

**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): April 26, 2024

Core Scientific, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40046
(Commission
File Number)

86-1243837
(IRS Employer
Identification No.)

838 Walker Road, Suite 21-2105
Dover, Delaware
(Address of principal executive offices)

19904
(Zip Code)

Registrant's telephone number, including area code: (512) 402-5233

(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 obligations 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.00001 per share	CORZ	The Nasdaq Global Select Market
Warrants, each whole warrant exercisable for one share of common stock at an exercise price of \$6.81 per share	CORZW	The Nasdaq Global Select Market
Warrants, each whole warrant exercisable for one share of common stock at an exercise price of \$0.01 per share	CORZZ	The Nasdaq Global Select Market

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.

Introductory Note

As previously disclosed, on January 23, 2024, Core Scientific, Inc. (the “Company”) emerged from bankruptcy.

On December 21, 2022, the Company and certain of its affiliates (collectively, the “Debtors”) had filed voluntary petitions (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) seeking relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). On January 15, 2024, the Debtors filed with the Bankruptcy Court the Fourth Amended Joint Chapter 11 Plan of Core Scientific, Inc. and its Affiliated Debtors (with Technical Modifications) (the “Plan”), and on January 16, 2024, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”). The Plan and Confirmation Order were previously filed as Exhibits 99.1 and 2.1, respectively, to the Company’s Current Report on Form 8-K, filed with the U.S. Securities and Exchange Commission on January 17, 2024. On January 23, 2024, the Plan became effective in accordance with its terms and the Debtors emerged from the Chapter 11 Cases.

In accordance with the Plan, the Board of Directors of the Company (the “Board”) was required to adopt an equity-based management incentive plan, under which up to ten percent of the common stock of the Company (the “Common Stock”) issued and outstanding, on a fully diluted basis, on the date of effectiveness of the Plan may be issued to members of the Company’s management. Among other things, the Confirmation Order authorized and approved any (i) necessary action with respect to such equity-based management incentive plan and (ii) reservation for issuance or share issuances pursuant to such equity-based management incentive plan.

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

(e) Adoption of the Core Scientific, Inc. 2024 Stock Incentive Plan (the “Incentive Plan”).

On April 26, 2024, the Compensation Committee (the “Committee”) of the Board approved and adopted the Incentive Plan in order to permit grants of equity-based compensation to eligible non-employee directors, officers, other employees, consultants, independent contractors and agents of the Company. The Incentive Plan was so approved and adopted in accordance with the terms of the Plan. As the adoption of the Incentive Plan and the issuance of the Company’s Common Stock pursuant to the Incentive Plan was part of and required by the Plan approved by the Bankruptcy Court under the Bankruptcy Code, stockholder approval is not required.

General. The Incentive Plan provides for the grant of nonqualified stock options, stock appreciation rights, shares of restricted stock, restricted stock units, performance awards, dividend equivalent rights and other stock-based awards.

The Incentive Plan provides for grants of up to 40,000,000 shares of the Company’s Common Stock in respect of awards, subject to adjustment as provided in the Incentive Plan, and limits the aggregate compensation that may be paid to the Company’s non-employee directors in respect of any single fiscal year (including awards under the Incentive Plan) to a total of \$800,000.

The Committee, as the Administrator (as defined in the Incentive Plan), will administer the Incentive Plan, including designating the eligible participants, as well as which participants will receive awards, the type and amounts of awards granted and the terms of such awards, including the vesting schedule, expiration date and other material features of the awards as well as the form of agreement evidencing the award.

The Incentive Plan provides for an adjustment in the number of shares of Common Stock available to be delivered under the Incentive Plan, the number of shares subject to awards, and the exercise price of certain awards in the event of a change in the capitalization of the Company, a stock dividend or stock split, a merger or combination of shares or other similar events, as well as for the adjustment or termination of awards upon the occurrence of certain corporate events.

Change in Control. Upon a Change in Control (as defined in the Incentive Plan), if outstanding awards under the Incentive Plan are assumed or new rights having an equivalent value for such outstanding awards are substituted therefor by the Acquiring Corporation (as defined in the Incentive Plan), the Board may, in its discretion require that, if the Acquiring Corporation terminates a participant’s employment or service without cause upon or

within two (2) years after the Change in Control, (i) some or all of the participant's outstanding options and SARs (as defined in the Incentive Plan) shall become exercisable in full or in part, (ii) the Restriction Period (as defined in the Incentive Plan) applicable to some or all of the participant's outstanding Stock Awards (as defined in the Incentive Plan) shall lapse in full or in part, (iii) the Performance Period (as defined in the Incentive Plan) applicable to some or all of the participant's outstanding awards shall lapse in full or in part, and (iv) the Performance Measures (as defined in the Incentive Plan) applicable to some or all outstanding awards shall be deemed to be satisfied at the greatest of target, the actual performance level attained, or such other performance level that may be reasonably projected to be attained with respect to such awards. If outstanding awards under the Incentive Plan are not assumed or new rights having an equivalent value for such outstanding awards are not substituted therefor by the Acquiring Corporation, then the Board may, in its discretion, require that (i) some or all of the participant's outstanding options and SARs shall become exercisable in full or in part, (ii) the Restriction Period applicable to some or all of the participant's outstanding Stock Awards shall lapse in full or in part, (iii) the Performance Period applicable to some or all of the participant's outstanding awards shall lapse in full or in part, and (iv) the Performance Measures applicable to some or all outstanding awards shall be deemed to be satisfied at the greatest of target, the actual performance level attained, or such other performance level that may be reasonably projected to be attained with respect to such awards.

Amendment and Termination. The Committee may amend or terminate the Incentive Plan at any time, provided that no such amendment may materially impair the rights of a holder of an outstanding award under the Incentive Plan without the holder's consent. The Committee will seek stockholder approval of any amendment of the Incentive Plan in the event such stockholder approval is required under the provisions of any applicable law or rule, including any rule of any stock exchange on which the Common Stock is then traded, and such action will not be effective until so approved. The Incentive Plan will terminate as of the first annual meeting of the Company's stockholders to occur on or after the tenth anniversary of the Incentive Plan's effective date, unless terminated earlier by the Committee.

The preceding summary of the Incentive Plan does not purport to be a complete description of all provisions of the Incentive Plan and should be read in conjunction with, and qualified in its entirety by reference to, the complete text of the Incentive Plan, which is filed herewith and is hereby incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
10.1	Core Scientific, Inc. 2024 Stock Incentive Plan, dated as of April 26, 2024.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Core Scientific, Inc.

