

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **May 8, 2014**

**Huntsman Corporation**

(Exact name of registrant as specified in its charter)

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

**001-32427**  
(Commission  
File Number)

**42-1648585**  
(IRS Employer  
Identification No.)

**500 Huntsman Way**  
**Salt Lake City, Utah**  
(Address of principal executive offices)

**84108**  
(Zip Code)

Registrant's telephone number, including area code:  
**(801) 584-5700**

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

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

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

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

(e) Amendment and Restatement of Huntsman Stock Incentive Plan

As described in Item 5.07 below, on May 8, 2014 at the 2014 Annual Meeting of Stockholders (the "Annual Meeting") of Huntsman Corporation (the "Company"), the Company's stockholders approved an amendment and restatement to the Huntsman Stock Incentive Plan in order to, among other items, increase the number of shares reserved for issuance under the plan by 4,580,000 shares and maintain the plan's compliance with Section 162(m) of the Internal Revenue Code of 1986, as amended.

A summary of the Amended and Restated Stock Incentive Plan is set forth in the Company's definitive proxy statement filed with the Securities and Exchange Commission on March 28, 2014 (the "Proxy Statement"). That summary and the above description of the Amended and Restated Stock Incentive Plan do not purport to be complete and are qualified in their entirety by reference to the Amended and Restated Stock Incentive Plan, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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

As described in Item 5.07 below, at the Annual Meeting, the Company's stockholders approved an amendment and restatement of the Company's Amended and Restated Certificate of Incorporation (the "Certificate" and as amended and restated, the "Amended and Restated Certificate") to eliminate the classified structure of the Board of Directors by providing the phase-in of the annual election of directors. The Amended and Restated Certificate became effective upon its filing with the Delaware Secretary of State on May 8, 2014. A copy of the Amended and Restated Certificate is attached hereto as Exhibit 3.1 and is incorporated into this Item 5.03 by reference.

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

(a) The Annual Meeting was held on May 8, 2014.

(b) The Company's stockholders voted on the following five proposals (described in detail in the Proxy Statement) at the Annual Meeting and cast their votes as follows:

**Proposal No. 1** The three nominees named below were elected to serve as Class I directors of the board of directors, to serve until the 2017 Annual Meeting, and the voting results were as follows.

Class I Directors	For	Withheld	Broker Non-Votes
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Jon M. Huntsman	179,053,714	14,405,375	30,311,660
Dr. Patrick T. Harker	159,461,009	33,998,080	30,311,660
Dr. Mary C. Beckerle	182,586,128	10,872,961	30,311,660

**Proposal No. 2** The non-binding advisory vote to approve the compensation of the Company's named executive officers was approved as set forth below.

For	Against	Abstain	Broker Non-Votes
131,224,509	43,380,052	18,854,528	30,311,660

**Proposal No. 3** The appointment of Deloitte & Touche LLP as the independent registered public accounting firm for the year ending December 31, 2014 was ratified, and the voting results were as follows.

For	Against	Abstain
209,219,637	5,271,294	9,279,818

**Proposal No. 4** The vote to approve the amendment and restatement of the Huntsman Stock Incentive Plan was approved as set forth below.

For	Against	Abstain	Broker Non-Votes
155,854,553	28,495,095	9,109,444	30,311,660

**Proposal No. 5** The vote to approve the amendment and restatement of the Certificate was approved as set forth below.

For	Against	Abstain	Broker Non-Votes
180,210,866	4,243,989	9,004,234	30,311,660

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

Number	Description of Exhibits
3.1	Amended and Restated Certificate of Incorporation of Huntsman Corporation
10.1	Amended and Restated Huntsman Stock Incentive Plan

**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.

HUNTSMAN CORPORATION

/s/ TROY M. KELLER  
*Assistant Secretary*

Dated: May 12, 2014

**EXHIBIT INDEX**

Number	Description of Exhibits
3.1	Amended and Restated Certificate of Incorporation of Huntsman Corporation
10.1	Amended and Restated Huntsman Stock Incentive Plan

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HUNTSMAN CORPORATION**

The name of the corporation is "Huntsman Corporation" (the "Corporation").

The original certificate of incorporation was filed with the Secretary of State of the State of Delaware on October 19, 2004.

This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") has been declared advisable by the board of directors of the Corporation (the "Board"), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by the officers of the Corporation in accordance with Sections 103, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

The text of the certificate of incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

**ARTICLE I  
NAME**

The name of the Corporation is "Huntsman Corporation."

**ARTICLE II  
REGISTERED AGENT**

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

**ARTICLE III  
PURPOSE**

The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV  
CAPITAL STOCK**

Section 4.1 Authorized Capital Stock. The Corporation shall be authorized to issue 1,300,000,000 shares of capital stock, consisting of two classes: 1,200,000,000 shares of common stock, par value \$0.01 per share ("Common Stock"), and 100,000,000 shares of preferred stock, par value \$0.01 per share ("Preferred Stock").

Section 4.2. Preferred Stock. The authorized shares of Preferred Stock may be issued in one or more series. Subject to any provision made in this Article IV fixing and determining the designations, powers, rights and preferences of any series of Preferred Stock, the Board is hereby authorized to issue the shares of Preferred Stock in such series and to fix from time to time the number of shares to be included in any series and the designations, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or

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restrictions thereof, of all shares of such series, all of which shall be stated in a resolution or resolutions providing for the issuance of such Preferred Stock (a "Preferred Stock Designation").

Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of any Preferred Stock Designation, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote generally in the election of directors irrespective of the provisions of Section 242(b)(2) of the DGCL. Except as otherwise provided by law or by a Preferred Stock Designation, the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders.

Section 4.3. Common Stock. The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. The holders of shares of Common Stock shall be entitled to one vote for each such share upon all proposals on which the holders of Common Stock are entitled to vote. Except as otherwise provided by law or by any Preferred Stock Designation, the holders of Common Stock shall have the exclusive right to vote for the members of the Board (the "Directors") and for all other purposes. Holders of Common Stock are entitled to receive ratably dividends if, as and when dividends are declared from time to time by the Board out of funds legally available for that purpose.

