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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

**February 27, 2020**  
(Date of earliest event reported)

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**QUANEX BUILDING PRODUCTS CORPORATION**

(Exact name of registrant as specified in its charter)

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

**1-33913**  
(Commission File Number)

**26-1561397**  
(IRS Employer Identification No.)

**1800 West Loop South, Suite 1500,  
Houston, Texas**  
(Address of principal executive offices)

**77027**  
(Zip Code)

Registrant's telephone number, including area code: **713-961-4600**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12(b) 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 \$0.01 per share	NX	New York Stock Exchange

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

Emerging growth company

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

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**Item 1.02. Termination of a Material Definitive Agreement.**

The information included below under Item 5.02 is incorporated herein by reference.

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

On February 27, 2020, the Board of Directors (the “Board”) of Quanex Building Products Corporation (the “Company”) approved a new Executive Severance Policy (the “Policy”). The Policy provides for the payment of severance benefits to the Company’s named executive officers and certain other key employees in the event of a “Qualifying Termination,” as such term is defined in the Policy. The amount of benefits to be paid under the policy depends upon (i) whether the Qualifying Termination has occurred in connection within 24 months of a Change in Control (as such term is defined in the Policy) or otherwise, and (ii) the participant’s placement within one of three tiers. Tier 1 covers the Company’s President and Chief Executive Officer; Tier 2 covers the Company’s Section 16 Officers; and Tier 3 covers certain key employees. The Policy includes a time-limited double trigger provision in the event of a Change in Control (as such term is defined in the Policy).

Set forth below is a short summary of the benefits that would be payable to each participant tier in the event of a Qualifying Termination under certain circumstances:

<b>Executive Tier</b>	<b>Type of Qualifying Termination</b>	<b>Severance Benefits to be Paid</b>
Tier 1 (President & CEO)	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>• 2x base salary plus 2x target annual bonus;</li> <li>• Pro-rata annual bonus for year of termination based on actual Company performance; and</li> <li>• COBRA coverage for 18 months.</li> </ul>
	Qualifying Termination <i>within 24 months</i> of Change in Control	<ul style="list-style-type: none"> <li>• 2.5x base salary plus 2.5x target annual bonus;</li> <li>• Pro-rata target annual bonus; and</li> <li>• COBRA coverage for 18 months.</li> </ul>
Tier 2 (Section 16 Officers)	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>• 1.5x base salary plus 1.5x target annual bonus;</li> <li>• Pro-rata annual bonus for year of termination based on actual Company performance; and</li> <li>• COBRA coverage for 18 months.</li> </ul>
	Qualifying Termination <i>within 24 months</i> of Change in Control	<ul style="list-style-type: none"> <li>• 2x base salary plus 2x target annual bonus;</li> <li>• Pro-rata target annual bonus; and</li> <li>• COBRA coverage for 18 months.</li> </ul>
Tier 3 (Certain Key Employees)	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>• 1x base salary plus 1x target annual bonus;</li> <li>• Pro-rata annual bonus for year of termination based on actual Company performance; and</li> <li>• COBRA coverage for 12 months</li> </ul>
	Qualifying Termination <i>within 24 months</i> of Change in Control	<ul style="list-style-type: none"> <li>• 1.5x base salary plus 1.5x target annual bonus;</li> <li>• Pro-rata target annual bonus; and</li> <li>• COBRA coverage for 18 months</li> </ul>

A participant’s inclusion in the Policy requires approval of the Company’s Compensation and Management Development Committee (the “Compensation Committee”). The Compensation Committee has determined that the Policy will not cover the Company’s Executive Chairman role, and is thus not applicable to the Company’s Chairman, Mr. William Griffiths.

With the exception of the severance and change in control agreements currently in place between the Company and Mr. Griffiths, the Policy will supersede any severance arrangements or change in control agreements currently in place between the Company and any executives. As such, the following agreements are no longer applicable, and each respective officer will sign a waiver and termination of any severance or change in control rights applicable under such agreement:

- Change in Control Agreement between the Company and Scott Zuehlke, effective January 25, 2016, filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K (Reg. No. 001-33913), as filed with the Securities and Exchange Commission on January 27, 2016.
- Change in Control Agreement between the Company and George Wilson, effective August 1, 2017, filed as Exhibit 10.2 of the Registrant's Current Report on Form 8-K (Reg. No. 001-33919) as filed with the Securities and Exchange Commission on July 27, 2017.
- Any severance provisions included in that certain Agreement between Quanex Building Products Corporation and Mark A. Livingston, effective January 30, 2019, filed as Exhibit 10.49 to the Company's Annual Report on Form 10-K (Reg. No. 001-33913) for the fiscal year ended October 31, 2019.

The foregoing discussion is qualified in its entirety by reference to the full text of the Policy, which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein.

### Item 5.03. Amendments to Articles of Incorporation or Bylaws.

#### Amendment to Bylaws

On February 27, 2020, the Board of Directors (the "Board") of Quanex Building Products Corporation (the "Company") approved an amendment to Section 4.4 of the Company's Third Amended and Restated Bylaws (the "Bylaws") to provide that Board members may be removed with or without cause by a simple majority of the Company's stockholders. This amendment served to remove the supermajority requirement that had previously been applicable for removal of directors without cause.

The foregoing discussion is qualified in its entirety by reference to the full text of the Fourth Amended and Restated Bylaws of the Company, which is attached to this Current Report on Form 8-K as Exhibit 3.1 and incorporated by reference herein.

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

On February 27, 2020, the Company held its Annual Meeting of Stockholders, pursuant to notice and proxy mailed on or about January 29, 2020, to the Company's stockholders of record as of January 8, 2020. There were 33,083,338 shares of common stock entitled to vote at the meeting, and a total of 29,961,513 shares were represented at the meeting in person or by proxy.

At the Annual Meeting, eight directors were elected for terms expiring at the Company's 2021 Annual Meeting, with the following tabulation of votes for each nominee:

Director Nominee	Votes For	Votes Against	Abstain	Broker Non-Votes	Percent of Shares Cast in Favor *
Robert R. Buck	28,133,001	367,695	7,520	1,453,297	98.68%
Susan F. Davis	27,823,902	675,210	9,104	1,453,297	97.60%
William C. Griffiths	28,069,691	430,706	7,819	1,453,297	98.46%
Donald R. Maier	28,137,942	362,578	7,696	1,453,297	98.70%
Meredith W. Mendes	28,291,122	208,102	8,993	1,453,297	99.24%
Joseph D. Rupp	27,817,723	682,681	7,813	1,453,297	97.58%
Curtis M. Stevens	28,111,507	389,867	6,842	1,453,297	98.61%
George L. Wilson	28,202,920	299,295	6,002	1,453,297	98.93%

\*Excludes Abstentions and Broker Non-Votes

In addition to the election of directors, stockholders at the Annual Meeting voted on and approved the following actions:

- Approved the new Quanex Building Products Corporation 2020 Omnibus Incentive Plan (the “2020 OIP”). A copy of the 2020 OIP as approved by the shareholders is filed as Exhibit 10.2 to this Current Report on Form 8-K.
- Provided an advisory “say on pay” vote approving the Company’s executive compensation programs; and
- Ratified the Audit Committee’s appointment of Grant Thornton LLP as the Company’s independent auditor for the fiscal year ending October 31, 2020;

The tabulation of votes for these proposals is set forth below:

<b>Proposal</b>	<b>Votes For</b>	<b>Votes Against</b>	<b>Abstain</b>	<b>Broker Non-Votes</b>	<b>Percent of Shares Cast in Favor *</b>
Approval of Quanex Building Products Corporation 2020 Omnibus Incentive Plan	27,710,028	774,473	23,716	1,453,297	97.20%
Advisory Vote to Approve Executive Compensation	27,838,059	648,703	21,455	1,453,297	97.65%
Ratification of Company’s Independent Auditor	29,924,592	29,377	7,544	0	99.88%