Dated: May 2, 2024

By: /s/ Todd M. DuChene
Name: Todd M. DuChene
Title: Chief Legal Officer and Chief Administrative Officer

**CORE SCIENTIFIC, INC.
2024 STOCK INCENTIVE PLAN**

I. INTRODUCTION

I.1 Purposes. The purposes of the Core Scientific, Inc. 2024 Stock Incentive Plan (this “Plan”) are (i) to align the interests of the Company’s stockholders and the recipients of awards under this Plan by increasing the proprietary interest of such recipients in the Company’s growth and success, (ii) to advance the interests of the Company by attracting and retaining Non-Employee Directors, officers, other employees, consultants, independent contractors and agents and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders.

I.2 Certain Definitions.

“**Administrator**” shall mean the Board or the Committee as shall be administering this Plan, in accordance with Section 1.3.

“**Agreement**” shall mean the written or electronic agreement evidencing an award hereunder between the Company and the recipient of such award.

“**Board**” shall mean the Board of Directors of the Company.

“**Change in Control**” shall have the meaning set forth in Section 5.8(b).

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Committee**” shall mean the Compensation Committee of the Board, or a subcommittee thereof, or such other committee designated by the Board, in each case, consisting of two (2) or more members of the Board, each of whom is intended to satisfy the applicable rules and requirements to be (i) a “Non-Employee Director” for purposes of Rule 16b-3 under the Exchange Act and (ii) “independent” for purposes of the rules of the principal national stock exchange on which the Common Stock is then traded.

“**Common Stock**” shall mean the common stock, par value \$0.00001 per share, of the Company, and all rights appurtenant thereto.

“**Company**” shall mean Core Scientific, Inc., a corporation organized under the laws of the State of Delaware, or any successor thereto.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Fair Market Value**” shall mean the closing transaction price of a share of Common Stock on the principal national stock exchange on which the Common Stock is traded on the date as of which such value is being determined or, if there shall be no reported transactions for such

date, on the next preceding date for which transactions were reported; provided, however, that the Company may in its discretion use the closing transaction price of a share of Common Stock on the day preceding the date as of which such value is being determined to the extent the Company determines such method is more practical for administrative purposes, such as for purposes of tax withholding. If the Common Stock is not listed on a national stock exchange or if Fair Market Value for any date cannot be so determined, Fair Market Value shall be determined by the Administrator by whatever means or method as the Administrator, in the good faith exercise of its discretion, shall at such time deem appropriate and in compliance with Section 409A of the Code. With respect to any property other than Common Stock, “Fair Market Value” shall mean the market value of such property determined by such methods or procedures as shall be established from time to time by the Administrator.

“**Follow-On Awards**” shall mean any award initially granted under this Plan during periods occurring on and after April 23, 2025.

“**Free-Standing SAR**” shall mean an SAR which is not granted in tandem with, or by reference to, an option, which entitles the holder thereof to receive, upon exercise, shares of Common Stock (which may be Restricted Stock) or, to the extent set forth in the applicable Agreement, cash or a combination thereof, with an aggregate value equal to the excess of the Fair Market Value of one share of Common Stock on the date of exercise over the base price of such SAR, multiplied by the number of such SARs which are exercised.

“**Incentive Stock Option**” shall mean an option to purchase shares of Common Stock that meets the requirements of Section 422 of the Code, it being understood that Incentive Stock Option awards shall not be granted pursuant to this Plan.

“**Non-Employee Director**” shall mean any director of the Company who is not an officer or employee of the Company or any Subsidiary.

“**Nonqualified Stock Option**” shall mean an option to purchase shares of Common Stock which is not an Incentive Stock Option.

“**Other Stock Award**” shall mean an award granted pursuant to Section 3.4.

“**Performance Award**” shall mean a right to receive an amount of shares of Common Stock (which may be Restricted Stock) or cash or a combination thereof, contingent upon the attainment of specified Performance Measures within a specified Performance Period.

“**Performance Measures**” shall mean the criteria and objectives, established by the Administrator, which shall be satisfied or met (i) as a condition to the grant or exercisability of all or a portion of an option or SAR or (ii) during the applicable Restriction Period or Performance Period as a condition to the vesting of the holder’s interest, in the case of a Restricted Stock Award, of the shares of Common Stock subject to such award, or, in the case of a Restricted Stock Unit Award, Other Stock Award or Performance Award, to the holder’s receipt of the shares of Common Stock subject to such award or of payment with respect to such

award. One or more of the following business criteria for the Company, on a consolidated basis, and/or for specified subsidiaries, business or geographical units or operating areas of the Company (except with respect to the total shareholder return and earnings per share criteria) on an individual basis, may be used by the Administrator in establishing Performance Measures under this Plan: earnings (including earnings per share and net earnings); earnings before interest, taxes and depreciation; earnings before interest, taxes, depreciation and amortization; total stockholder return; return on equity or average stockholder's equity; return on assets, investment, or capital employed; stock price; margin (including gross margin); income (before or after taxes); operating income; operating income after taxes; pre-tax profit; operating cash flow; sales or revenue targets; increases in revenue or product revenue; expenses and cost reduction goals; improvement in or attainment of working capital levels; economic value added (or an equivalent metric); market share; cash flow; cash flow per share; share price performance; debt reduction; customer satisfaction; stockholders' equity; capital expenditures; debt levels; operating profit or net operating profit; workforce diversity; growth of net income or operating income; billings; financing; regulatory milestones; stockholder liquidity; corporate governance and compliance; intellectual property; personnel matters; progress of internal research; progress of partnered programs; partner satisfaction; budget management; partner or collaborator achievements; internal controls, including those related to the Sarbanes-Oxley Act of 2002; investor relations, analysts and communication; implementation or completion of projects or processes; employee retention; number of users, including unique users; strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property); establishing relationships with respect to the marketing, distribution and sale of the Company's products; supply chain achievements; co-development, co-marketing, profit sharing, joint venture or other similar arrangements; individual performance goals; corporate development and planning goals; and any combination of the foregoing or such other measures of performance selected by the Administrator whether or not listed herein. Each such goal may be determined on a pre-tax or post-tax basis or on an absolute or relative basis, and may include comparisons based on current internal targets, the past performance of the Company (including the performance of one or more subsidiaries, divisions, or operating units) or the past or current performance of other companies or market indices (or a combination of such past and current performance). In addition to the ratios specifically enumerated above, performance goals may include comparisons relating to capital (including, but not limited to, the cost of capital), stockholders' equity, shares outstanding, assets or net assets, sales, or any combination thereof. In establishing a Performance Measure or determining the achievement of a Performance Measure, the Administrator may provide that achievement of the applicable Performance Measures may be amended or adjusted to include or exclude components of any Performance Measure, including, without limitation, foreign exchange gains and losses, asset write-downs, acquisitions and divestitures, change in fiscal year, unbudgeted capital expenditures, special charges such as restructuring or impairment charges, debt refinancing costs, extraordinary or noncash items, unusual, infrequently occurring, nonrecurring or one-time events affecting the Company or its financial statements or changes in law or accounting principles. Performance Measures shall be subject to such other special rules and conditions as the Administrator may establish at any time.