Section 4.4. Registered Owners. The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

**ARTICLE V  
THE BOARD**

Section 5.1. Number, Election and Terms of Directors

(a) The number of Directors that constitute the entire Board shall be fixed from time to time by a majority of the total number of authorized Directors, whether or not there exists any vacancy in previously authorized directorships; provided, however, that the number of Directors that constitute the entire Board shall be not less than three nor more than fifteen; and

(b) Subject to the rights of any Preferred Stock as set forth in a Preferred Stock Designation:

(i) until the election of Directors at the 2015 annual meeting of stockholders, pursuant to Section 141(d) of the DGCL, the Directors (other than those Directors elected by the holders of any series of Preferred Stock pursuant to a Preferred Stock Designation (the "Preferred Stock Directors")) shall be divided into three classes, Class I, Class II and Class III, which shall be as equal in number as possible, with the Directors in Class I having a term expiring at the 2015 annual meeting of stockholders, the Directors in Class II having a term expiring at the 2016 annual meeting and the Directors in Class III having a term expiring at the 2017 annual meeting of stockholders;

(ii) commencing with the election of Directors at the 2015 annual meeting of stockholders, pursuant to Section 141(d) of the DGCL, the Directors

(other than the Preferred Stock Directors) shall be divided into two classes, Class I and Class II, with the Directors in Class I having a term expiring at the 2016 annual meeting of stockholders and the Directors in Class II having a term expiring at the 2017 annual meeting of stockholders. The successors of the Directors who, immediately prior to the 2015 annual meeting of stockholders, were members of Class I (and whose terms expire at the 2015 annual meeting of stockholders) shall be elected to Class I; the Directors who, immediately prior to the 2015 annual meeting of stockholders, were members of Class II and whose terms were scheduled to expire at the 2016 annual meeting of stockholders shall become members of Class I; and the Directors who, immediately prior to the 2015 annual meeting of stockholders, were members of Class III and whose terms were scheduled to expire

at the 2017 annual meeting of stockholders shall become members of Class II with a term expiring at the 2017 annual meeting of stockholders;

(iii) commencing with the election of Directors at the 2016 annual meeting of stockholders, pursuant to Section 141(d) of the DGCL, the Directors (other than the Preferred Stock Directors) shall be members of a single class, Class I, with all Directors of such class having a term expiring at the 2017 annual meeting of stockholders. The successors of the Directors who, immediately prior to the 2016 annual meeting of stockholders, were members of Class I (and whose terms expire at the 2016 annual meeting of stockholders) shall be elected to Class I for a term that expires at the 2017 annual meeting of stockholders, and the Directors who, immediately prior to the 2016 annual meeting of stockholders, were members of Class II and whose terms were scheduled to expire at the 2017 annual meeting of stockholders shall become members of Class I with a term expiring at the 2017 annual meeting of stockholders; and

(iv) from and after the election of Directors at the 2017 annual meeting of stockholders, the Board shall cease to be classified as provided in Section 141(d) of the DGCL, and the Directors elected at the 2017 annual meeting of stockholders (and each annual meeting of stockholders thereafter) shall be elected for a term expiring at the next annual meeting of stockholders and may be removed with or without cause.

(c) Other than with respect to Preferred Stock Directors, in no case will a decrease in the number of directors shorten the term of any incumbent Director. Each Director shall hold office until the annual meeting of stockholders at which such Director's term expires and, the foregoing notwithstanding, shall serve until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal.

(d) Election of Directors need not be by written ballot unless the Bylaws of the Corporation (the "Bylaws") shall so provide.

Section 5.2. Removal Of Directors. Until the election of directors at the 2017 annual meeting of stockholders, no Director, other than Preferred Stock Directors, shall be removed from office as a Director by vote or other action of the stockholders or otherwise except for cause, and then only by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of capital stock of the Corporation generally entitled to vote in the election of Directors, voting together as a single class.

Section 5.3. Vacancies. Subject to any requirements of law to the contrary, other than with respect to Preferred Stock Directors, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation or removal shall only be filled by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board. Until the election of directors at the 2017 annual meeting of stockholders, any Director elected in accordance with the first sentence of this Section 5.3 shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been elected and qualified or until his or her earlier death, resignation or removal. From and after the 2017 annual meeting of stockholders, any Director elected in accordance with the first sentence of this Section 5.3 shall hold office until the first meeting of the stockholders held after such Director's appointment for the purpose of electing directors and until such Director's successor shall have been elected and qualified or until his or her earlier death, resignation or removal.

Section 5.4. Preferred Stock Directors. During any period when the holders of any series of Preferred Stock have the right to elect additional directors pursuant to the provisions of a Preferred Stock Designation, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of Directors of the Corporation shall automatically be increased by such specified number of Directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for

or fixed pursuant to said provisions, and (ii) each such additional Director shall serve until such Director's successor shall have been duly elected and qualified, or until such Director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional Directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional Directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional Directors, shall forthwith terminate and the total authorized number of Directors of the Corporation shall automatically be reduced accordingly.

## ARTICLE VI BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board.

## ARTICLE VII AMENDMENT OF CERTIFICATE OF INCORPORATION

Except as otherwise provided in this Certificate of Incorporation or the Bylaws or by applicable law, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and, except as set forth in Article IX, all rights, preferences and privileges of whatever nature conferred upon stockholders, Directors or any other person by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

## ARTICLE VIII STOCKHOLDER ACTION BY WRITTEN CONSENT

Any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders except as permitted by a Preferred Stock Designation with respect to the rights of a series of Preferred Stock.

## ARTICLE IX LIMITED LIABILITY OF DIRECTORS

A Director shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except, if and to the extent required by the DGCL, as amended from time to time, for liability (i) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the Director derived an improper personal benefit. Neither the amendment nor repeal of this Article IX shall eliminate or reduce the effect of this Article IX in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article IX, would accrue or arise, prior to such amendment or repeal.

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IN WITNESS WHEREOF, Huntsman Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its Executive Vice President, General Counsel and Secretary this 8th day of May, 2014.

/s/ David M. Stryker

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David M. Stryker  
Executive Vice President, General Counsel and  
Secretary

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**HUNTSMAN CORPORATION**  
**STOCK INCENTIVE PLAN**  
(as amended and restated effective May 8, 2014)

**SECTION 1. Purpose of the Plan**

The Huntsman Corporation Stock Incentive Plan, as amended from time to time (the "**Plan**"), is intended to promote the interests of Huntsman Corporation, a Delaware corporation (the "**Company**"), by encouraging Employees, Consultants and Directors to acquire or increase their equity interest in the Company and to provide a means whereby they may develop a sense of proprietorship and personal involvement in the development and financial success of the Company, and to encourage them to remain with and devote their best efforts to the business of the Company, thereby advancing the interests of the Company and its stockholders. The Plan is also contemplated to enhance the ability of the Company and its Subsidiaries to attract and retain the services of individuals who are essential for the growth and profitability of the Company.

**SECTION 2. Definitions**

As used in the Plan, the following terms shall have the meanings set forth below:

"**Award**" shall mean an Option, Restricted Stock Award, Performance Award, Phantom Share, SAR, Bonus Stock Award, Dividend Equivalent, Substitute Award, or Other Stock-Based Award.

"**Award Agreement**" shall mean any written or electronic agreement, contract, instrument, or document evidencing any Award, which may, but need not, be executed or acknowledged by a Participant.

"**Board**" shall mean the Board of Directors of the Company.

"**Bonus Stock**" shall mean Common Stock granted as a bonus pursuant to Section 6(f).

"**Change of Control**" shall mean: (a) with respect to an Award that is subject to section 409A of the Code, the occurrence of any event which constitutes a change of control under section 409A of the Code, including any regulations promulgated pursuant thereto; and (b) with respect to any other Award, the occurrence of any of the following events: (i) the acquisition by any "person," as such term is used in sections 13(d) and 14(d) of the Exchange Act, other than the Company, a Subsidiary of the Company or a Company employee benefit plan, of "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 20% or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors; or (ii) the consummation of a reorganization, merger, consolidation or other form of corporate transaction or series of transactions, in each case, with respect to which Persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation or other transaction do not, immediately thereafter, own more than 20% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities in substantially the same proportions

as their ownership immediately prior to such event; or (iii) the sale or disposition by the Company of all or substantially all the Company's assets; or (iv) a change in the composition of the Board, as a result of which fewer than a majority of the directors are Incumbent Directors; or (v) the approval by the Board or the stockholders of the Company of a complete or substantially complete liquidation or dissolution of the Company.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations thereunder.