*\*Excludes Abstentions and Broker Non-Votes*

**Item 9.01    Financial Statements and Exhibits.**

(d)Exhibits.    The following exhibits are being filed herewith:

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
<a href="#">3.1</a>	<a href="#">Fourth Amended and Restated Bylaws of Quanex Building Products Corporation</a>
<a href="#">10.1</a>	<a href="#">Executive Severance Policy of Quanex Building Products Corporation</a>
<a href="#">10.2</a>	<a href="#">Quanex Building Products Corporation 2020 Omnibus Incentive Plan</a>
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

**SIGNATURE**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**QUANEX BUILDING PRODUCTS CORPORATION**

(Registrant)

**March 2, 2020**

(Date)

/s/ PAUL B. CORNETT

Paul B. Cornett

*Senior Vice President – General Counsel and Secretary*

**THIRD AMENDED AND RESTATED BY-LAWS**  
**of**  
**QUANEX BUILDING PRODUCTS CORPORATION**  
(a Delaware Corporation)

**ARTICLE I**  
**Offices**

**1.1. Registered Office.** The Corporation shall at all times maintain a registered office in the State of Delaware.

**1.2. Other Offices.** The Corporation may also have offices at such other places within or outside of the State of Delaware as the Board of Directors shall from time to time appoint or the business of the Corporation require.

**ARTICLE II**  
**Capital Stock**

**2.1. Issuance of Stock.** The Board of Directors may authorize the issuance of the capital stock of the Corporation at such times, for such consideration, and on such terms and conditions as the Board may deem advisable, subject to any restrictions and provisions of law, the Certificate of Incorporation of the Corporation as amended and restated from time to time (the "Certificate of Incorporation") or any other provisions of these By-laws.

**2.2. Certificates for Shares.** The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by, the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The certificates shall otherwise be in such form as may be determined by the Board of Directors, shall be issued in numerical order, shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares.

**2.3. Transfer of Shares.** The shares of the capital stock of the Corporation are transferable only on the books of the Corporation upon surrender, in the case of certificated shares, of the certificates therefor properly endorsed for transfer, or otherwise properly assigned, and upon the presentation of such evidences of ownership of the shares and validity of the assignment as the Corporation may require.

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**2.4. Registered Stockholders.** The Corporation shall be entitled to treat the person in whose name any share of stock is registered as the owner thereof for purposes of dividends and other distributions in the course of business or in the course of recapitalization, consolidation, merger, reorganization, liquidation, or otherwise, and for the purpose of votes, approvals and consents by stockholders, and for the purpose of notices to stockholders, and for all other purposes whatsoever, 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, save as expressly required by the laws of the State of Delaware.

**2.5. Transfer Agent and Registrar.** The Board of Directors may appoint one or more transfer agents and registrars, and may require certificates for shares to bear the signature of such transfer agent(s) and registrar(s).

**2.6. Replacement Certificates.** Upon the presentation to the Corporation of a proper affidavit attesting the loss, destruction or mutilation of any certificate for shares of stock of the Corporation, the Board of Directors may direct the issuance of a new certificate or uncertificated shares in lieu of and to replace the certificate so alleged to be lost, destroyed or mutilated. The Board of Directors may require as a condition precedent to the issuance of a new certificate or uncertificated shares any or all of the following: (a) additional evidence of the loss, destruction or mutilation claimed; (b) advertisement of the loss in such manner as the Board of Directors may direct or approve; (c) a bond or agreement of indemnity, in such form and amount and with such surety (or without surety) as the Board of Directors may direct or approve; and (d) the order of approval of a court.

### **ARTICLE III Stockholders and Meetings of Stockholders**

**3.1. Places of Meetings.** All meetings of stockholders shall be held at such place within or outside of the State of Delaware, including by means of remote communication, as shall be fixed by the Board of Directors and stated in the notice of meeting.

**3.2. Annual Meeting.** The Annual Meeting of Stockholders of the Corporation shall be held on such date and at such time as is fixed by the Board of Directors and stated in the notice of meeting. Directors shall be elected in accordance with the provisions of the Certificate of Incorporation and these By-laws and such other business shall be transacted as may properly come before the meeting.

**3.3. Adjournment of Annual Meeting.** The Annual Meeting of Stockholders may be adjourned by the presiding officer of the meeting for any reason (including, if the presiding officer determines that it would be in the best interests of the Corporation to extend the period of time for the solicitation of proxies) from time to time and place to place until the presiding officer shall determine that the business to be conducted at the meeting is completed, which determination shall be conclusive.

#### **3.4. Conduct of Business at Annual Meeting.**

(a) At an Annual Meeting of the Stockholders, only such business, including without limitation, nominations of persons for election to the board of directors, shall be conducted as shall have been properly brought before the meeting. To be properly brought before an Annual Meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors or (iii) otherwise properly brought before the meeting by a stockholder of the Corporation who (A) was a stockholder of record of the Corporation at the time the notice provided for in this Section 3.4 is delivered to the Secretary of the Corporation and at the time of the Annual Meeting, (B) shall be entitled to vote at such meeting, and (C) complies with the notice procedures set forth in this Section 3.4 as to such business or nomination. Clause (C) shall be the exclusive means for a stockholder to make nominations or submit business (other than matters properly brought under Rule 14a-8 (or any successor thereto) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations), and indicated in the Corporation's notice of meeting) at an Annual Meeting.

(b) Without qualification, for business to be properly brought before an Annual Meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation, (a) with respect to business to be brought before the Annual Meeting in 2016, not later than the close of business on the 120th day nor earlier than 150 days prior to the first anniversary date of the date that the Corporation mailed its proxy materials related to its immediately preceding Annual Meeting and (b) with respect to business to be brought before the Annual Meeting in 2017 or any Annual Meeting thereafter, not later than the close of business on the 90th day nor earlier than 120 days prior to the first anniversary date of the Corporation's immediately preceding Annual Meeting; provided, however, that in the event that the date of the Annual Meeting is more than 60 days later than the anniversary date of the immediately preceding Annual Meeting, notice by the stockholder to be timely must be received not later than the close of business on the 10th day following the earlier of the date on which a written statement setting forth the date of the Annual Meeting was mailed to stockholders or the date on which it is first disclosed to the public. In no event shall the public announcement of an adjournment or postponement of the Annual Meeting of stockholders commence a new time period (or extend the time period) for the giving of a stockholder's notice as described above. To be in proper form, a stockholder's notice to the Secretary of the Corporation shall set forth:

(i) as to each person, if any, whom the stockholder proposes to nominate for election as a director (A) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (or any subsequent provisions replacing such Act, rules or regulations), (B) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, and (C) include a completed and signed questionnaire, representation and agreement required by paragraph (e) of this Section 3.4;

(ii) as to each matter the stockholder proposes to bring before the Annual Meeting (other than the nomination of persons for election as directors), (A) a brief description of the business desired to be brought before the Annual Meeting, (B) the reasons for conducting such business at the Annual Meeting, (C) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the by-laws of the Corporation, the language of the proposed amendment), (D) any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and (E) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, (A) the name and address, as they appear on the Corporation's books, of such stockholder proposing such proposal, and of such beneficial owner, if any, (B)(1) the class and number of shares of the Corporation which are directly or indirectly owned beneficially or of record by such stockholder and by such beneficial owner, (2) the existence and material terms of any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder or beneficial owner, if any, has a right to vote any shares of any security of the Corporation (including, if applicable, any contract, arrangement, understanding or relationship pursuant to which any economic interest in the capital stock to be voted is beneficially owned by a person or persons other than the stockholder of record as of the record date), (3) any short interest in any security of the Corporation (for purposes of this Section 3.4, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through a contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), in each case with respect to the information required to be included in the notice pursuant to (1) through (3) above, as of the date of such notice and including, without limitation, any such interests held by members of such stockholder's or such beneficial owner's immediate family sharing the same household, (D) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations), (E) a representation that the person is a holder of record or otherwise has the right to vote shares of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (F) if the person does not own any stock of record, a representation as to who owns the shares of stock the person intends to vote of record and the basis upon which the person has the right to vote the shares of stock, and (G) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends (1) to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominees or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination.