“**Performance Period**” shall mean any period designated by the Administrator during which (i) the Performance Measures applicable to an award shall be measured and (ii) the conditions to vesting applicable to an award shall remain in effect.

“**Restricted Stock**” shall mean shares of Common Stock which are subject to a Restriction Period and which may, in addition thereto, be subject to the attainment of specified Performance Measures within a specified Performance Period.

“**Restricted Stock Award**” shall mean an award of Restricted Stock under this Plan.

“**Restricted Stock Unit**” shall mean a right to receive one share of Common Stock or, in lieu thereof and to the extent set forth in the applicable Agreement, the Fair Market Value of such share of Common Stock in cash, which shall be contingent upon the expiration of a specified Restriction Period and which may, in addition thereto, be contingent upon the attainment of specified Performance Measures within a specified Performance Period.

“**Restricted Stock Unit Award**” shall mean an award of Restricted Stock Units under this Plan.

“**Restriction Period**” shall mean any period designated by the Administrator during which (i) the Common Stock subject to a Restricted Stock Award may not be sold, transferred, assigned, pledged, hypothecated or otherwise encumbered or disposed of, except as provided in this Plan or the Agreement relating to such award, or (ii) the conditions to vesting applicable to a Restricted Stock Unit Award or Other Stock Award shall remain in effect.

“**SAR**” shall mean a stock appreciation right which may be a Free-Standing SAR or a Tandem SAR.

“**Stock Award**” shall mean a Restricted Stock Award, Restricted Stock Unit Award or Other Stock Award.

“**Subsidiary**” shall mean any corporation, limited liability company, partnership, joint venture or similar entity in which the Company owns, directly or indirectly, an equity interest possessing more than fifty percent (50%) of the combined voting power of the total outstanding equity interests of such entity.

“**Substitute Award**” shall mean an award granted under this Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, including a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term “Substitute Award” be construed to refer to an award made in connection with the cancellation and repricing of an option or SAR.

“**Tandem SAR**” shall mean an SAR which is granted in tandem with, or by reference to, an option (including a Nonqualified Stock Option granted prior to the date of grant of the SAR),

which entitles the holder thereof to receive, upon exercise of such SAR and surrender for cancellation of all or a portion of such option, shares of Common Stock (which may be Restricted Stock) or, to the extent set forth in the applicable Agreement, cash or a combination thereof, with an aggregate value equal to the excess of the Fair Market Value of one share of Common Stock on the date of exercise over the base price of such SAR, multiplied by the number of shares of Common Stock subject to such option, or portion thereof, which is surrendered.

“**Tax Date**” shall have the meaning set forth in Section 5.5.

I.3 Administration. This Plan shall be administered by the Administrator. The Administrator shall be comprised of the Committee, it being understood that, pursuant to the Core Scientific, Inc. Charter of the Compensation Committee of the Board of Directors, as in effect as of the effective date hereof, the Board has previously delegated authority to the Committee to (among other things) approve, modify, terminate, and administer this Plan. To the extent administration of this Plan is delegated to the Committee, the Committee shall constitute the Administrator to the extent that the powers theretofore possessed by the Board have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise. Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of this Plan, adopted from time to time by the Administrator. The Board may retain the authority to concurrently administer this Plan with the Committee and may, at any time, revert to the Board some or all of the powers previously delegated, in each case pursuant to resolutions adopted by the Board. Until and unless determined otherwise by the Board, the Committee shall be the Administrator and will have full authority to act as the Administrator of this Plan with all of the powers theretofore possessed by the Board and the power to grant awards under this Plan pursuant to this Section 1.3.

Any one or a combination of the following awards may be made under this Plan to eligible persons: (i) options to purchase shares of Common Stock in the form of Nonqualified Stock Options; (ii) SARs in the form of Tandem SARs or Free-Standing SARs; (iii) Stock Awards in the form of Restricted Stock, Restricted Stock Units or Other Stock Awards; and (iv) Performance Awards. The Administrator shall, subject to the terms of this Plan, select eligible persons for participation in this Plan and determine the form, amount and timing of each award to such persons and, if applicable, the number of shares of Common Stock subject to an award, the number of SARs, the number of Restricted Stock Units, the dollar value subject to a Performance Award, the purchase price or base price associated with the award, the time and conditions of exercise or settlement of the award and all other terms and conditions of the award, including, without limitation, the form of the Agreement evidencing the award. Subject to satisfaction of the minimum vesting conditions of Section 1.6, the Administrator may (i.e., to the extent such conditions of Section 1.6 are satisfied as of such time), in its sole discretion and for any reason at any time, take action such that (i) any or all outstanding options and SARs shall become exercisable in part or in full, (ii) all or a portion of the Restriction Period applicable to any outstanding awards shall lapse, (iii) all or a portion of the Performance Period applicable to

any outstanding awards shall lapse and (iv) the Performance Measures (if any) applicable to any outstanding awards shall be deemed to be satisfied at the target, the actual performance level attained, or such other performance level that may be reasonably projected to be attained with respect to such awards. The Administrator shall, subject to the terms of this Plan, interpret this Plan and the application thereof, establish rules and regulations it deems necessary or desirable for the administration of this Plan and may impose, incidental to the grant of an award, conditions with respect to the award, such as limiting competitive employment or other activities, prohibiting the exercise of any option or SAR during a period of up to thirty (30) days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Change in Control, for reasons of administrative convenience, and settling all controversies regarding this Plan and awards granted thereunder. All such interpretations, rules, regulations and conditions shall be conclusive and binding on all parties.

The Administrator may delegate some or all of its power and authority hereunder to the Board or, subject to applicable law, to a subcommittee of the Board, a member of the Board, the Chief Executive Officer or such other executive officer of the Company as the Administrator deems appropriate; provided, however, that the Administrator may not delegate its power and authority to a member of the Board, the Chief Executive Officer or other executive officer of the Company with regard to the selection for participation in this Plan of an officer, director or other person subject to Section 16 of the Exchange Act or decisions concerning the timing, pricing or amount of an award to such an officer, director or other person.

No member of the Board or Committee, and neither the Chief Executive Officer nor any other executive officer to whom the Committee delegates any of its power and authority hereunder, shall be liable for any act, omission, interpretation, construction or determination made in connection with this Plan in good faith, and the members of the Board and the Committee and the Chief Executive Officer or other executive officer shall be entitled to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including attorneys' fees) arising therefrom to the full extent permitted by law (except as otherwise may be provided in the Company's Certificate of Incorporation and/or By-Laws) and under any directors' and officers' liability insurance that may be in effect from time to time.