"**Committee**" shall mean the Board or any committee of the Board designated, from time to time, by the Board to act as the Committee under the Plan; provided, however, that, unless otherwise determined by the Board, the Committee shall consist solely of two or more directors, each of whom shall be a Qualified Member (except to the extent administration of this Plan by "outside directors" is not then required in order to qualify for tax deductibility under section 162(m) of the Code).

"**Consultant**" shall mean any individual who is not an Employee or a Director and who provides consulting, advisory or other similar services to the Company or a Subsidiary.

"**Covered Employee**" shall mean an Employee who is designated by the Committee, at the time of grant of a Performance Award, as likely to be a "covered employee" within the meaning of section 162(m) of the Code.

"**Director**" shall mean any member of the Board who is not an Employee.

"**Dividend Equivalent**" shall mean a right, granted to an Employee, Consultant or Director under Section 6(g), to receive cash, Common Stock, other Awards or other property equal in value to dividends paid with respect to a specified number of shares of Common Stock, or other periodic payments.

"**Effective Date**" shall mean, for this amendment and restatement, May 8, 2014. The Plan was originally adopted by the Company on February 8, 2005, and was most recently amended and restated effective November 4, 2009.

"**Employee**" shall mean any employee of the Company or a Subsidiary.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations thereunder.

"**Fair Market Value**" shall mean, as of any applicable date, the closing sales price for a Share on the New York Stock Exchange (or such other national securities exchange which constitutes the principal trading market for the Shares) for the applicable date as reported by such reporting service approved by the Committee; provided, however, that if Shares shall not have been quoted or traded on such applicable date, Fair Market Value shall be determined based on the last preceding date on which they were quoted or traded, or, if deemed appropriate by the Committee, in such other manner as it may determine to be appropriate, in accordance with the Non-Qualified Deferred Compensation Rules. In the event the Common Stock is not publicly traded at the time a determination of its Fair Market Value is required to be made hereunder, the

determination of Fair Market Value shall be made in good faith by the Committee, taking into account all factors the Committee deems appropriate, including without limitation the Non-Qualified Deferred Compensation Rules.

"**Incentive Stock Option**" or "**ISO**" shall mean an option granted under Section 6(a) of the Plan that is intended to qualify as an "incentive stock option" under

section 422 of the Code or any successor provision thereto.

“**Incumbent Directors**” shall mean directors who either (A) are directors of the Company as of the Effective Date, or (B) are elected, or nominated for election, thereafter to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination, but “Incumbent Director” shall not include an individual whose election or nomination is in connection with (i) an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or an actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board or (ii) a plan or agreement to replace a majority of the then Incumbent Directors.

“**Non-Qualified Deferred Compensation Rules**” shall mean the limitations or requirements of section 409A of the Code and the guidance and regulations promulgated thereunder.

“**Non-Qualified Stock Option**” or “**NQO**” shall mean an option granted under Section 6(a) of the Plan that is not intended to be an Incentive Stock Option.

“**Option**” shall mean an Incentive Stock Option or a Non-Qualified Stock Option.

“**Other Stock-Based Award**” shall mean an Award granted under Section 6(i) of the Plan.

“**Participant**” shall mean any Employee, Consultant or Director who was granted an Award under the Plan that remains outstanding.

“**Performance Award**” shall mean any right granted under Section 6(c) of the Plan.

“**Person**” shall mean any individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, government or political subdivision thereof or other entity.

“**Phantom Shares**” shall mean the right to receive Shares or cash equal to the Fair Market Value of such Shares, or any combination thereof, as determined by the Committee, at the end of a specified deferral period (which may or may not be coterminous with the Restricted Period of the Award), which is granted pursuant to Section 6(d) of the Plan.

“**Qualified Member**” shall mean a member of the Committee who is a “nonemployee director” within the meaning of Rule 16b-3(b)(3) and an “outside director” within the meaning of Treasury regulation 1.162-27 under section 162(m) of the Code.

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“**Restricted Period**” shall mean the period established by the Committee with respect to an Award during which the Award either remains subject to forfeiture or is not exercisable by the Participant.

“**Restricted Stock**” shall mean any Share, prior to the lapse of restrictions thereon, granted under Section 6(b) of the Plan.

“**Rule 16b-3**” shall mean Rule 16b-3 promulgated by the SEC under the Exchange Act, or any successor rule or regulation thereto as in effect from time to time.

“**SAR**” shall mean a stock appreciation right granted under Section 6(e) of the Plan that entitles the holder to receive the excess of the Fair Market Value of a Share on the relevant date over the exercise price of such SAR, with the excess paid in cash and/or in Shares in the discretion of the Committee, subject to the limitation on cash payments in Section 4(d).

“**SEC**” shall mean the Securities and Exchange Commission, or any successor thereto.

“**Shares**” or “**Common Shares**” or “**Common Stock**” shall mean the common stock of the Company, \$0.01 par value, and such other securities or property as may become the subject of Awards under the Plan.

“**Subsidiary**” shall mean any entity (whether a corporation, partnership, joint venture, limited liability company or other entity) in which the Company owns a majority of the voting power of the entity directly or indirectly, and any other entity in which the Company has an economic interest that is designated by the Committee as a Subsidiary for purposes of the Plan, except (i) with respect to the grant of an ISO, in which case the term Subsidiary shall mean any “subsidiary corporation” of the Company as defined in section 424 of the Code, or (ii) in the case of Options or SARs that are intended to comply with Treasury regulation 1.409A-1(b)(5)(i), in which case the term Subsidiary shall mean an entity in a chain of entities in which each entity has a “controlling interest” in another entity in the chain, starting with the Company.

“**Substitute Award**” shall mean an Award granted pursuant to Section 6(h) of the Plan.

### **SECTION 3. Administration.**

The Plan shall be administered by the Committee. A majority of the Committee shall constitute a quorum, and the acts of the members of the Committee who are present at any meeting thereof at which a quorum is present, or acts unanimously approved by the members of the Committee in writing, shall be the acts of the Committee. Subject to the terms of the Plan and applicable law, and in addition to other express powers and authorizations conferred on the Committee by the Plan, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of Shares to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) interpret and administer the Plan and

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any instrument or agreement relating to an Award made under the Plan; (vii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; (viii) amend any Award under the Plan as provided in Section 7(b); and (ix) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive, and binding upon all Persons, including the Company, any Subsidiary, any Participant, any holder or beneficiary of any Award, any stockholder and any other Person. The Committee may, subject to any applicable law, regulatory, securities exchange or other similar restrictions, delegate to one or more officers of the Company the authority to grant Awards to Employees and Consultants who are not, and whose family members are not, subject to section 16(b) of the Exchange Act (for this purpose “family members” include the brothers or sisters (whether by whole or half blood), spouse, ancestors, or lineal descendants of the Employee or Consultant, and any spouse of any of the foregoing). The Committee may impose such limitations and restrictions, in addition to any required limitations or restrictions, as the Committee may determine in its sole discretion. Any Award granted pursuant to such a delegation shall be subject to all of the provisions of the Plan concerning such

Award.