(c) The Corporation may require any proposed nominee to furnish such other information as it may reasonably require (i) to determine the eligibility of such proposed nominee to serve as a director of the Corporation, (ii) to determine whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the Corporation; and (iii) that could be material to a reasonable stockholder's understanding of the independence and qualifications, or lack thereof, of such nominee. In addition, if the stockholder's ownership of shares of the Corporation, as set forth in the notice, is solely beneficial, documentary evidence of such ownership must accompany the notice. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an Annual Meeting except in accordance with the procedures set forth in this Section 3.4. The presiding officer of an Annual Meeting shall, if the facts warrant, determine and declare to the meeting that any business which was not properly brought before the meeting is out of order and shall not be transacted at the meeting.

(d) Notwithstanding anything in the second sentence of paragraph (b) of this Section 3.4 to the contrary, in the event that the number of directors to be elected to the board of directors of the Corporation at an Annual Meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased board of directors at least one hundred (100) days prior to the first anniversary of the preceding year's Annual Meeting, a stockholder's notice required by this Section 3.4 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(e) To be eligible to be a nominee for election or reelection as a director of the Corporation (other than a nominee nominated pursuant to Section 3.4(a)(i) or (ii) or Section 3.5(b)(i)), a person must deliver (in accordance with the time periods prescribed for delivery of notice under Sections 3.4 and 3.5 hereof, as applicable) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock trading policies and guidelines of the Corporation.

### **3.5. Special Meetings.**

(a) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the board of directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by the Board of Directors or a committee appointed by the Board of Directors or (ii) provided that the Board of Directors has determined that the directors shall be elected at such meeting, by any stockholder of the Corporation who (A) was a stockholder of record at the time the notice provided for in Section 3.4 hereof is delivered to the Secretary of the Corporation and at the time of the special meeting, (B) shall be entitled to vote at the meeting and upon such election, and (C) complies with the notice procedures set forth in this Article III. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice in the same form as required by paragraph (b) of Section 3.4 hereof with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 3.4(e)) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(b) Only such business shall have been conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III and only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of the stockholders of the Corporation. Except as otherwise required by law and subject to the rights of the holders of any claim or series of stock having a preference over the common stock of the Corporation (the "Common Stock") as to dividends or on liquidation, a special meeting of stockholders may be called only by the Chairman of the Board or the President or by the Secretary at the written request of a majority of the directors or, solely in accordance with Section 3.5(g) of these By-laws, a stockholder, or a group of stockholders formed for the purpose of making such request, that beneficially own 25% or more of the outstanding Common Stock. The request shall state the purpose or purposes for which the meeting is to be called. The notice of every special meeting of stockholders shall state the purpose for which it is called.

(c) Except as otherwise required by law and subject to the rights of the holders of any claim or series of stock having a preference over the Common Stock as to dividends or on liquidation, the Chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III and (b) if any proposed nomination or business was not made or proposed in compliance with this Article III, in the reasonable judgment of the presiding officer of the meeting under the circumstances existing at the time and given the information available to such officer, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 3.5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3.5, to be considered a qualified representative of the stockholder, a person must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of the stockholders.

(d) For purpose of this Article III, “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(e) Nothing in this Article III, shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Corporation’s proxy statement pursuant to Rule 14a-8 (or any successor thereto) promulgated under the Exchange Act or (b) of the holders of any series of preferred stock to nominate and elect directors pursuant to and to the extent provided in any applicable provisions of the Articles of Incorporation.

(f) Any special meeting of stockholders may be adjourned by the presiding officer of the meeting for any reason (including, if the presiding officer determines that it would be in the best interests of the Corporation to extend the period of time for the solicitation of proxies) from time to time and from place to place until the presiding officer shall determine that the business to be conducted at the meeting is completed, which determination shall be conclusive.

(g) Stockholder Requests for Special Meetings. (i) Special meetings of stockholders (each a “Stockholder Requested Special Meeting”) shall be called by the Secretary upon the written request of a stockholder, or a group of stockholders formed for the purpose of making such request, that beneficially own 25% or more of the outstanding common stock (the “Threshold Percentage”) as of the date of submission of the written request. Compliance by the requesting stockholder or group with the requirements of this Section 3.5(g) and related provisions of these By-laws shall be determined by the Board of Directors, which determination shall be conclusive and binding on the stockholder or stockholders making such request for a Stockholder Requested Special Meeting. Except in accordance with this Section 3.5(g), stockholders shall not be permitted to propose business to be brought before a special meeting of stockholders.

(i) A request for a Stockholder Requested Special Meeting must be in writing and signed by the beneficial owners of the Threshold Percentage of the common stock (or their duly authorized agents) and be delivered to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. Such request shall (A) set forth a statement of the specific purpose or purposes of the Stockholder Requested Special Meeting and the matters proposed to be acted on at such Stockholder Requested Special Meeting (including the text of any resolution or resolutions proposed for consideration), (B) bear the date of signature of each stockholder (or duly authorized agent) signing the request, (C) set forth (1) the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the request is signed), (2) the number of shares of common stock as to which such stockholder has beneficial ownership and (3) include evidence of the fact and duration of such stockholder's beneficial ownership of such stock consistent with that which is required under Regulation 14A under the Exchange Act, (D) set forth all information relating to each such stockholder that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act, (E) describe any material interest of each such stockholder in the specific purpose or purposes of the meeting, (F) describe any agreement, arrangement or understanding between or among the stockholders requesting the Stockholder Requested Special Meeting or between or among the stockholder or stockholders requesting the Stockholder Requested Special Meeting and any other person or entity in connection with the request or the matters proposed to be acted on at the Stockholder Requested Special Meeting and (G) include an acknowledgment by each stockholder and any duly authorized agent that any disposition of shares of common stock as to which such stockholder has beneficial ownership as of the date of delivery of the request and prior to the record date for the proposed Stockholder Requested Special Meeting requested by such stockholder shall constitute a revocation of such request with respect to such shares. In addition, the stockholder and any duly authorized agent shall promptly provide any other information reasonably requested by the Corporation to allow it to satisfy its obligations under applicable law. Any requesting stockholder may revoke a request for a special meeting at any time prior to the commencement of the Stockholder Requested Special Meeting by written revocation delivered to the Secretary at the principal executive offices of the Corporation. If, following such revocation at any time before the commencement of the Stockholder Requested Special Meeting, the remaining requests are from stockholders holding in the aggregate less than the Threshold Percentage, the Board of Directors, in its discretion, may cancel the Stockholder Requested Special Meeting.

(ii) Notwithstanding the foregoing, the Secretary shall not be required to call a Stockholder Requested Special Meeting if (A) the request for such special meeting does not comply with this Section 3.5(g), (B) the Board of Directors or the Chief Executive Officer has called or calls an annual or special meeting of stockholders to be held not later than ninety (90) days after the date on which a valid request has been delivered to the Secretary (the "Delivery Date"), (C) the request is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding Annual Meeting and ending on the date of the next Annual Meeting, (D) the request contains an identical or substantially similar item (a "Similar Item") to an item that was presented at any meeting of stockholders held within one hundred and twenty (120) days prior to the Delivery Date (and, for purposes of this clause (D) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors), (E) the request relates to an item of business that is not a proper subject for action by the stockholders of the Corporation under applicable law or (F) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law.