I.4 Eligibility. Participants in this Plan shall consist of such officers, other employees, Non-Employee Directors, consultants, independent contractors, agents, and persons expected to become officers, other employees, Non-Employee Directors, consultants, independent contractors and agents of the Company and its Subsidiaries as the Administrator in its sole discretion may select from time to time. The Administrator's selection of a person to participate in this Plan at any time shall not require the Administrator to select such person to participate in this Plan at any other time. Except as otherwise provided for in an Agreement, for purposes of this Plan, references to employment by the Company shall also mean employment by a Subsidiary, and references to employment shall include service as a Non-Employee Director, consultant, independent contractor or agent. The Administrator shall determine, in its sole

discretion, the extent to which a participant shall be considered employed during any periods during which such participant is on a leave of absence. The aggregate value of all compensation granted or paid, as applicable, to any individual for service as a Non-Employee Director with respect to any calendar year, including awards granted and cash fees paid by the Company to such Non-Employee Director, will not exceed \$800,000 in total value, calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes.

I.5 Shares Available. Subject to adjustment as provided in Section 5.7 and to all other limits set forth in this Plan, the number of shares of Common Stock that shall initially be available for all awards under this Plan, other than Substitute Awards, shall be (i) 40,000,000 shares, which number of shares is intended to approximate, but not exceed, ten percent (10%) of the shares outstanding on a fully-diluted basis as of the close of business on January 23, 2024. To the extent the Company grants an option, a Free-Standing SAR, a Stock Award or settles a Performance Award in shares of Common Stock, the number of shares of Common Stock that remain available for future grants under this Plan shall be reduced by an amount equal to the number of shares subject to such option, Free-Standing SAR, Stock Award or Performance Award.

To the extent that shares of Common Stock subject to an outstanding option, SAR, Stock Award or Performance Award granted under this Plan, other than Substitute Awards, are not issued or delivered by reason of (i) the expiration, termination, cancellation or forfeiture of such award (excluding shares subject to an option cancelled upon settlement in shares of a related Tandem SAR or shares subject to a Tandem SAR cancelled upon exercise of a related option) or (ii) the settlement of such award in cash, then such shares of Common Stock shall again be available under this Plan; provided, however, that shares of Common Stock subject to an award under this Plan shall not again be available for issuance under this Plan if such shares are (x) shares that were subject to an option or stock-settled SAR and were not issued or delivered upon the net settlement or net exercise of such option or SAR, or (y) shares delivered to or withheld by the Company to pay the purchase price or the withholding taxes related to an outstanding award.

The number of shares of Common Stock available for awards under this Plan shall not be reduced by (i) the number of shares of Common Stock subject to Substitute Awards or (ii) available shares under a stockholder approved plan of a company or other entity which was a party to a corporate transaction with the Company (as appropriately adjusted to reflect such corporate transaction) which become subject to awards granted under this Plan (subject to applicable stock exchange requirements).

Shares of Common Stock to be delivered under this Plan shall be made available from authorized and unissued shares of Common Stock, or authorized and issued shares of Common Stock reacquired and held as treasury shares or otherwise or a combination thereof.

I.6 Minimum Vesting Conditions. Notwithstanding any other provision of this Plan to the contrary, in no event shall any Follow-On Award vest earlier than the first anniversary of the date on which the award is granted; provided, that the following types of Follow-On Awards

shall not be subject to the foregoing minimum vesting requirement: any (i) Substitute Awards granted in connection with awards that are assumed, converted or substituted pursuant to a merger, acquisition or similar transaction entered into by the Company or any of its Subsidiaries, (ii) shares delivered in lieu of fully vested cash obligations, (iii) awards to Non-Employee Directors that vest on the earlier of the one-year anniversary of the date of grant and the next annual meeting of shareholders, which is at least 50 weeks after the immediately preceding year's annual meeting (except with respect to any new Non-Employee Director who joins the Board other than in connection with any such annual meeting), and (iv) any additional awards the Administrator may grant, up to a maximum of 5% of the available share reserve authorized for issuance under this Plan pursuant to Section 1.5 (subject to adjustment under Section 5.7); and, provided, further, that the foregoing restriction does not apply to the Board's exercise of discretion to provide for accelerated exercisability or vesting of any award in the event of death, disability or a Change in Control.

II. STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

II.1 Stock Options. The Administrator may, in its discretion, grant options to purchase shares of Common Stock to such eligible persons as may be selected by the Administrator. Each option granted under this Plan shall constitute a Nonqualified Stock Option.

Options shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Administrator shall deem advisable:

(a) Number of Shares and Purchase Price. The number of shares of Common Stock subject to an option and the purchase price per share purchasable upon exercise of the option shall be determined by the Administrator; provided, however, that the purchase price per share purchasable upon exercise of an option shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the date of grant of such option.

Notwithstanding the foregoing, in the case of an option that is a Substitute Award, the purchase price per share of the shares subject to such option may be less than one hundred percent (100%) of the Fair Market Value per share on the date of grant, provided, that the excess of: (i) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (ii) the aggregate purchase price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor company or other entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate purchase price of such shares.

(b) Option Period and Exercisability. The period during which an option may be exercised shall be determined by the Administrator; provided, however, that no option shall be exercised later than ten (10) years after its date of grant. The Administrator may, in its discretion, establish Performance Measures which shall be satisfied or met as a condition to the grant of an option or

to the exercisability of all or a portion of an option. The Administrator shall determine whether an option shall become exercisable in cumulative or non-cumulative installments and in part or in full at any time. An exercisable option, or portion thereof, may be exercised only with respect to whole shares of Common Stock. If an option is exercised for shares of Restricted Stock, a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.2(c), or such shares shall be transferred to the holder in book entry form with restrictions on the shares duly noted, and the holder of such Restricted Stock shall have such rights of a stockholder of the Company as determined pursuant to Section 3.2(d). Prior to the exercise of an option, the holder of such option shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such option.

(c) Method of Exercise. An option may be exercised (i) by giving written notice to the Company specifying the number of whole shares of Common Stock to be purchased and accompanying such notice with payment therefor in full (or arrangement made for such payment to the Company's satisfaction) either (A) in cash, (B) by delivery (either actual delivery or by attestation procedures established by the Company) of shares of Common Stock having a Fair Market Value, determined as of the date of exercise, equal to the aggregate purchase price payable by reason of such exercise, (C) authorizing the Company to withhold whole shares of Common Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the date of exercise, equal to the amount necessary to satisfy such obligation, (D) in cash by a broker-dealer acceptable to the Company to whom the participant has submitted an irrevocable notice of exercise or (E) a combination of (A), (B) and (C), in each case to the extent set forth in the Agreement relating to the option, (ii) if applicable, by surrendering to the Company any Tandem SARs which are cancelled by reason of the exercise of the option and (iii) by executing such documents as the Company may reasonably request. In no event may any option granted hereunder be exercised for a fraction of a share of Common Stock. No adjustment shall be made for ordinary cash dividends or other rights for which the record date is prior to the date as of which the optionee exercises the option and becomes the sole owner of the subject shares of Common Stock. No shares of Common Stock shall be issued and no certificate representing Common Stock shall be delivered until the full purchase price therefor and any withholding taxes thereon, as described in Section 5.5, have been paid (or arrangement made for such payment to the Company's satisfaction). An option shall be automatically exercised as of the end of the last day of the term of the option, if the option price is less than the Fair Market Value of a share of Common Stock on such date, on a net exercise basis as contemplated by this Section 2.1(c) and with tax withholding satisfied by the Company retaining shares from the exercise as contemplated by Section 5.5. In its sole discretion, the Administrator may provide, at the time of grant, that the shares to be issued upon an option's exercise shall be in the form of Restricted Stock or other similar securities, or may reserve the right so to provide after the time of grant.