#### **SECTION 4. Shares Available for Awards.**

(a) Shares Available. Subject to adjustment as provided in Section 4(c), the number of Shares that may be issued with respect to Awards (including pursuant to the exercise of Incentive Stock Options) under the Plan, since its original inception, shall be 37,170,909 Shares. To the extent an Award has been or is settled with the delivery of Shares, such Shares shall not be available for issuance under future Awards under the Plan. If an Award is surrendered, exchanged, forfeited, settled in cash or otherwise lapses, expires, terminates or is canceled without the actual delivery of Shares, including (i) Shares forfeited with respect to Restricted Stock, or (ii) the number of Shares withheld or surrendered in payment of any exercise or purchase price of an Award or taxes relating to Awards, then the Shares covered by such Award, to the extent of such surrender, exchange, forfeiture, expiration, lapse, termination, cancellation or payment in cash, shall again be Shares that may be issued with respect to Awards granted under the Plan. Notwithstanding the foregoing provisions, if any such Shares could not again be available for Awards to a particular Covered Employee under applicable law or regulation, such Shares shall be available exclusively for Awards to Participants who are not subject to such limitation.

(b) Sources of Shares Deliverable Under Awards. Any Shares delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares, treasury Shares or previously issued Shares reacquired by the Company, including Shares purchased on the open market.

(c) Anti-dilution Adjustments. With respect to any "equity restructuring" event (such as a stock dividend, stock split, reverse stock split or similar event with respect to Shares) that could result in an additional compensation expense to the Company pursuant to the provisions of the Financial Accounting Standards Board, Accounting Standards Codification, Topic 718—

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Stock Compensation, as the same may be amended or superseded from time to time ("*ASC Topic 718*"), if adjustments to Awards with respect to such event were discretionary, the Committee shall equitably adjust the number and type of Shares (or other securities or property) covered by each outstanding Award and the terms and conditions, including the exercise price and performance criteria (if any), of such Award to equitably reflect such restructuring event. With respect to any other similar event that would not result in an ASC Topic 718 accounting charge if the adjustment to Awards with respect to such event were subject to discretionary action, the Committee shall have complete discretion to adjust Awards in such manner as it deems appropriate with respect to such other event. In the event the Committee makes any adjustment pursuant to the foregoing provisions of this Section 4(c), the Committee shall make a corresponding and proportionate adjustment to the maximum number and the type of Shares (or other securities or property) with respect to which Awards may be granted under the Plan after such event as provided in Section 4(a) and the individual participant annual grant limits with respect to Awards (other than dollar-denominated Awards) as provided in Section 4(d). Any such adjustments pursuant to this Section 4(c) shall be evidenced by written addendums to the Plan and Award Agreements prepared by the Company and, with respect to Options, shall be in accordance with the Treasury regulations concerning Incentive Stock Options.

(d) Individual Participant Limits. Subject to adjustment as provided in Section 4(c), the maximum number of Share-denominated Awards that may be granted under the Plan to any individual during any calendar year during any part of which this Plan is in effect shall not relate to more than 3,000,000 shares of Common Stock. The maximum amount of dollar-denominated Awards that may be granted to any individual during any calendar year may not exceed \$15,000,000.

#### **SECTION 5. Eligibility.**

Any Employee, Consultant or Director shall be eligible to be designated a Participant by the Committee.

#### **SECTION 6. Awards.**

(a) Options. Subject to the provisions of the Plan, the Committee shall have the authority to determine Employees, Consultants and Directors to whom Options shall be granted, the number of Shares to be covered by each Option, the exercise price therefor and the conditions and limitations applicable to the exercise of the Option, including the applicable Restricted Period and/or performance objectives, if any, and the following terms and conditions and such additional terms and conditions, as the Committee shall determine, that are not inconsistent with the provisions of the Plan.

(i) Exercise Price. The exercise price per Share purchasable under an Option shall be determined by the Committee at the time the Option is granted, but, except with respect to a Substitute Award, shall not be less than the Fair Market Value per Share on the effective date of such grant.

(ii) Time and Method of Exercise. The Committee shall determine and provide in the Award Agreement the time or times at which an Option may be exercised

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in whole or in part, and the method or methods by which, and the form or forms (which may include, without limitation, cash, check acceptable to the Company, Shares already-owned by the Participant, a "cashless-broker" exercise (through procedures approved by the Company), other securities or other property, a note (to the extent permitted by applicable law), a withholding or "netting" of Shares from the Option if it is not an Incentive Stock Option, or any combination thereof, having a Fair Market Value on the exercise date equal to the relevant exercise price) in which payment of the exercise price with respect thereto may be made or deemed to have been made. The maximum term for an Option shall be 10 years.

(iii) Incentive Stock Options. An Incentive Stock Option may be granted only to an individual who is an employee of the Company or any parent or subsidiary corporation (as defined in section 424 of the Code) at the time the Option is granted and must be granted within 10 years from the date the Plan was approved by the Board or the stockholders of the Company, whichever is earlier. To the extent that the aggregate Fair Market Value (determined at the time the respective Incentive Stock Option is granted) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year under all incentive stock option plans of the Company and its parent and subsidiary corporations exceeds \$100,000, or such Options fail to constitute Incentive Stock Options for any reason, such purported Incentive Stock Options shall be treated as Non-Qualified Stock Options. The Committee shall determine, in accordance with applicable provisions of the Code, Treasury regulations and other administrative pronouncements, which of a Participant's purported Incentive Stock Options do not constitute Incentive Stock Options and shall notify the Participant of such determination as soon as reasonably practicable after such determination. No Incentive Stock Option shall be granted to an individual if, at the time the Option is granted, such individual owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of its parent or subsidiary corporation, within the meaning of section 422(b)(6) of the Code, unless (i) at the time such Option is granted the option price is at least 110% of the Fair Market Value of the Common Stock subject to the Option and (ii) such Option by its terms is not exercisable after the expiration of five years from the date of grant. An Incentive Stock Option shall not be transferable otherwise than by will or the laws of descent and distribution, and shall be exercisable during the Participant's lifetime only by such Participant or the Participant's guardian or legal representative. The terms of any Incentive Stock Option granted under the Plan shall comply and be interpreted consistently in all respects with the provisions of section 422 of the Code, or any successor provision, and any regulations promulgated thereunder.

(iv) Forfeiture. Unless otherwise specified in the applicable Award Agreement, upon a Participant's termination of service with the Company and its Subsidiaries, whether voluntary or involuntary (and including without limitation termination on account of death, disability, or retirement), all such Participant's



Options as to which the Restricted Period has not elapsed as of the date of termination shall be forfeited, and all such Participant's Options as to which the Restricted Period has elapsed as of the date of termination shall remain exercisable for the period of time set forth in the Award Agreement, after which time any such Options which remain unexercised

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shall be forfeited. However, the Committee may, when it finds that a waiver would be in the best interests of the Company, waive in whole or in part any or all remaining restrictions with respect to a Participant's Options.