(iii) Any Stockholder Requested Special Meeting shall be held at such date, time and place within or without the state of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting, which shall be fixed in accordance with these By-laws. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the request; provided, however, that nothing herein shall prohibit the Corporation from submitting matters to a vote of the stockholders at any Stockholder Requested Special Meeting.

**3.6. Notice of Meetings.** Written notice of each meeting of stockholders shall be mailed to each stockholder of record at his last address as it appears on the books of the Corporation at least ten days, but no more than 60 days prior to the date of the meeting.

**3.7. Record Date.** The Board of Directors shall have power to close the stock transfer books of the Corporation for a period not more than sixty nor less than ten days preceding the date of any meeting of stockholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date not more than sixty nor less than ten days preceding the date of any meeting of stockholders, or the date for any payment of dividends, or the date for allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to vote at any such meeting or entitled to receive payment of any such dividend or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, and in such cases only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to vote at such meeting, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid. This By-law shall in no way affect the rights of a stockholder and his transferee or transferor as between themselves.

**3.8. Stockholder List.** The officer who has charge of the stock ledger of the Corporation shall make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information received to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

**3.9. Quorum.** The holders of a majority of the outstanding shares of stock of the Corporation having voting power with respect to a subject matter (excluding shares held by the Corporation for its own account) present or represented by proxy shall constitute a quorum at the meeting of stockholders for the transaction of business with respect to such subject matter; provided, however, that if the subject matter is one as to which a higher vote is required (as contemplated by the Certificate of Incorporation or the laws of the State of Delaware, then the holders of that number of shares equal to at least that higher number of outstanding shares of stock of the Corporation having voting power with respect to such subject matter (excluding shares held by the Corporation for its own account) present or represented by proxy shall constitute a quorum at the meeting of stockholders solely for the transaction of business with respect to such subject matter. In the absence of a quorum with respect to a particular subject, the presiding officer of the meeting shall have power to adjourn the meeting from time to time, without notice other than an announcement at the meeting stating the time, place, if any, thereof, and the means of remote communication if any, until a quorum is present with respect to that subject matter. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally notified.

**3.10. Majority Vote.** When a quorum is present or represented at any meeting of stockholders, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders in all matters, unless the matter is one upon which, by express provision of the corporation laws of the State of Delaware, of the Certificate of Incorporation or of these By-laws, a different vote is required, in which case such express provision shall govern and control the decision of that matter. Each director shall be elected by the vote of the majority of the votes cast with respect to the director at any meeting of stockholders for the election of directors at which a quorum is present, provided that if as of a date that is fourteen (14) days in advance of the date the Corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this section, a majority of the votes cast means that the number of shares voted "for" a director must exceed the number of votes cast against that director. The Nominating & Corporate Governance Committee has established procedures under which any director who is not elected shall offer to tender his or her resignation to the Board. The Nominating & Corporate Governance Committee will make a recommendation to the Board on whether to accept or reject the resignation, or whether other action should be taken. The Board will act on the Committee's recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results. Directors shall hold office until the next Annual Meeting and until their successors shall be duly elected and qualified.

**3.11. Proxies.** Every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder (which for purposes of this Section may include a signature and form of proxy pursuant to a facsimile or telegraphic form of proxy or any other instruments acceptable to the Judge of Election), bearing a date not more than three years prior to voting, unless such instrument provides for a longer period, and filed with the Secretary of the Corporation before, or at the time of, the meeting. If such instrument shall designate two or more persons to act as proxies, unless such instrument shall provide to the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, each proxy so attending shall be entitled to exercise such powers in respect of the same portion of the shares as he is of the proxies representing such shares.

**3.12. One Vote Per Share.** Unless otherwise provided by the Certificate of Incorporation or by the corporation laws of the State of Delaware, each stockholder of the Corporation shall, at every meeting of stockholders, be entitled to one vote in person or by proxy for each share of capital stock of the Corporation registered in his name.

**3.13. Shares Held by Certain Holders.** Any other corporation owning voting shares in this Corporation may vote the same by its President or by proxy appointed by him, unless some other person shall be appointed to vote such shares by resolution of the Board of Directors of such stockholder corporation. A partnership holding shares of this Corporation may vote such shares by any general partner or by proxy appointed by any general partner. Shares standing in the name of a deceased person may be voted by the executor or administrator of such deceased person, either in person or by proxy. Shares standing in the name of a guardian, conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no such fiduciary shall be entitled to vote shares held in such fiduciary capacity without a transfer of such shares into the name of such fiduciary. Shares standing in the name of a receiver may be voted by such receiver. A stockholder whose shares are pledged shall be entitled to vote such shares, unless in the transfer by the pledgor on the books of the Corporation, he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent the stock and vote thereon.

**3.14. Conduct of Business.** The order of business and all other matters of procedure at every meeting of the stockholders may be determined by the presiding officer of the meeting, who shall be the Chairman of the Board of Directors, the President or such other officer of the Corporation as designated by the Board. The presiding officer of the meeting shall have all the powers and authority vested in a presiding officer by law or practice without restriction, including, without limitation, the authority, in order to conduct an orderly meeting, to impose reasonable limits on the amount of time at the meeting taken up in remarks by any one stockholder and to declare any business not properly brought before the meeting to be out of order.

**3.15. Judge of Election.** The Board shall appoint one or more Judges of Election to serve at every meeting of the stockholders.

#### **ARTICLE IV Directors and Meetings of Directors**

**4.1. General Powers.** The business and affairs of the Corporation shall be managed by a Board of Directors (herein the “Board of Directors” or the “Board”) who may exercise all the powers of the Corporation not reserved to or conferred on the stockholders by statute, the Certificate of Incorporation or the By-laws of the Corporation.

**4.2. Number of Directors.** Except as otherwise fixed pursuant to the provisions of the Certificate of Incorporation relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors shall be as fixed from time to time by resolution of the Board, provided the number shall be not less than three. The directors, other than those who may be elected by the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, shall be divided into three classes as nearly equal in number as possible, with the term of office of one class expiring each year. The term of office of each director shall expire at the third Annual Meeting of Stockholders after election of the class to which he belongs. Notwithstanding the foregoing, effective as of the Annual Meeting of Stockholders to be held in 2017 and at each Annual Meeting of Stockholders thereafter, except as otherwise provided by law, each director to be elected at any such Annual Meeting of Stockholders shall be elected to serve until the next Annual Meeting of Stockholders and until his or her successor is duly elected and qualified; provided, however, that any director who prior to the Annual Meeting of Stockholders in 2017 was elected to a three year term that continues beyond the date of the Annual Meeting of Stockholders in 2017, shall continue to serve as a director for the remainder of his or her elected three year term or until his or her earlier resignation, removal, death, or other incapacity. As a result, effective as of the Annual Meeting of Stockholders in 2019, the Board of Directors will no longer be classified under Section 141(d) of the Delaware General Corporation Law and directors shall no longer be divided into classes. During the intervals between Annual Meetings of Stockholders, any vacancy occurring in the Board of Directors caused by resignation, removal, death or other incapacity, and any newly-created directorships resulting from an increase in the number of directors, shall be filled by a majority vote of the directors then in office, whether or not a quorum. Each director chosen to fill a vacancy shall hold office for the unexpired term in respect of which such vacancy occurs. Each director chosen to fill a newly-created directorship following the Annual Meeting of Stockholders in 2016 shall hold office for a term expiring at the next Annual Meeting of Stockholders. Directors are not required to be residents of Delaware or stockholders of the Corporation.

**4.3. Maximum Age of Directors.** No person may be elected or re-elected a director of the Corporation if at the time of his election or reelection he shall have attained the age of 72 years, provided however, that a director who shall attain the age of 72 years while serving as a director shall continue in office until the expiration of the term for which he was elected.