II.2 Stock Appreciation Rights. The Administrator may, in its discretion, grant SARs to such eligible persons as may be selected by the Administrator. The Agreement relating to an SAR shall specify whether the SAR is a Tandem SAR or a Free-Standing SAR.

SARs shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Administrator shall deem advisable:

(a) Number of SARs and Base Price. The number of SARs subject to an award shall be determined by the Administrator. The base price of a Tandem SAR shall be the purchase price per share of the related option. The base price of a Free-Standing SAR shall be determined by the Administrator; provided, however, that such base price shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the date of grant of such SAR (or, if earlier, the date of grant of the option for which the SAR is exchanged or substituted).

Notwithstanding the foregoing, in the case of an SAR that is a Substitute Award, the base price per share of the shares subject to such SAR may be less than one hundred percent (100%) of the Fair Market Value per share on the date of grant, provided, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate base price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor company or other entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate base price of such shares.

(b) Exercise Period and Exercisability. The period for the exercise of an SAR shall be determined by the Administrator; provided, however, that no SAR shall be exercised later than ten (10) years after its date of grant. The Administrator may, in its discretion, establish Performance Measures which shall be satisfied or met as a condition to the grant of an SAR or to the exercisability of all or a portion of an SAR. The Administrator shall determine whether an SAR may be exercised in cumulative or non-cumulative installments and in part or in full at any time. An exercisable SAR, or portion thereof, may be exercised, in the case of a Tandem SAR, only with respect to whole shares of Common Stock and, in the case of a Free-Standing SAR, only with respect to a whole number of SARs. If an SAR is exercised for shares of Restricted Stock, a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.2(c), or such shares shall be transferred to the holder in book entry form with restrictions on the shares duly noted, and the holder of such Restricted Stock shall have such rights of a stockholder of the Company as determined pursuant to Section 3.2(d). Prior to the exercise of a stock-settled SAR, the holder of such SAR shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such SAR.

(c) Method of Exercise. A Tandem SAR may be exercised (i) by giving written notice to the Company specifying the number of whole SARs which are being exercised, (ii) by surrendering to the Company any options which are cancelled by reason of the exercise of the Tandem SAR and (iii) by executing such documents as the Company may reasonably request. A Free-Standing SAR may be exercised (A) by giving written notice to the Company specifying the whole

number of SARs which are being exercised and (B) by executing such documents as the Company may reasonably request. No shares of Common Stock shall be issued and no certificate representing shares of Common Stock shall be delivered until any withholding taxes thereon, as described in Section 5.5, have been paid (or arrangement has been made for such payment to the Company's satisfaction). In its sole discretion, the Administrator may provide, at the time of grant, that the shares to be issued upon a Free-Standing SAR's exercise shall be in the form of Restricted Stock or other similar securities, or may reserve the right so to provide after the time of grant. An SAR shall be automatically exercised as of the end of the last day of the term of the SAR, if the base price is less than the Fair Market Value of a share of Common Stock on such date, and with tax withholding satisfied by the Company retaining shares from the exercise as contemplated by Section 5.5.

II.3 Termination of Employment or Service. Subject to satisfaction of the minimum vesting conditions of Section 1.6, all of the terms relating to the exercise, cancellation or other disposition of an option or SAR (i) upon a termination of employment with or service to the Company of the holder of such option or SAR, as the case may be, whether by reason of disability, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Administrator and set forth in the applicable Agreement.

II.4 No Repricing. The Administrator shall not, without the approval of the stockholders of the Company, (i) reduce the purchase price or base price of any previously granted option or SAR, (ii) cancel any previously granted option or SAR in exchange for another option or SAR with a lower purchase price or base price, (iii) cancel any previously granted option or SAR in exchange for cash or another award if the purchase price of such option or the base price of such SAR exceeds the Fair Market Value of a share of Common Stock on the date of such cancellation, in each case, other than in connection with a Change in Control or the adjustment provisions set forth in Section 5.7, or (iv) include provisions with respect to any option or SAR that "reloads" such option or SAR on exercise.

II.5 No Dividend Equivalents. Notwithstanding anything in an Agreement to the contrary, the holder of an option or SAR shall not be entitled to receive dividend equivalents with respect to the number of shares of Common Stock subject to such option or SAR.

III. STOCK AWARDS

III.1 Stock Awards. The Administrator may, in its discretion, grant Stock Awards to such eligible persons as may be selected by the Administrator. The Agreement relating to a Stock Award shall specify whether the Stock Award is a Restricted Stock Award, a Restricted Stock Unit Award or, in the case of an Other Stock Award, the type of award being granted.

III.2 Terms of Restricted Stock Awards. Restricted Stock Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Administrator shall deem advisable.

- (a) Number of Shares and Other Terms. The number of shares of Common Stock subject to a Restricted Stock Award and the Restriction Period, Performance Period (if any) and Performance Measures (if any) applicable to a Restricted Stock Award shall be determined by the Administrator.
- (b) Vesting and Forfeiture. The Agreement relating to a Restricted Stock Award shall provide, in the manner determined by the Administrator, in its discretion, and subject to the provisions of this Plan, for the vesting of the shares of Common Stock subject to such award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period and/or (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period and/or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period.
- (c) Stock Issuance. During the Restriction Period, the shares of Restricted Stock shall be held by a custodian in book entry form with restrictions on such shares duly noted or, alternatively, a certificate or certificates representing a Restricted Stock Award shall be registered in the holder's name and may bear a legend, in addition to any legend which may be required pursuant to Section 5.6, indicating that the ownership of the shares of Common Stock represented by such certificate is subject to the restrictions, terms and conditions of this Plan and the Agreement relating to the Restricted Stock Award. All such certificates shall be deposited with the Company, together with stock powers or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if deemed necessary or appropriate, which would permit transfer to the Company of all or a portion of the shares of Common Stock subject to the Restricted Stock Award in the event such award is forfeited in whole or in part. Upon termination of any applicable Restriction Period (and the satisfaction or attainment of applicable Performance Measures), subject to the Company's right to require payment of any taxes in accordance with Section 5.5, the restrictions shall be removed from the requisite number of any shares of Common Stock that are held in book entry form, and all certificates evidencing ownership of the requisite number of shares of Common Stock shall be delivered to the holder of such award.
- (d) Rights with Respect to Restricted Stock Awards. Unless otherwise set forth in the Agreement relating to a Restricted Stock Award, and subject to the terms and conditions of a Restricted Stock Award, the holder of such award shall have all rights as a stockholder of the Company, including, but not limited to, voting rights, the right to receive dividends and the right to participate in any capital adjustment applicable to all holders of Common Stock; provided, however, that a distribution or dividend with respect to shares of Common Stock underlying the Restricted Stock Award, including a regular cash dividend, shall be deposited with the Company and shall be subject to the same vesting conditions that apply to such shares of Common Stock.