(b) **Restricted Stock.** The Committee shall have the authority to grant Awards of Restricted Stock to Employees, Consultants and Directors upon such terms and conditions as the Committee may determine.

(i) **Terms and Conditions.** Each Restricted Stock Award shall be subject to the fulfillment during the Restricted Period of such conditions, including performance objectives, if any, as the Committee may specify at the date of grant, which conditions may lapse separately or in combination at such times, under such circumstances, in such installments or otherwise, as the Committee may determine. During the Restricted Period, the Participant shall have such rights of ownership in or with respect to the Restricted Stock as set forth in the Award Agreement, subject to Section 6(b)(ii) below concerning dividends.

(ii) **Dividends.** Unless otherwise specified in the applicable Award Agreement, dividends and distributions made with respect to a share of Restricted Stock shall be held by the Company in a bookkeeping account for the Participant (credited either as cash (without interest) or as Phantom Shares), which account shall be subject to the same vesting and forfeiture restrictions as the share of Restricted Stock with respect to which such dividends and distributions are made.

(iii) **Registration.** Any Restricted Stock may be evidenced in such manner as the Committee shall deem appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates. In the event any stock certificate is issued in respect of Restricted Stock granted under the Plan, such certificate shall be registered in the name of the Participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(iv) **Forfeiture.** Unless otherwise specified in the applicable Award Agreement with respect to a Permitted Waiver Event, upon a Participant's termination of service with the Company and its Subsidiaries during an applicable Restricted Period, all Restricted Stock subject to such Restricted Period shall be forfeited by the Participant and re-acquired by the Company. Notwithstanding the foregoing, the Committee may, when it finds that a waiver would be in the best interests of the Company, waive in whole or in part any or all remaining forfeiture and other restrictions with respect to such Participant's Restricted Stock if such termination of service is (x) due to the Participant's death, disability, or retirement, or (y) an involuntary termination by the Company or Subsidiary other than for "cause," or a termination by the Participant for a "good reason," as such terms are defined in the Award Agreement or an employment or severance agreement with (or a plan of) the Company or a Subsidiary, (the foregoing collectively being a "**Permitted Waiver Event**"); provided, however, if the Award is to a Covered Employee and intended to qualify as "performance-based compensation" under section 162(m) of the Code, such waiver may be only upon a termination due to death or

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disability or a Change of Control of the Company or other event permitted under section 162(m) of the Code.

(v) **Transfer Restrictions.** During the Restricted Period, Restricted Stock will be subject to such limitations on transfer as necessary to comply with section 83 of the Code.

(c) **Performance Awards.** The Committee shall have the authority to determine the Employees, Consultants and Directors who shall receive a Performance Award, pursuant to which the right of such individual to receive a grant, or to exercise or receive settlement, of any Award available under this Plan, and the timing thereof, may be subject to performance objectives as specified by the Committee. In addition, a Performance Award may be denominated as a cash amount at the time of grant and confer on the Participant the right to receive payment upon the achievement of such performance objectives during such Restricted Periods as the Committee shall establish with respect to the Award.

(i) **Terms and Conditions.** Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine the performance objectives to be achieved during the applicable Restricted Period, the length of the Restricted Period, the number of Shares or the amount of cash subject to any Performance Award and the amount of any payment to be made upon achievement of the performance objectives applicable to any Performance Award.

(ii) **Performance Awards to Covered Employees.** If the Committee determines that a Performance Award to be granted to an Employee who is designated by the Committee as likely to be a Covered Employee should qualify as "performance-based compensation" for purposes of section 162(m) of the Code, the performance objectives for such Performance Award shall consist of one or more performance criteria set forth in Section 6(j)(viii) of this Plan. Performance objectives applicable to such a Performance Award shall be objective and shall otherwise meet the requirements of section 162(m) of the Code, including the requirement that the level or levels of performance targeted by the Committee resulting in the achievement of performance objectives be "substantially uncertain" at the time the Committee actually establishes the performance objectives. Performance objectives shall be established not later than 90 days after the beginning of any Restricted Period applicable to such Performance Awards, or at such other date as may be required or permitted for "performance-based compensation" under section 162(m) of the Code. The Committee may establish a Performance Award pool, which shall be an unfunded pool based upon the achievement of performance objectives related to one or more of the performance criteria set forth in Section 6(j)(viii) hereof, for purposes of measuring the performance of the Company in connection with such Performance Awards. All determinations by the Committee with respect to Awards that are intended to constitute "performance-based compensation" within the meaning of section 162(m) of the Code shall be made in writing. The Committee may not delegate any responsibility relating to such Performance Awards.

(iii) **Payment of Performance Awards.** Performance Awards are earned as of the date the Committee determines the applicable performance objectives have been

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satisfied. Performance Awards may be paid (in cash and/or in Shares, in the sole discretion of the Committee) in a lump sum or in installments promptly as of or following the date the Committee determines the applicable performance objectives have been satisfied, in accordance with procedures established by the Committee with respect to such Award. The Committee may exercise its discretion to reduce or increase the amounts payable under any Performance Awards, except with respect to Performance Awards to Covered Employees that are intended to qualify as "performance-based compensation" under section 162(m) of the Code, in which case, the Committee may, in its discretion, reduce the amount of settlement otherwise to be made in connection with such Performance Awards but may not exercise discretion to increase any such amount.

(iv) Forfeiture. Unless otherwise specified in the applicable Award Agreement with respect to a Permitted Waiver Event, upon a Participant's termination of service with the Company and its Subsidiaries during the applicable Restricted Period, whether voluntary or involuntary (and including without limitation termination on account of death, disability, or retirement), all Performance Awards shall be forfeited by the Participant. However, the Committee may, when it finds that a waiver upon a Permitted Waiver Event would be in the best interests of the Company, waive in whole or in part any or all remaining restrictions with respect to such Participant's Performance Award; provided, however, if the Award to a Covered Employee is intended to qualify as "performance-based compensation" under section 162(m) of the Code, such waiver may be only upon a termination due to death or disability or a Change of Control of the Company or other event permitted under section 162(m) of the Code.

(d) Phantom Shares. The Committee shall have the authority to grant Awards of Phantom Shares to Employees, Consultants and Directors upon such terms and conditions as the Committee may determine.

(i) Terms and Conditions. Each Phantom Share Award shall constitute an agreement by the Company to issue or transfer a specified number of Shares or pay an amount of cash equal to the Fair Market Value of a specified number of Shares, or a combination thereof, to the Participant in the future, subject to the fulfillment during the Restricted Period of such conditions, including performance objectives, if any, as the Committee may specify at the date of grant. The Participant shall not have any rights of ownership in or with respect to the Phantom Shares. Phantom Shares shall be earned upon the lapse of the Restricted Period and shall be settled upon expiration of a specified deferral period (which may or may not be coterminous with the Restricted Period). The Committee shall cause the corresponding number of Shares to be issued or transferred, or shall cause the corresponding amount to be paid promptly thereafter.