**4.4. Removal of Directors.**

(a) Notwithstanding anything in the By-laws to the contrary, any director may be removed from office as a director, with or without cause.

(b) The removal of any director, with or without cause, shall require the affirmative vote of stockholders of record holding a majority of the outstanding shares of stock of the Corporation entitled to vote in elections of directors at a meeting of the stockholders called for that purpose.

**4.5. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such times and at such place or places as the directors shall, from time to time, determine at a prior meeting. Special meetings of the Board may be called by the Chairman of the Board or President of the Corporation and shall be called by either of said officers upon the written request of any two directors. Special meetings shall be held at the office of the Corporation or at such place as is stated in the notice of the meeting. No notice shall be required for regular meetings of the Board. Notices of special meetings shall be given by mail at least five days before the meeting or by telephone, teletype or telegram at least 24 hours before the meeting. Notices may be waived. Notices need not include any statement of the purpose of the meeting.

**4.6. Unanimous Action; Telephonic and Other Participation.** When all of the directors shall be present at any meeting, however called or notified, they may act upon any business that might lawfully be transacted at regular meetings of the Board, or at special meetings duly called, and action taken at such meetings shall be as valid and binding as if legally called and notified. Members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment to the full extent and with the same effect as authorized and permitted by the laws of the State of Delaware.

**4.7. Quorum.** One-third of the total number of the members of the Board of Directors shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which there is a quorum present shall be the acts of the Board; provided, however, that the directors may act in such other manner, with or without a meeting, as may be permitted by the laws of the State of Delaware and provided further, that if all of the directors shall consent in writing to any action taken by the Corporation, such action shall be as valid as though it had been authorized at a meeting of the Board.

**4.8. Compensation.** Directors shall receive such compensation and such fees for attendance at meetings of the Board or of committees thereof and such other compensation as shall be fixed by a majority of the entire Board.

**ARTICLE V**  
**Committees of Directors**

**5.1. Designation.** The Board of Directors may designate from among its members an executive committee and/or one or more other committees, each consisting of one or more directors. The designation of a committee, and the delegation of authority to it, shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law. No member of any committee shall continue to be a member thereof after ceasing to be a director of the Corporation. The Board of Directors shall have the power at any time to increase or decrease the number of members of any committee, to fill vacancies thereon, to change any member thereof and to change the functions or terminate the existence thereof.

**5.2. Powers.** Any such committee, to the extent provided by resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets; recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution; or amending the By-laws of the Corporation; and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger with respect to the merger into the Corporation of a subsidiary of which at least 90 percent of the outstanding shares of each class are owned by the Corporation.

**5.3. Procedures; Meetings; Quorum.**

(a) The Board of Directors shall appoint a chairman from among the members of the committee and shall appoint a secretary who may, but need not, be a member of the committee. The chairman shall preside at all committee meetings and the secretary of the committee shall keep a record of its acts and proceedings.

(b) Regular meetings of a committee, of which no notice shall be necessary, shall be held on such days and at such places as shall be fixed by resolution adopted by the committee. Special meetings of a committee shall be called at the request of the Chief Executive Officer or of any member of the committee, and shall be held upon such notice as is required by these By-laws for special meetings of the Board of Directors, provided that notice by word of mouth or telephone shall be sufficient if received in the city where the meeting is to be held not later than the day immediately preceding the day of the meeting. A waiver of notice of a meeting, signed by the person or persons entitled to such notice, whether before or after the event stated therein, shall be deemed equivalent to the giving of such notice.

(c) Attendance of any member of a committee at a meeting shall constitute a waiver of notice of the meeting. A majority of a committee, from time to time, shall be necessary to constitute a quorum for the transaction of any business, and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee. Members of a committee may hold a meeting of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at the meeting.

(d) Any action which may be taken at a meeting of a committee may be taken without a meeting if a consent in writing, setting forth the actions so taken shall be signed by all members of the committee entitled to vote with respect to the subject matter thereof. The consent shall have the same effect as a unanimous vote of the committee.

(e) The Board of Directors may vote to the members of any committee a reasonable fee as compensation for attendance at meetings of the committee.

**ARTICLE VI**  
**Officers**

**6.1. Number.** The Board of Directors shall elect a Chief Executive Officer, a President, who may also be the Chief Executive Officer, and a Secretary, and may elect a Chairman, a Treasurer, one or more vice presidents, including an Executive or Senior Vice President and a Vice President-Finance, a Controller, a Controller-Operations, and one or more assistant secretaries and assistant treasurers. The Chief Executive Officer of the Corporation and the Chairman shall be directors of the Corporation; other officers need not be directors. Any two of the above offices, except those of President and Vice President, may be held by the same person but no officers shall execute, acknowledge or verify any instrument in more than one capacity.

**6.2. Election and Term of Office.** Officers of the Corporation shall hold office until their death or resignation or until their successors are duly chosen and qualified. Any officer, agent or employee may be removed at any time, with or without cause, by the Board but such removal shall be without prejudice to the contractual rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Vacancy occurring in any office or position at any time may be filled by the Board. All officers, agents and employees of the Corporation shall respectively have such authority and perform such duties in the conduct and management of the Corporation as may be delegated by the Board of Directors or by these By-laws.

**6.3. Compensation.** Officers shall receive such compensation as may from time to time be determined by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of such officer also being a director. Agents and employees shall receive such compensation as may from time to time be determined by the President of the Corporation or, if the Board of Directors has elected a Chairman of the Board and has designated such Chairman of the Board to be the Chief Executive Officer of the Corporation, by the Chairman of the Board.

**6.4. Chairman of the Board.** The Chairman of the Board shall preside at all meetings of the stockholders and at all meetings of the directors. In the absence of the Chairman of the Board, the Chairman of the Nominating and Corporate Governance Committee shall so preside.

**6.5. Chief Executive Officer and President.** The Board of Directors shall designate either the Chairman of the Board or the President as the Chief Executive Officer of the Corporation. The Chief Executive Officer of the Corporation shall supervise and direct the operations of the business in accordance with the policies determined by the Board of Directors. If the President is not designated the Chief Executive Officer, the President shall be the Chief Operating Officer of the Corporation and shall be responsible for the general supervision and control of the business and the affairs of the Corporation subject to the directions of the Chairman of the Board and the Board of Directors. The Chief Operating Officer, in the absence or incapacity of the Chief Executive Officer, shall perform the duties of that office.

**6.6. Vice President.** In the absence or incapacity of the President, the Board of Directors shall designate a Vice President, Senior or Executive Vice President to perform the duties of the President during such absence or incapacity." Each Vice President shall have such other duties and authority as shall be assigned by the President or may be delegated by the Board of Directors. The Vice President-Finance shall be responsible for and direct the Treasurer and Controller of the Corporation in all treasury, accounting, cost and budgeting, and data collection functions. He will report directly to the President with a report and policy relationship to the Chairman of the Board and the Board of Directors.

**6.7. Chief Financial Officer.** The Chief Financial Officer shall be the principal financial and accounting officer of the Corporation. He shall have general direction of and supervision over the financial and accounting affairs of the Corporation. He shall render to the Chief Executive Officer, the President and the Board of Directors, at regular meetings of the Board of Directors, or whenever they may require it, an account of the financial condition of the Corporation. He shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors, the Chief Executive Officer or the President.

**6.8. General Counsel.** The General Counsel shall be the principal legal officer of the Corporation. He shall have general direction of and supervision over the legal affairs of the Corporation and shall advise the Board of Directors and officers of the Corporation on all legal matters. He shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors, the Chief Executive Officer or the President.