III.3 Terms of Restricted Stock Unit Awards. Restricted Stock Unit Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Administrator shall deem advisable.

- (a) **Number of Shares and Other Terms.** The number of shares of Common Stock subject to a Restricted Stock Unit Award, including the number of shares that are earned upon the attainment of any specified Performance Measures, and the Restriction Period, Performance Period (if any) and Performance Measures (if any) applicable to a Restricted Stock Unit Award shall be determined by the Administrator.
- (b) **Vesting and Forfeiture.** The Agreement relating to a Restricted Stock Unit Award shall provide, in the manner determined by the Administrator, in its discretion, and subject to the provisions of this Plan, for the vesting of such Restricted Stock Unit Award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period, and/or (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period and/or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period.
- (c) **Rights with Respect to Restricted Stock Unit Awards.** The Agreement relating to a Restricted Stock Unit Award shall specify (i) whether such award may be settled in shares of Common Stock or cash or a combination thereof and (ii) whether the holder thereof shall be entitled to receive dividend equivalents, and, if determined by the Administrator, interest on, or the deemed reinvestment of, any deferred dividend equivalents, with respect to the number of shares of Common Stock subject to such award. Any dividend equivalents credited with respect to Restricted Stock Units that are subject to vesting conditions shall be subject to the same vesting conditions as the underlying award. Prior to the settlement of a Restricted Stock Unit Award, the holder of such award shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such award. If determined by the Administrator and to the extent specified in the Agreement relating to a Restricted Stock Unit Award, any such dividend equivalents may be eligible to earn interest, or be subject to the deemed reinvestment into additional Restricted Stock Units under such award.

III.4 Other Stock Awards. Subject to the limitations set forth in this Plan, the Administrator is authorized to grant other awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, shares of Common Stock, including without limitation shares of Common Stock granted as a bonus and not subject to any vesting conditions, dividend equivalents, deferred stock units, stock purchase rights and shares of Common Stock issued in lieu of obligations of the Company to pay cash under any compensatory plan or arrangement, subject to such terms as shall be determined by the Administrator. The Administrator shall determine the terms and conditions of such awards, which may include the right to elective deferral thereof, subject to such terms and conditions as the Administrator may specify in its discretion. Any distribution, dividend or dividend

equivalents with respect to Other Stock Awards that are subject to vesting conditions shall be subject to the same vesting conditions as the underlying awards.

III.5 Termination of Employment or Service. Subject to satisfaction of the minimum vesting conditions of Section 1.6, all of the terms relating to the satisfaction of Performance Measures and the termination of the Restriction Period or Performance Period relating to a Stock Award, or any forfeiture and cancellation of such award (i) upon a termination of employment with or service to the Company of the holder of such award, whether by reason of disability, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Administrator and set forth in the applicable Agreement.

IV. PERFORMANCE AWARDS

IV.1 Performance Awards. The Administrator may, in its discretion, grant Performance Awards to such eligible persons as may be selected by the Administrator.

IV.2 Terms of Performance Awards. Performance Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Administrator shall deem advisable.

(a) **Value of Performance Awards and Performance Measures.** The method of determining the value of the Performance Award and the Performance Measures and Performance Period applicable to a Performance Award shall be determined by the Administrator.

(b) **Vesting and Forfeiture.** The Agreement relating to a Performance Award shall provide, in the manner determined by the Administrator, in its discretion, and subject to the provisions of this Plan, for the vesting of such Performance Award if the specified Performance Measures are satisfied or met during the specified Performance Period and for the forfeiture of such award if the specified Performance Measures are not satisfied or met during the specified Performance Period.

(c) **Settlement of Vested Performance Awards.** The Agreement relating to a Performance Award shall specify whether such award may be settled in shares of Common Stock (including shares of Restricted Stock) or cash or a combination thereof. If a Performance Award is settled in shares of Restricted Stock, such shares of Restricted Stock shall be issued to the holder in book entry form or a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.2(c) and the holder of such Restricted Stock shall have such rights as a stockholder of the Company as determined pursuant to Section 3.2(d). Any dividends or dividend equivalents with respect to a Performance Award shall be subject to the same vesting and other restrictions as such Performance Award. Prior to the settlement of a Performance Award in shares of Common Stock, including Restricted Stock, the holder of such award shall have no rights as a stockholder of the Company.

IV.3 Termination of Employment or Service. Subject to satisfaction of the minimum vesting conditions of Section 1.6, all of the terms relating to the satisfaction of Performance

Measures and the termination of the Performance Period relating to a Performance Award, or any forfeiture and cancellation of such award (i) upon a termination of employment with or service to the Company of the holder of such award, whether by reason of disability, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Administrator and set forth in the applicable award Agreement.

V. GENERAL

V.1 Effective Date and Term of Plan. This Plan shall become effective as of the date on which this Plan is approved by the Committee, it being understood that the prior approval of the implementation of a stock-based incentive plan, consisting of the number of shares of Common Stock reserved hereunder, by a bankruptcy court shall serve as stockholder approval, except to the extent otherwise prohibited by law or the rules of the principal national stock exchange on which the Common Stock is then traded. This Plan shall terminate as of the first annual meeting of the Company's stockholders to occur on or after the tenth (10th) anniversary of its effective date, unless terminated earlier by the Committee. Termination of this Plan shall not affect the terms or conditions of any award granted prior to termination.

V.2 Amendments. The Committee may amend this Plan as it shall deem advisable; provided, however, that no amendment to this Plan shall be effective without the approval of the Company's stockholders if (i) stockholder approval is required by applicable law, rule or regulation, including any rule of any stock exchange on which the Common Stock is then traded, or (ii) such amendment seeks to modify the Non-Employee Director compensation limit set forth in Section 1.4 or the prohibition on repricing set forth in Section 2.4 hereof; provided further, that no amendment may materially impair the rights of a holder of an outstanding award without the consent of such holder.