(ii) Dividend Equivalents. Unless otherwise specified in the applicable Award Agreement, with respect to a Phantom Share, the economic equivalent of all dividends and other distributions paid on a Share during the Restricted Period shall be credited by the Company in a cash bookkeeping account (without interest) or in additional Phantom Shares, which account shall be subject to the same vesting and forfeiture restrictions as the related Phantom Share.

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(iii) Forfeiture. Unless otherwise provided in an applicable Award Agreement with respect to a Permitted Waiver Event, upon a Participant's termination of service with the Company and its Subsidiaries during the applicable Restricted Period, all Phantom Shares subject to such Restricted Period shall be forfeited by the Participant. Notwithstanding the foregoing, the Committee may, when it finds that a waiver upon a Permitted Waiver Event would be in the best interests of the Company, waive in whole or in part any or all remaining forfeiture and other restrictions with respect to such Participant's Phantom Shares; provided, however, if the Award to a Covered Employee is intended to qualify as "performance-based compensation" under section 162(m) of the Code, such waiver may be only upon a termination due to death or disability or a Change of Control of the Company or such other event permitted by section 162(m) of the Code.

(e) SARs. The Committee shall have the authority to determine the Employees, Consultants and Directors to whom SARs shall be granted, the number of SARs to be granted, the exercise price and the conditions and limitations applicable to the exercise of the SAR, including the applicable Restricted Period and/or performance objectives, if any, and the following terms and conditions and such additional terms and conditions, as the Committee shall determine, that are not inconsistent with the provisions of the Plan. SARs may be granted in tandem with or separately from an Option.

(i) Exercise Price. The exercise price per SAR shall be determined by the Committee at the time the SAR is granted, but, except with respect to a Substitute Award, shall not be less than the Fair Market Value per Share on the effective date of such grant.

(ii) Time of Exercise. The Committee shall determine and provide in the Award Agreement the time or times at which an SAR may be exercised in whole or in part. The maximum term for an SAR shall be 10 years.

(iii) Method of Payment. Unless provided in the Award Agreement, the Committee shall determine, in its discretion, whether the SAR shall be paid in cash, shares of Common Stock or a combination thereof.

(iv) Forfeiture. Unless otherwise provided in an applicable Award Agreement with respect to a Permitted Waiver Event, upon a Participant's termination of service with the Company and its Subsidiaries, whether voluntary or involuntary (and including without limitation termination on account of death, disability, or retirement), all such Participant's SARs as to which the Restricted Period has not elapsed as of the date of termination shall be forfeited, and all such Participant's SARs as to which the Restricted Period has elapsed as of the date of termination shall remain exercisable for the period of time set forth in the Award Agreement, after which time any such SARs which remain unexercised shall be forfeited. However, the Committee may, when it finds that a waiver would be in the best interests of the Company, waive in whole or in part any or all remaining restrictions with respect to a Participant's SARs.

(f) Bonus Stock. The Committee is authorized to grant Common Stock as a bonus, or to grant Common Stock or other Awards in lieu of obligations to pay cash or deliver other

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property under this Plan or under other plans or compensatory arrangements, provided that, in the case of Participants subject to section 16 of the Exchange Act, the amount of such grants remains within the discretion of the Committee to the extent necessary to ensure that acquisitions of Bonus Stock or other Awards are exempt from liability under section 16(b) of the Exchange Act. Bonus Stock or other Awards granted hereunder shall be subject to such other terms as shall be determined by the Committee. In the case of any grant of Common Stock to an officer of the Company or any of its Subsidiaries in lieu of salary or other cash compensation, the number of shares granted in place of such compensation shall be reasonable, as determined by the Committee.

(g) Dividend Equivalents. The Committee is authorized to grant Dividend Equivalents to an Employee, Consultant or Director, entitling the Participant to receive cash, Common Stock, other Awards, or other property equal in value to dividends paid with respect to a specified number of shares of Common Stock, or other periodic payments. Dividend Equivalents may be awarded on a free-standing basis or in connection with another Award. The Committee may provide that Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in additional Common Stock, Awards, or other investment vehicles, and subject to such restrictions on transferability and risks of forfeiture, as the Committee may specify.

(h) Substitute Awards. Awards may be granted under the Plan in substitution of similar awards held by individuals who become Employees, Consultants or Directors as a result of a merger, consolidation or acquisition by the Company or a Subsidiary of another entity or the assets of another entity. Such Substitute Awards, if an Option or SAR, may have an exercise price less than the Fair Market Value of a Share on the date of such substitution, to the extent necessary to preserve the value of the award, and will become exercisable upon the lapse of the Restricted Period. Such Substitute Awards, if Restricted Stock or Phantom Shares, shall be earned by the Participant, and promptly issued, transferred, or paid, upon the lapse of the Restricted Period or other specified deferral period.

(i) Other Stock-Based Award. The Committee may also grant to Employees, Consultants or Directors an Other Stock-Based Award, which shall consist of a right which is an Award denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Shares as is deemed by the Committee to be consistent with the purposes of the Plan, which may include convertible or exchangeable debt securities, other rights convertible or exchangeable into Common Stock, purchase rights for Common Stock, Awards with value and payment contingent upon performance of the Company or any other factors designated by the Committee, and Awards valued by reference to the book value of Common Stock or the value of securities of or the performance of specified Subsidiaries of the Company. Subject to the

(j) General.

(i) Award Agreements. An Award Agreement may be delivered to each Participant to whom an Award is granted. The terms of the Award Agreement shall be as determined by the Committee, so long as they are consistent with the Plan.

(ii) Awards May Be Granted Separately or Together. Subject to Section 7(a), Awards may, in the discretion of the Committee, be granted either alone or in addition to, or in tandem with, or in substitution or exchange for, any other Award granted under the Plan or any award granted under any other plan of the Company or any Subsidiary. Such additional, tandem and substitute or exchanged Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award, the Committee shall require the surrender of such other Award in consideration for the grant of the new Award.

(iii) Limits on Transfer of Awards.

(A) Except as provided in paragraph (C) below, each Award, and each right under any Award, shall be exercisable only by the Participant during the Participant's lifetime, or if permissible under applicable law, by the Participant's guardian or legal representative as determined by the Committee.

(B) Except as provided in paragraph (C) below or in a qualified domestic relations order, no Award and no right under any such Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant in any manner (whether for value or other consideration) other than by will or by the laws of descent and distribution, and any such purported prohibited assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Subsidiary.

(C) To the extent specifically approved in writing by the Committee, an Award (other than an Incentive Stock Option) may be transferred to immediate family members or related family trusts, limited partnerships or similar family entities on such terms and conditions as the Committee may establish or approve.

(iv) Terms of Awards. The term of each Award shall be for such period as may be determined by the Committee, provided the term of an Option and SAR shall be limited as provided in Sections 6(a)(ii) and (iii) and Section 6(e)(ii), respectively.

(v) Share Certificates. All certificates for Shares or other securities of the Company or any Subsidiary delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations, and other requirements of the SEC, any stock exchange upon which such Shares or other securities are then listed, and any applicable federal or state laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(vi) Consideration for Grants. Awards may be granted for no cash consideration or for such consideration as the Committee determines, including, without limitation, such minimal cash consideration as may be required by applicable law.

