by the Company, evidencing such payment (provided that the Grantee may delete information unrelated to the Parachute Payment or Excise Tax and provided, further that the Company at all times shall treat such returns as confidential and use such return only for purpose contemplated by this paragraph).

(f) In the event of any controversy with the Internal Revenue Service (or other taxing authority) with regard to the Excise Tax, the Grantee shall permit the Company to control issues related to the Excise Tax (at its expense), provided that such issues do not potentially materially adversely affect the Grantee but the Grantee shall control any other issues. In the event that the issues are interrelated, the Grantee and the Company shall in good faith cooperate so as not to jeopardize resolution of either issue. In the event of any conference with any taxing authority as to the Excise Tax or associated income taxes, the Grantee shall permit the representative of the Company to accompany the Grantee, and the Grantee and his representative shall cooperate with the Company and its representative.

(g) The Company shall be responsible for all charges of the Accountants.

(h) The Company and the Grantee shall promptly deliver to each other copies of any written communications, and summaries of any verbal communications, with any taxing authority regarding the Excise Tax covered by this Exhibit A.

(i) Nothing in this Exhibit A is intended to violate the Sarbanes-Oxley Act of 2002 and to the extent that any advance or repayment obligation hereunder would do so, such obligation shall be modified so as to make the advance a nonrefundable payment to the Grantee and the repayment obligation null and void.

(j) Notwithstanding the foregoing, any payment or reimbursement made pursuant to this Exhibit A shall be paid to the Grantee promptly and in no event later than the end of the

calendar year next following the calendar year in which the related tax is paid by the Grantee or where no taxes are required to be remitted, the end of the Grantee's calendar year following the Grantee's calendar year in which the audit is completed or there is a final and nonappealable

settlement or other resolution of the litigation.

(k) The provisions of this Exhibit A shall survive the termination of the Grantee's employment with the Company for any reason and the termination of the Award Agreement.

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