V.3 Agreement. Each award under this Plan shall be evidenced by an Agreement setting forth the terms and conditions applicable to such award. No award shall be valid until an Agreement is executed by the Company and, to the extent required by the Company, either executed by the recipient or accepted by the recipient by electronic means approved by the Company within the time period specified by the Company. Upon such execution or execution and electronic acceptance, and delivery of the Agreement to the Company, such award shall be effective as of the effective date set forth in the Agreement.

V.4 Non-Transferability. No award shall be transferable other than by will, the laws of descent and distribution or pursuant to beneficiary designation procedures approved by the Company or, to the extent expressly permitted in the Agreement relating to such award, to the holder's family members, a trust or entity established by the holder for estate planning purposes, a charitable organization designated by the holder, in each case, without consideration. Except to the extent permitted by the foregoing sentence or the Agreement relating to an award, each award may be exercised or settled during the holder's lifetime only by the holder or the holder's legal representative or similar person. Except as permitted by the second preceding sentence, no award may be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or

similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of any award, such award and all rights thereunder shall immediately become null and void.

V.5 Tax Withholding. The Company shall have the right to require, prior to the issuance or delivery of any shares of Common Stock or the payment of any cash pursuant to an award made hereunder, payment by the holder of such award of any federal, state, local or other taxes which may be required to be withheld or paid in connection with such award. An Agreement may provide that (i) the Company shall withhold whole shares of Common Stock which would otherwise be delivered to a holder, having an aggregate Fair Market Value determined as of the date the obligation to withhold or pay taxes arises in connection with an award (the “Tax Date”), or withhold an amount of cash which would otherwise be payable to a holder, in the amount necessary to satisfy any such obligation or (ii) the holder may satisfy any such obligation by any of the following means: (A) a cash payment to the Company; (B) delivery (either actual delivery or by attestation procedures established by the Company) to the Company of previously owned whole shares of Common Stock having an aggregate Fair Market Value, determined as of the Tax Date, equal to the amount necessary to satisfy any such obligation; (C) authorizing the Company to withhold whole shares of Common Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the Tax Date, or withhold an amount of cash which would otherwise be payable to a holder equal to the amount necessary to satisfy any such obligation; (D) in the case of the exercise of an option, a cash payment by a broker-dealer acceptable to the Company to whom the participant has submitted an irrevocable notice of exercise or sale; or (E) any combination of (A), (B) and (C), in each case to the extent set forth in the Agreement relating to the award. If a fraction of a share of Common Stock would be required to satisfy such an obligation, then the number of shares of Common Stock to be delivered or withheld may be rounded up to the nearest whole share of Common Stock.

Except as required by applicable law the Company has no duty or obligation to any participant to advise such holder as to the time or manner of exercising such award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an award or a possible period in which the award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an award to the holder of such award and will not be liable to any holder of an award for any adverse tax consequences to such holder in connection with an award. As a condition to accepting an award under this Plan, each participant: (i) agrees to not make any claim against the Company, or any of its officers, directors, employees or affiliates related to tax liabilities arising from such award or other Company compensation, and (ii) acknowledges that such participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of the award and has either done so or knowingly and voluntarily declined to do so. Additionally, each participant acknowledges any option or SAR granted under this Plan is exempt from Section 409A of the Code only if the exercise or strike price is at least equal to the “fair market value” of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the award. Additionally, as a condition to accepting an option or SAR granted

under this Plan, each participant agrees not make any claim against the Company, or any of its officers, directors, employees or affiliates in the event that the Internal Revenue Service asserts that such exercise price or strike price is less than the “fair market value” of the Common Stock on the date of grant, as subsequently determined by the Internal Revenue Service.

As a condition to accepting an award under this Plan, in the event that the amount of the Company’s and/or its affiliate’s withholding obligation in connection with such award was greater than the amount actually withheld by the Company and/or its affiliates, each participant agrees to indemnify and hold the Company and/or its affiliates harmless from any failure by the Company and/or its affiliates to withhold the proper amount.

V.6 Restrictions on Shares. Each award made hereunder shall be subject to the requirement that if at any time the Company determines that the listing, registration or qualification of the shares of Common Stock subject to such award upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the delivery of shares thereunder, such shares shall not be delivered unless such listing, registration, qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company may require that certificates evidencing shares of Common Stock delivered pursuant to any award made hereunder bear a legend indicating that the sale, transfer or other disposition thereof by the holder is prohibited except in compliance with the Securities Act of 1933, as amended, and the rules and regulations thereunder.

V.7 Adjustment. In the event of any equity restructuring (within the meaning of Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation—Stock Compensation or any successor or replacement accounting standard) that causes the per share value of shares of Common Stock to change, such as a stock dividend, stock split, spinoff, rights offering or recapitalization through an extraordinary cash dividend, the number and class of securities available under this Plan, the terms of each outstanding option and SAR (including the number and class of securities subject to each outstanding option or SAR and the purchase price or base price per share), the terms of each outstanding Stock Award (including the number and class of securities subject thereto), and the terms of each outstanding Performance Award (including the number and class of securities subject thereto, if applicable), shall be appropriately adjusted by the Administrator, such adjustments to be made in the case of outstanding options and SARs without an increase in the aggregate purchase price or base price and in accordance with Section 409A of the Code. In the event of any other change in corporate capitalization, including a merger, consolidation, reorganization, or partial or complete liquidation of the Company, such equitable adjustments described in the foregoing sentence may be made as determined to be appropriate and equitable by the Administrator to prevent dilution or enlargement of rights of participants. In either case, the decision of the Administrator regarding any such adjustment shall be final, binding and conclusive.

V.8 Change in Control.

(a) Subject to the terms of the applicable Agreements, in the event of a “Change in Control” and notwithstanding any provision in Section 1.3 or Section 1.6 to the contrary:

(1) to the extent the corporation resulting from or succeeding to the business of the Company pursuant to such Change in Control, or a parent corporation thereof, (the “Acquiring Corporation”), shall not assume the outstanding awards under this Plan or substitute new awards therefor having an equivalent value for such outstanding awards, the Board (as constituted prior to such Change in Control), may, in its discretion, require that (i) some or all outstanding options and SARs shall become exercisable in full or in part, (ii) the Restriction Period applicable to some or all outstanding Stock Awards shall lapse in full or in part, either immediately or upon a subsequent termination of employment, (iii) the Performance Period applicable to some or all outstanding awards shall lapse in full or in part, and (iv) the Performance Measures applicable to some or all outstanding awards shall be deemed to be satisfied at the greatest of target, the actual performance level attained, or such other performance level that may be reasonably projected to be attained with respect to such awards; and

(2) to the extent the Acquiring Corporation, shall assume the outstanding awards under this Plan or substitute new awards therefor having an equivalent value for such outstanding awards, the Board (as constituted prior to such Change in Control), may, in its discretion, require that if the Acquiring Corporation terminates a participant’s employment or service without cause upon or within two (2) years after the Change in Control, (i) some or all of the participant’s outstanding options and SARs shall become exercisable in full or in part, (ii) the Restriction Period applicable to some or all of the participant’s outstanding Stock Awards shall lapse in full or in part, (iii) the Performance Period applicable to some or all of the participant’s outstanding awards shall lapse in full or in part, and (iv) the Performance Measures applicable to some or all outstanding awards shall be deemed to be satisfied at the greatest of target, the actual performance level attained, or such other performance level that may be reasonably projected to be attained with respect to such awards .