(vii) Delivery of Shares or other Securities and Payment by Participant of Consideration. No Shares or other securities shall be delivered pursuant to any Award until payment in full of any amount required to be paid pursuant to the Plan or the applicable Award Agreement (including, without limitation, any exercise price or tax withholding) is received by the Company. Such payment may be made by such method or methods and in such form or forms as the Committee shall determine, including, without limitation, cash, Shares, other securities, other Awards or other property, withholding of Shares, cashless exercise with simultaneous sale, or any combination thereof, provided that the combined value, as determined by the Committee, of all cash and cash equivalents and the Fair Market Value of any such Shares or other property so tendered to the Company, as of the date of such tender, is at least equal to the full amount required to be paid pursuant to the Plan or the applicable Award Agreement to the Company.

(viii) Performance Criteria. The Committee shall establish performance goals applicable to those Awards that are intended by the Committee to qualify as "performance-based compensation" as described in section 162(m)(4)(C) of the Code, where such goals are required in order to so comply. Such performance goals shall be established based upon one or more of the following performance criteria: (A) earnings per share; (B) revenues; (C) cash flow; (D) cash flow returns; (E) free cash flow; (F) operating cash flow; (G) net cash flow; (H) working capital; (I) return on net assets; (J) return on assets; (K) return on investment; (L) return on capital; (M) return on equity; (N) economic value added; (O) gross margin; (P) contribution margin; (Q) operating margin; (R) net income; (S) pretax earnings; (T) pretax earnings before interest, depreciation and amortization ("EBITDA"); (U) pretax earnings after interest expense and before incentives, service fees, and extraordinary or special items; (V) operating income; (W) total stockholder return; (X) Share price; (Y) book value; (Z) enterprise value; (AA) debt reduction; (BB) costs or expenses; (CC) objective safety measures (including recordable incident rates and lost time incident rates); (DD) objective environmental measures (including gas releases); (EE) sales; (FF) market share; (GG) objective productivity measures; (HH) revenue or earnings per employee; (II) objective measures related to implementation or completion of significant projects or processes; (JJ) significant and objective strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, information technology, and goals relating to acquisitions, divestitures, joint ventures and similar transactions, and budget comparisons; and (KK) significant and objective individual criteria, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions, the development of long-term business goals, formation of joint ventures, research or development collaborations, and the completion of other corporation transactions. Such goals (other than stock price and earnings per share) may be expressed in terms of the Company, a Subsidiary, department, division, business unit, or product, as determined by

the Committee, and may be absolute, relative to one or more other companies, or relative to one or more indexes. A performance goal need not be based upon an increase or positive result under a business criterion and may, for example, be based upon limiting economic losses or maintaining the status quo. Which factor or factors to be used with respect to any grant, and the weight to be accorded thereto if more than one factor is used, shall be determined by the Committee, in its sole discretion, at the time of grant. To the extent consistent with section 162(m) of the Code with respect to Awards intended to constitute "performance-based compensation," the Committee (A) shall appropriately adjust any evaluation of performance under a performance goal to eliminate the effects of charges for restructurings, discontinued operations, extraordinary items and all items of gain, loss or expense determined to be extraordinary or unusual in nature or related to the disposal of a segment of a business or related to a change in accounting principle, all as determined in accordance with applicable accounting provisions, as well as the cumulative effect of accounting changes, in each case as determined in accordance with generally accepted accounting principles or identified in the Company's

financial statements or notes to the financial statements; and (B) may appropriately adjust any evaluation of performance under a performance goal to exclude any of the following that occurs during the applicable performance period: (1) asset write-downs, (2) litigation, claims, judgments or settlements, (3) the effect of changes in tax law or other such laws or provisions affecting reported results, (4) accruals for reorganization and restructuring programs, or (5) accruals of any amounts for payment under this Plan or any other compensation arrangement maintained by the Company.

(ix) Unusual Transactions or Events. In the event of any distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, reorganization, merger, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other corporate transaction or event or any unusual or nonrecurring transactions or events (including without limitation a Change of Control) affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in applicable laws, regulations or accounting principles, and whenever the Committee determines that action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, the Committee, in its sole discretion and on such terms and conditions as it deems appropriate, may take any one or more of the following actions (unless the discretion to take such action would cause an Award to a Covered Employee to not qualify as “performance-based compensation” under section 162(m) of the Code if intended to so qualify):

(A) To provide for either (i) the termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant’s rights (and, for the avoidance of doubt, if as of the date of the occurrence of such transaction or event the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant’s rights, then such Award may be terminated by the Company without

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payment) or (ii) the replacement of such Award with other rights or property of substantially equivalent value selected by the Committee in its sole discretion;

(B) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(C) To make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Awards and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future, provided that, with respect to outstanding Awards such adjustments shall result in substantially equivalent value to the affected Participants; and

(D) To provide that such Award shall be exercisable (within such period of time as the Committee may specify, for example, but not by way of limitation, in connection with a Change of Control, the Committee may specify that unexercised, vested Options or SARs terminate upon consummation of the Change of Control), or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement.

Notwithstanding the foregoing, with respect to an above event that is an “equity restructuring” event that would be subject to a compensation expense pursuant ASC Topic 718, the provisions in Section 4(c) shall control to the extent they are in conflict with the discretionary provisions of this Section 6(j)(ix).

## **SECTION 7. Amendment and Termination.**

Except to the extent prohibited by applicable law:

(a) Amendments to the Plan. The Board or the Committee may amend, alter, suspend, discontinue, or terminate the Plan without the consent of any stockholder, Participant, other holder or beneficiary of an Award, or other Person (but stockholder approval will be required to the extent required by applicable law or listing requirements); provided, however, notwithstanding any other provision of the Plan or any Award Agreement, without the approval of the stockholders of the Company no such amendment, alteration, suspension, discontinuation, or termination shall be made that would (i) increase the total number of Shares that may be issued under Awards (including ISOs) granted under the Plan, except as provided in Sections 4(c) and 6(j)(ix) of the Plan, (ii) increase the class of individuals eligible to receive Awards under the Plan or (iii) materially increase the benefits available under the Plan. In addition, except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, or exchange of shares) and

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except as provided in Section 6(j)(ix) of this Plan, the terms of outstanding Awards may not be amended to reduce the exercise price of outstanding Options or SARs or cancel outstanding Options or SARs in exchange for cash, other Awards or Options or SARs with an exercise price that is less than the exercise price of the original Options or SARs without stockholder approval. Notwithstanding the foregoing, without the consent of an affected Participant, no Board or Committee action pursuant to this Section 7(a) may materially or adversely affect the rights of such Participant under any previously granted and outstanding Award.

(b) Amendments to Awards. Subject to Section 7(a) above and any express restrictions in the Plan concerning the acceleration of the vesting of Awards, the Committee may accelerate or waive any conditions or rights under, amend any terms of, or alter any Award theretofore granted, provided that, subject to Section 7(c) below, no change in any Award shall materially adversely affect the rights of a Participant under the Award without the consent of such Participant. Notwithstanding the foregoing, and subject to Section 7(c) below, (i) with respect to any Award to a Covered Employee that is intended to qualify as “performance-based compensation” under section 162(m) of the Code, no adjustment shall be authorized to the extent such adjustment would cause the Award to fail to so qualify, and (ii) no acceleration of the terms of payment of any Award that provides for a deferral of compensation under the Non-Qualified Deferred Compensation Rules shall be authorized if such acceleration would subject a Participant to additional taxes under the Non-Qualified Deferred Compensation Rules.