**6.9. Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and shall record all votes and minutes from all proceedings in a book to be kept for that purpose. He shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed, it shall be attested by his signature or by the signature of the Treasurer or an Assistant Secretary; provided, however, that the affixing of the seal of the Corporation to any document or instrument specifically shall not be required in order for such document or instrument to be binding on or the official act of the Corporation, and the signature of any authorized officer, without the seal of the Corporation, shall be sufficient for such purposes. The Secretary shall perform such other duties and have such other authorities as are delegated to him by the Board of Directors.

**6.10. Treasurer.** The Treasurer shall be responsible for the care and custody of all funds and other financial assets, taxes, corporate debt, order entry and sales invoicing including credit memos, credit and collection of accounts receivable, cash receipts, and the banking and insurance functions of the Corporation. He shall report directly to and perform such other duties as shall be assigned by the Vice President-Finance.

**6.11. Controller.** The Controller shall be responsible for the installation and supervision of all general accounting records of the Corporation, preparation of financial statements and the annual and operating budgets and profit plans, continuous audit of accounts and records of the Corporation, preparation and interpretation of statistical records and reports, taking and costing of all physical inventories and administering the inventory levels, supervision of accounts payable and cash disbursements function and hourly and salary payrolls. He shall report directly to and perform such other functions as shall be assigned him by the Vice President-Finance.

## **ARTICLE VII Notice**

**7.1. Methods of Giving Notice.** Whenever, under the provisions of applicable statutes, the Certificate of Incorporation or these By-laws, notice is required to be given to any director, member of any committee or stockholder, such notice may be given in writing and delivered personally or mailed to such director, member or stockholder; provided that in the case of a director or a member of any committee such notice may be given orally or by telephone. If mailed, notice to a director, member of a committee or stockholder shall be deemed to be given when deposited in the United States mail first class in a sealed envelope, with postage thereon prepaid, addressed, in the case of a stockholder, to the stockholder at the stockholder's address as it appears on the records of the Corporation or, in the case of a director or member of a committee, to such a persons at his business address. Notice to directors and stockholders may also be given by facsimile telecommunication. Notice may also be given to any director, member of any committee or stockholder by a form of electronic transmission as that term is defined in Section 232 of the Delaware General Corporation Law.

**7.2. Written Waiver.** Whenever any notice is required to be given under the provisions of an applicable statute, the Certificate of Incorporation or these By-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person or persons entitled to such notice, in each case either before or after the time stated therein, shall be deemed equivalent to the required notice.

**ARTICLE VIII**  
**Banking, Checks and Other Instruments**

**8.1. Banks.** The Board of Directors shall by resolution designate the bank or banks in which the funds of the Corporation shall be deposited, and such funds shall be deposited in the name of the Corporation and shall be subject to checks drawn as authorized by resolution of the Board of Directors.

**8.2. Contracts and Other Instruments.** The Board of Directors may in any instance designate the officers and agents who shall have authority to execute any contract, conveyance, or other instrument on behalf of the Corporation; or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officer or agents, the Chairman of the Board, if designated as the Chief Executive Officer of the Corporation, President or any Vice President, and the Secretary or Assistant Secretary or Treasurer or Assistant Treasurer may execute the same in the name and on behalf of the Corporation and may affix the corporate seal thereto.

**ARTICLE IX**  
**Fiscal Year**

The fiscal year of the Corporation shall begin on the first day of November and end on the thirty-first day of October.

**ARTICLE X**  
**Books and Records**

The proper officers and agents of the Corporation shall keep and maintain such books, records and accounts of the Corporation's business and affairs and such stock ledgers and lists of stockholders as the Board of Directors shall deem advisable and as shall be required by the laws of the State of Delaware or other states or jurisdictions empowered to impose such requirements.

**ARTICLE XI**  
**Indemnification**

**11.1. Indemnification and Advancement of Expenses.** Each director or officer of the Corporation or a subsidiary of the Corporation (an “Article XI Person”) who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she, or a person of whom he or she is the legal representative, (i) is or was a director or officer of the Corporation or a subsidiary of the Corporation, or (ii) is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, in each case whether or not serving in such capacity at the time any claim is asserted or any liability or expense is incurred, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the laws of the State of Delaware (but, in the case of any amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expenses, (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any pending, threatened or completed proceeding in advance of its final disposition; provided, however, that, if the laws of the State of Delaware require, the payment of such expenses incurred by an Article XI Person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Article XI Person, to repay all amounts so advanced if it shall ultimately be determined that such Article XI Person is not entitled to be indemnified under the applicable provisions of the laws of the State of Delaware. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation or a subsidiary of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

**11.2. Claims.** If a claim for indemnification or advancement of expenses under this Article XI is not paid in full within thirty days after a written claim therefor by the Article XI Person has been received by the Corporation, the Article XI Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Article XI Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

**11.3. Other Sources.** The Corporation's obligation, if any, to indemnify or to advance expenses to any Article XI Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Article XI Person actually collects as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise; *provided* that the person shall not be under any obligation to bring any action or otherwise pursue recovery of any such other right to indemnification or advancement of expenses.

**11.4. Amendment or Repeal.** Any repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection hereunder of any person in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed and even if such proceeding is not commenced or completed until after such repeal or modification) arising out of, or related to, any act or omission occurring prior to the time of such repeal or modification.

**11.5. Other Indemnification and Advancement of Expenses.** This Article XI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Article XI Persons when and as authorized by appropriate corporate action.

**11.6. Non-Exclusivity.** The indemnification and advancement of expenses provided in Section 11.1 of these By-laws shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of stockholders, vote of disinterested directors, insurance arrangement or otherwise, both as to action in his or her official capacity and as to action in another capacity.

**ARTICLE XII**  
**Other Matters**

**12.1. Severability.** Any determination that any provision of these By-laws is for any reason inapplicable, invalid, illegal or otherwise ineffective shall not affect or invalidate any other provision of these By-laws.

**12.2. Evidence of Authority.** A certificate by the Secretary or an Assistant Secretary as to any action taken by the stockholders, directors, any committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

**ARTICLE XIII**  
**Amendments**

These By-laws may be altered, amended or repealed and new by-laws may be adopted at any regular meeting of the stockholders or Board of Directors; or at any special meeting of the stockholders or Board of Directors; provided that notice of such proposed making, alteration or repeal be included in the notice of such special meeting. The Board of Directors may take such action by the vote of a majority of those Directors present and voting at a meeting where a quorum is present. In accordance with the provisions of the Certificate of Incorporation, the stockholders may make new by-laws, or adopt, alter, amend, or repeal by-laws adopted by either the stockholders or the Board of Directors by the affirmative vote of the holders of not less than two-thirds (66 2/3<sup>rd</sup> %) of the voting power of all of the then outstanding shares of capital stock of the Corporation then entitled to vote generally for the election of directors. The power of the stockholders and the Board shall include the fixing and appointing of the number of directors in accordance with the provisions of the Certificate of Incorporation.

## Executive Severance Policy

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### Eligibility

Executives within the three executive tiers set forth below who agree to be bound by all of the restrictions, conditions and limitations under this Executive Severance Policy (“Policy”) will be eligible to severance payments and other applicable benefits as set forth in this Policy upon a “Qualifying Termination,” as such term is defined herein.

- **Tier 1:** Chief Executive Officer.
- **Tier 2:** Section 16 Officers.
- **Tier 3:** Members of the Corporate Executive Committee, or equivalent executive committee if renamed.

As needed on an ongoing basis and in its sole discretion, the Compensation & Management Development Committee shall determine the eligibility and appropriate tier placement of any executives participating in the Policy (each such participant referred to herein as “Executive”).

### Qualifying Terminations

Each of the following termination events will constitute a “Qualifying Termination” under this Policy. Benefits payable under each of the different “Qualifying Termination” scenarios are as set forth elsewhere in this Policy.