(b) For purposes of this Plan, a “Change in Control” shall be deemed to have occurred if:

(1) the consummation of an acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of either (x) the then outstanding shares of Common Stock of the Company (the “Outstanding Company Common Stock”) or (y) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”) provided, however, that for purposes of this subsection (1), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company; (B) any acquisition by the Company; (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (A), (B) and (C) of subsection (2) of this Section 5.8(b);

(2) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its subsidiaries or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its subsidiaries (a “Business Combination”), in each case, unless, following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or, for a noncorporate entity, equivalent securities), as the case may be, of the entity resulting from such Business Combination (including an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be; (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, fifty percent (50%) or more of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination; and (C) at least a majority of the members of the board of directors (or, for a noncorporate entity, equivalent body or committee) of the entity resulting from such Business Combination were members of the Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(3) the approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, (B) the definition of Change in Control or any analogous term in an individual written agreement between the Company or any affiliate and the participant shall supersede the foregoing definition with respect to awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply, and (C) with respect to any nonqualified deferred compensation that becomes payable on account of the Change in Control, such transaction or event also constitutes a “change in ownership,” a “change in effective control” or a “change in the ownership of a substantial portion of the assets” of the Company within the meaning of Section 409A of the Code if required in order for the payment not to violate Section 409A of the Code.

V.9 Deferrals and Section 409A.

(a) Awards made under this Plan are intended to comply with or be exempt from Section 409A of the Code, and ambiguous provisions, if any, set forth herein or any Agreement shall be construed and interpreted in a manner consistent with such intent. No payment, benefit or consideration shall be substituted for an award if such action would result in the imposition of taxes under Section 409A of the Code. Notwithstanding anything in this Plan to the contrary, if any Plan provision or award under this Plan would result in the imposition of an additional tax under Section 409A of the Code, that Plan provision or award shall be reformed, to the extent permissible under Section 409A of the Code, to avoid imposition of the additional tax, and no such action shall be deemed to materially impair the rights of a holder of an outstanding award.

(b) Unless the Administrator provides otherwise in an Agreement, each Stock Award or Performance Award (or portion thereof if the award is subject to a vesting schedule) shall be settled no later than the fifteenth (15th) day of the third (3rd) month after the end of the first (1st) calendar year in which the award (or such portion thereof) is no longer subject to a “substantial risk of forfeiture” within the meaning of Section 409A of the Code. Notwithstanding the foregoing, the Administrator may determine that the delivery of shares of Common Stock or the payment of cash, or a combination thereof, upon the settlement of all or a portion of any award made hereunder shall be deferred, or the Administrator may, in its sole discretion, approve deferral elections made by holders of awards. Deferrals shall be for such periods and upon such terms as the Administrator may determine in its sole discretion, subject to the requirements of Section 409A of the Code.

(c) If a holder of an award is determined on the date of the holder’s termination of employment to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then, with regard to any payment under this Plan that is considered nonqualified deferred compensation under Section 409A of the Code and which is payable on account of a “separation from service” (within the meaning of Section 409A of the Code), such payment shall be delayed until the earlier of (i) the first business day following the six (6)-month anniversary of the holder’s “separation from service” and (ii) the date of the holder’s death (the “Delay Period”). Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 5.9(c) (whether they would have otherwise been payable in a single lump sum or in installments in the absence of such delay) will be paid in a lump sum, without interest, on the first (1st) business day following the expiration of the Delay Period and any remaining payments due under the award will be paid in accordance with the normal payment dates specified for them in the applicable Agreement. For purposes of Section 409A of the Code, each payment made under this Plan or any award shall be treated as a separate payment.

V.10 No Right of Participation, Employment or Service. Unless otherwise set forth in an employment agreement, no person shall have any right to participate in this Plan. Neither this Plan nor any award made hereunder shall confer upon any person any right to continued employment by or service with the Company, any Subsidiary or any affiliate of the Company or

affect in any manner the right of the Company, any Subsidiary or any affiliate of the Company to terminate the employment or service of any person at any time without liability hereunder.

V.11 Rights as Stockholder. No person shall have any right as a stockholder of the Company with respect to any shares of Common Stock or other equity security of the Company which is subject to an award hereunder unless and until such person becomes a stockholder of record with respect to such shares of Common Stock or equity security.

V.12 Designation of Beneficiary. To the extent permitted by the Company, a holder of an award may file with the Company a written designation of one or more persons as such holder's beneficiary or beneficiaries (both primary and contingent) in the event of the holder's death or incapacity. To the extent an outstanding option or SAR granted hereunder is exercisable, such beneficiary or beneficiaries shall be entitled to exercise such option or SAR pursuant to procedures prescribed by the Company. Each beneficiary designation shall become effective only when filed in writing with the Company during the holder's lifetime on a form prescribed by the Company. The spouse of a married holder domiciled in a community property jurisdiction shall join in any designation of a beneficiary other than such spouse. The filing with the Company of a new beneficiary designation shall cancel all previously filed beneficiary designations. If a holder fails to designate a beneficiary, or if all designated beneficiaries of a holder predecease the holder, then each outstanding award held by such holder, to the extent vested or exercisable, shall be payable to or may be exercised by such holder's executor, administrator, legal representative or similar person.

V.13 Unfunded Plan. This Plan and all of the awards granted hereunder shall be unfunded. To the extent any holder of an award acquires a right to receive payments from the Company under this Plan, such rights shall be no greater than the rights of an unsecured general creditor of the Company, and such individual shall not have any rights in or against any specific assets of the Company.

V.14 Awards Subject to Clawback. The awards granted under this Plan and any cash payment or shares of Common Stock delivered pursuant to an award are subject to forfeiture, recovery by the Company or other action pursuant to the applicable Agreement or any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.

V.15 Governing Law. This Plan, each award hereunder and the related Agreement, and all determinations made and actions taken pursuant thereto, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware and construed in accordance therewith without giving effect to principles of conflicts of laws.

V.16 Foreign Employees. Without amending this Plan, the Administrator may grant awards to eligible persons who are foreign nationals and/or reside outside of the United States on such terms and conditions different from those specified in this Plan as may in the judgment of the

Administrator be necessary or desirable to foster and promote achievement of the purposes of this Plan and, in furtherance of such purposes the Administrator may make such modifications, amendments, procedures, subplans and the like as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or its Subsidiaries operates or has employees.