(c) Amendments to Preserve or Achieve Tax Treatment and Comply with Law. Notwithstanding Section 7(b) above, the Board or the Committee may amend or alter any terms of any outstanding Award as it deems advisable in order to preserve or achieve its intended tax treatment or to comply with applicable law, provided that such amendments or alterations shall result in substantially equivalent value to the affected Participants.

(d) Substantially Equivalent Value. With respect to amendments, alterations, or adjustments of any Award, “substantially equivalent value” may be determined without consideration of any tax consequences of the amendment, alteration, or adjustment.

## **SECTION 8. General Provisions.**

(a) No Rights to Awards. No Participant or other Person shall have any claim to be granted any Award, there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Awards and the terms and conditions of Awards need not be the same with respect to each recipient.

(b) **Tax Withholding.** The Company or any Subsidiary is authorized to withhold from any Award, from any payment due or transfer made under any Award (including from a distribution of Stock) or from any compensation or other amount owing to a Participant the amount (in cash, Shares, or other property) of any applicable taxes required to be withheld by the Company or Subsidiary in respect of the Award, its exercise, the lapse of restrictions thereon, or any payment or transfer under the Award and to take such other action as may be necessary in the opinion of the Company or Subsidiary to satisfy all of its obligations for the payment of such taxes. In addition, the Committee may provide, in an Award Agreement, that the Participant may direct the Company to satisfy such Participant's tax withholding obligations through the

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withholding of Shares otherwise to be acquired upon the exercise or payment of such Award; provided, that, in such case, the number of Shares that shall be so withheld shall be limited to the number of Shares having an aggregate Fair Market Value on the date of withholding equal to the aggregate amount of such tax withholding obligations determined based on the applicable minimum statutory tax withholding requirements.

(c) **No Right to Employment or Retention.** The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of the Company or any Subsidiary or under any other service contract with the Company or any Subsidiary, or to remain on the Board. Further, the Company or a Subsidiary may at any time dismiss a Participant from employment or terminate any contractual agreement or relationship with any Consultant, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan, in any Award Agreement or any other agreement or contract between the Company or a Subsidiary and the affected Participant. If a Participant's employer ceases to be a Subsidiary, such Participant's Award or Awards shall continue in full force and effect as if the Participant's employer were still a Subsidiary, unless and until the Committee, within its discretion, adjusts the Participant's Award or Awards in any of the manners described in Section 6(j)(ix) (A) through (D).

(d) **Governing Law.** The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the laws of the State of Delaware and applicable federal law.

(e) **Severability.** If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, Person or Award and the remainder of the Plan and any such Award shall remain in full force and effect. If such amendment or striking of such provision adversely affects the value of the Award, the Committee shall cause appropriate action to be taken to provide the affected Participant with substantially equivalent value to the Award in question.

(f) **Other Laws.** The Committee may refuse to issue or transfer any Shares or other consideration under an Award, permit the exercise of an Award and/or the satisfaction of its tax withholding obligation in the manner elected by the Participant, holder or beneficiary if, acting in its sole discretion, it determines that the issuance or transfer of such Shares or such other consideration, the manner of exercise or satisfaction of the tax withholding obligation might violate any applicable law or regulation, including without limitation, the Sarbanes-Oxley Act, or entitle the Company to recover the same under section 16(b) of the Exchange Act, and any payment tendered to the Company by a Participant, other holder or beneficiary in connection with the exercise of such Award shall be promptly refunded or refused, as the case may be, to the relevant Participant, holder or beneficiary. It is the intent of the Company that the grant of any Awards to or other transaction by a Participant who is subject to section 16 of the Exchange Act shall be exempt from such section pursuant to an applicable exemption (except for transactions acknowledged in writing to be non-exempt by such Participant) and, if any provision of this Plan

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or any Award Agreement does not comply with the requirements of Rule 16b-3 as then applicable to any such transaction, such provision shall be construed or deemed amended to the extent necessary to conform to the applicable requirements of Rule 16b-3 so that such Participant shall avoid liability under section 16(b) of the Exchange Act.

(g) **No Trust or Fund Created.** Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Subsidiary and a Participant or any other Person. To the extent that any Person acquires a right to receive payments from the Company or any Subsidiary pursuant to an Award, such right shall be no greater than the right of any general unsecured creditor of the Company or any Subsidiary. This Plan shall not constitute an "employee benefit plan" for purposes of section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(h) **Section 409A.** With respect to any Award that is subject to section 409A of the Code, notwithstanding anything in the Plan or the Award Agreement to the contrary such Award shall be construed as necessary to comply with section 409A of the Code, including, but not limited to, (i) compensation under such Award may not be distributed earlier than as permitted in section 409A(2) of the Code, (2) the time or schedule of payment of such Award may not be accelerated except as provided in the Treasury regulations under section 409A, and (3) no compensation under such Award may be deferred at the Participant's election or by the Company except as permitted by Code section 409A.

(i) **No Fractional Shares.** No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be cancelled, terminated, or otherwise eliminated.

(j) **Headings.** Headings are given to the Section and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

(k) **Undertakings of Certain Subsidiaries.** The Subsidiaries who otherwise agree to the terms of the Plan shall, upon request of the Company, fund the cash portion of any Award for a Participant who is an Employee or Consultant of such Subsidiary.

(l) **Clawback.** This Plan is subject to any written clawback policies the Company, with the approval of the Board, may adopt. Any such policy may subject a Participant's rights and benefits under this Plan to reduction, cancellation, forfeiture or recoupment if certain specified events or wrongful conduct occur, including but not limited to an accounting restatement due to the Company's material noncompliance with financial reporting regulations or other events or wrongful conduct specified in any such clawback policy, adopted to conform to the Dodd-Frank Wall Street Reform and Consumer Protection Act and rules promulgated thereunder by the SEC, and that the Company determines should apply to this Plan.

## **SECTION 9. Effective Date of Plan.**

This amendment and restatement of the Plan shall become effective as of the Effective Date, subject to approval by the stockholders of the Company.

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**SECTION 10. Term of the Plan.**

No Award shall be granted under this amendment and restatement of the Plan prior to the date this amendment and restatement of the Plan is approved by the stockholders of the Company. If so approved, the Plan shall continue until the earliest of (i) May 8, 2024, (ii) the date the Board terminates the Plan, and (iii) the date Shares are no longer available for Awards under the Plan. However, unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award granted prior to such termination, and the authority of the Committee to amend, alter, adjust, suspend, discontinue, or terminate any such Award or to waive any conditions or rights under such Award, shall extend beyond such termination date. Until this amendment and restatement becomes effective (or, if this amendment and restatement is not approved by the stockholders), the Plan shall continue as in effect prior to this proposed amendment and restatement. Nothing herein shall affect the terms of any Award granted prior to the Effective Date of this amendment and restatement of the Plan.