- **Qualifying Termination without Change in Control:** Involuntary termination of the Executive by the Company without Cause, and without a Change in Control of the Company;
- **Qualifying Termination following Change in Control:** Involuntary termination of the Executive by the Company without Cause, or voluntary termination by the Executive for Good Reason, in each case within twenty-four (24) months following the effective date of a Change in Control of the Company.

For purposes of this Policy and determining whether a Qualifying Termination has occurred, the following definitions shall apply:

- **Cause:** Any action or inaction by the Executive that constitutes (a) gross negligence or willful misconduct in connection with the Executive’s duties or in the course of the Executive’s employment with the Company; (b) any act of fraud, embezzlement or theft in connection with Executive’s duties or in the course of employment with the Company; (c) intentional wrongful damage to property of the Company; (d) a substantial failure by the Executive to perform his or her duties after notice to the Executive and a reasonable opportunity to cure; (e) the Executive’s material breach of restrictive covenants contained in any Company policy or any agreement between the Executive and the Company; or (f) the Executive’s intentional wrongful disclosure of secret processes or confidential information of the Company.
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· **Good Reason:** To the extent any such action has been taken without the Executive's written consent, the occurrence of any of the following events: (a) the Company or its successor assigns to the Executive any duties materially inconsistent with such Executive's position (including offices, titles and reporting requirements), authority, duties or responsibilities with the Company in effect immediately before the occurrence of the Change in Control, or otherwise makes any material negative change in any such position, authority, duties or responsibilities; (b) the Company or its successor takes any other action that results in a material diminution in such position, authority, duties or responsibilities or otherwise take any action that materially interferes therewith; (c) the Company or its successor materially reduces the Executive's annual base salary or target annual bonus as in effect immediately before the occurrence of the Change in Control, other than as part of a reduction of less than ten percent (10%) that is applicable to all executives of the Company or its successor; (d) the Company or its successor relocates the Executive's principal office more than fifty (50) miles from the participant's principal office at the time of the Change in Control, provided that such relocation results in an increase to the participant's daily commute time; or (e) the Company fails to obtain assumption or adoption of this Policy by its successor within ten (10) days following the applicable Change in Control.

· **Target Annual Bonus:** For purposes of this Policy, an Executive's "target annual bonus" shall mean the target annual bonus amount applicable to such Executive for the fiscal year in which the Qualifying Termination occurs, with such amount to be determined, as applicable, by reference to either (a) the target annual bonus amount contemplated by the Executive's current Annual Incentive Award, or (b) the target annual bonus amount contemplated for such Executive by the Company's Management Incentive Program. With respect to Executives eligible to receive Annual Incentive Awards, if no Annual Incentive Award has yet been granted to such Executive by the Company's Compensation Committee for the fiscal year in which the Qualifying Termination occurs, then the "target annual bonus" shall be calculated by reference to the target annual bonus contemplated by the Executive's most recently-granted Annual Incentive Award.

· **Change in Control:** As used in this Policy, the definition of "Change in Control" shall be that set forth in the Quanex Building Products Corporation 2020 Omnibus Incentive Plan or any successor incentive plan, as in effect at the time of such Change in Control. If no such incentive plan is in effect, then "Change in Control" shall mean the occurrence of any of the following:

(a) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Covered Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20 percent (20%) or more of either (i) the then outstanding shares of the common stock of the Company (the "Outstanding Company Common Stock"), or (ii) 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 (a), the following acquisitions shall not constitute a Change in Control of the Company: (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 corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (c) of this paragraph; or

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(b) during any period of two consecutive years following the effective date of this Policy (the “Effective Date”), individuals who at the beginning of such period constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Covered Person other than the Board; or

(c) the consummation of (i) a reorganization, merger or consolidation or sale of the Company, or (ii) a disposition of all or substantially all of the assets of the Company (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, direct or indirectly, more than 50 percent (50%) of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which 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 Covered Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20 percent (20%) or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation, 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 of the corporation resulting from such Business Combination, were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

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

**Severance Benefits**

The benefits set forth below shall be paid in the event of a Qualifying Termination:

Executive Tier	Type of Qualifying Termination	Severance Benefits to be Paid
Tier 1	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>• 2x base salary plus 2x target annual bonus at the time of Qualifying Termination, payable in installments on normal payroll schedule; and</li> <li>• Pro-rata annual bonus for year of termination based on actual Company performance and number of days worked by the Executive during the fiscal year, to be paid at the same time bonuses are paid to active employees; and</li> <li>• Continued health and welfare benefits, or reimbursement thereof, for eighteen (18) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>
	Qualifying Termination <i>following</i> Change in Control	<ul style="list-style-type: none"> <li>• 2.5x base salary plus 2.5x target annual bonus at the time of Qualifying Termination (or, if higher, at the time of Change in Control), payable in a lump sum within fifteen (15) days of termination; and</li> <li>• Pro-rata target annual bonus for year of termination based on number of days worked by the Executive during the fiscal year, payable in a lump sum within fifteen (15) days of termination; and</li> <li>• Continued health and welfare benefits, or reimbursement thereof, for eighteen (18) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>
Tier 2	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>• 1.5x base salary plus 1.5x target annual bonus at the time of Qualifying Termination, payable in installments on normal payroll schedule; and</li> <li>• Pro-rata annual bonus for year of termination based on actual Company performance and number of days worked by the Executive during the fiscal year, to be paid at the same time bonuses are paid to active employees; and</li> <li>• Continued health and welfare benefits, or reimbursement thereof, for eighteen (18) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>
	Qualifying Termination <i>following</i> Change in Control	<ul style="list-style-type: none"> <li>• 2x base salary plus 2x target annual bonus at the time of Qualifying Termination (or, if higher, at the time of Change in Control), payable in a lump sum within fifteen (15) days of termination; and</li> <li>• Pro-rata target annual bonus for year of termination based on number of days worked by the Executive during the fiscal year, payable in a lump sum within fifteen (15) days of termination; and</li> </ul>

		<ul style="list-style-type: none"> <li>Continued health and welfare benefits, or reimbursement thereof, for eighteen (18) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>
Tier 3	Qualifying Termination <i>without</i> Change in Control	<ul style="list-style-type: none"> <li>1x base salary plus 1x target annual bonus at the time of Qualifying Termination, payable in installments on normal payroll schedule; and</li> <li>Pro-rata annual bonus for year of termination based on actual Company performance and number of days worked by the Executive during the fiscal year, to be paid at the same time bonuses are paid to active employees; and</li> <li>Continued health and welfare benefits, or reimbursement thereof, for twelve (12) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>
	Qualifying Termination <i>following</i> Change in Control	<ul style="list-style-type: none"> <li>1.5x base salary plus 1.5x target annual bonus at the time of Qualifying Termination (or, if higher, at the time of Change in Control), payable in a lump sum within fifteen (15) days of termination; and</li> <li>Pro-rata target annual bonus for year of termination based on number of days worked by the Executive during the fiscal year, payable in a lump sum within fifteen (15) days of termination; and</li> <li>Continued health and welfare benefits, or reimbursement thereof, for eighteen (18) months for the Executive and his or her spouse and dependents, subject to earlier termination when the Executive becomes eligible for such benefits from a subsequent employer.</li> </ul>

If reimbursement of health and welfare benefits (for any of the above termination events) is determined to be necessary in lieu of continued coverage (as determined in the sole discretion of the Compensation & Management Development Committee), such reimbursement will be made as monthly taxable cash payments. Treatment of all equity awards or any other long-term incentive awards will be governed by the applicable award agreements and plan documents.

Any payments due hereunder shall commence being made within sixty (60) days following the date of termination, but in no event later than five (5) days following the date on which the applicable Release and Separation Agreement becomes irrevocable; provided that, if such 60-day period begins in one taxable year and ends in a second taxable year, the payment shall commence in the second taxable year.

**Golden Parachute “Best Net”**

If an Executive would be subject to an excise tax as a result of any severance payment to be made hereunder, then payments and benefits will be reduced to the extent required to eliminate such excise tax, if such reduction would result in the Executive’s receipt of a greater after-tax amount as compared to the amount he or she would receive net of excise tax if no such payment reduction were made.

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## Conditions to Participation and Receipt of Severance Payments; Release and Severance Agreement

By agreeing to participate in this Executive Severance Policy, and as a condition to receiving any severance payments hereunder, the Executive agrees as follows:

· Release and Separation Agreement. The Executive and the Company agree that the Company's offer of severance benefits following a Qualifying Termination is wholly conditioned on the Executive's execution of a Release and Separation Agreement tendered by the Company which will contain standard provisions such as a full release and other appropriate provisions, prohibitions, and obligations applicable to the Executive, including but not limited to restrictive covenants relating to non-solicitation, non-disparagement, and non-competition. The Company may forego the payment of any or all severance benefits hereunder if the Executive refuses to sign such an agreement tendered by the Company.

· Confidentiality, Non-Use, and Return of Property. The Executive (a) will not and has not taken, altered, destroyed, or deleted any files, documents, electronically stored information (in whatever form, including electronic mail and data) or other materials belonging to, or created by or on behalf of the Company, whether or not containing any trade secrets or confidential information; (b) during employment and thereafter, will not use or disclose any of the Company's trade secrets or confidential information in any way or in any format, including written information, information stored by electronic means, and any information retained in the Executive's memory, and shall hold in confidence all non-public information regarding the Company's marketing, business development, budgets or financial projections, or pending contracts, proposals or solicitations; (c) acknowledges that all (i) correspondence, proposals, notes, reports, memoranda, records and files; (ii) plans, specifications, drawings, blueprints, and designs; (iii) training, service or other manuals; (iv) customer or personnel lists or files, including mailing or contact lists; (v) computer software, programs, disks or files; (vi) tools, materials or equipment; (vii) photographs, photostats, negatives, undeveloped film; (viii) tape or electronic recordings (ix) information contained on any electronic storage or communications device used by the Executive during his or her employment with the Company, including those furnished by the Company and those owned by the Executive, and (x) any other documents or programs, whether compiled by the Executive or other employees of the Company, or its contractors, vendors or consultants, and those which were made available to the Executive while employed at the Company, which contain any confidential information or trade secrets or concern or describe any part of the Company's business, the Executive's employment or the Company's or Executive's dealings, transactions or communications with any customers (all of which is hereinafter collectively referred to as Company Information), are and shall remain the sole and exclusive property of the Company; (d) during employment and thereafter, has not kept in his or her possession, and will not disclose nor deliver to anyone else any Company Information whether in electronic, paper or any other format; and (e) has returned to the Company all of the Company's property and all Company Information which had been in the Executive's possession, including, but not limited to all access cards, notes, data, forms, reference and training materials, applications, memoranda, computer programs, print-outs, disks and the information contained in any computer, and any other records which contain, reflect or describe any confidential or proprietary information or trade secrets belonging exclusively to the Company.

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The provisions set forth herein apply to any Company Information contained on or within any personal computer, mobile device, cell phone, iPad, or any other telephonic or electronic communication or data storage device, including those owned by the Executive which were used during the Executive's employment with the Company (all of which are hereinafter collectively called "Electronic Devices"). As a condition to receipt of the Severance Benefit described herein, the Executive will deliver to the Company any files, records, notes or other documents, and any Electronic Devices which were used during the Executive's employment with the Company and which contain any Company Information. The Company shall have the right to inspect any Electronic Device and to remove any Company Information therefrom, and to retain any file, record, note or other document containing Company Information.

- Arbitration of Disputes; Repayment of Legal Fees. Any dispute relating to the application, administration, or interpretation of this Policy shall be settled by arbitration administered in Houston, Texas, by the American Arbitration Association in accordance with its then effective arbitration rules. In the event of a dispute relating to the application of this Policy, the Company will reimburse the Executive for his or her actual legal fees and expenses, if the Executive prevails on at least one material issue related hereto.

- No Limitation or Restriction on Whistleblower Rights. Notwithstanding anything in this Policy to the contrary, this Policy is not intended to, and shall be interpreted in a manner that does not, limit or restrict any Executive from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the U.S. Securities Exchange Act of 1934).

#### **Miscellaneous Provisions**

- Multiple Severance or Termination Scenarios. In no event will an Executive receive severance payments under multiple executive tiers, under multiple Qualifying Termination scenarios, or under multiple Company severance policies, Severance Agreements, or Change in Control Agreements, or any combination thereof.

- Administration of Policy. This Executive Severance Policy is administered by the Compensation & Management Development Committee, which shall have full and exclusive power and authority to administer the Policy and to take all actions that the Policy expressly contemplates or that such Committee, in its sole discretion, determines are necessary or appropriate in connection with the administration of the Policy with respect to any Qualifying Termination and any severance payment to be made hereunder.

- Precedence. This Executive Severance Policy supersedes and takes precedence over any Severance Agreement or Change in Control Agreement in place between the Company and any Executive who participates herein.

- Third-Party Beneficiaries. If the Executive is or was employed by a subsidiary of the Company, then such subsidiary is intended to be a third-party beneficiary of this Agreement and shall have the right to enforce this Agreement, including but not limited to the provisions relating to restrictive covenants and the Executive's required entry into a release and severance agreement prior to the payment of any amounts hereunder.

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Repayment of Severance Amounts under Certain Circumstances. In the event that the Executive breaches or otherwise fails to abide by the terms of a Release and Severance Agreement required by this Policy, then (a) any unpaid amounts at the time of such breach shall be forfeited in their entirety, and (b) any severance or similar amounts that had been previously paid to such Executive under this Policy shall be repaid to the Company by the Executive within thirty (30) days of such breach.

Compliance with Section 409A of the Code. This Executive Severance Policy is intended to comply and shall be administered in a manner that is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended, and shall be construed and interpreted in accordance with such intent. To the extent that a payment is subject to Section 409A of the Code, the payment shall be granted, paid, settled or deferred in a manner that will comply with Section 409A of the Code, including regulations or other guidance issued with respect thereto, except as otherwise determined by the Compensation & Management Development Committee. Any provision of this Executive Severance Policy that would cause the grant of an award or the payment, settlement or deferral thereof to fail to satisfy Section 409A of the Code shall be amended to comply with Section 409A of the Code on a timely basis, which may be made on a retroactive basis, in accordance with regulations and other guidance issued under Section 409A of the Code.

Notwithstanding anything contained herein to the contrary, an Executive shall not be considered to have terminated employment with the Company for purposes of any payments under this Executive Severance Policy which are subject to Section 409A of the Code until the Executive would be considered to have incurred a "separation from service" from the Company within the meaning of Section 409A of the Code.

Should any payments made in accordance with the Policy to a "specified employee" (as defined under Section 409A of the Code) be determined to be payments from a nonqualified deferred compensation plan and are payable in connection with an Executive's "separation from service" (as defined under Section 409A of the Code), that are not exempt from Section 409A of the Code as a short-term deferral or otherwise, these payments, to the extent otherwise payable within six (6) months after the Executive's separation from service, and to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, will be paid in a lump sum on the earlier of the date that is six (6) months and one day after the Executive's date of separation from service or the date of the Executive's death. For purposes of Section 409A of the Code, the payments to be made to an Executive in accordance with this Policy shall be treated as a right to a series of separate payments.

To the extent required to avoid accelerated taxation and/or tax penalties under Section 409A of the Code, amounts reimbursable to an Executive under this Policy shall be paid to such Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided) during any one year may not effect amounts reimbursable or provided in any subsequent year.

The Company makes no representation that any or all of the payments described in this Policy will be exempt from or comply with Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to any such payment. The Executive shall be solely responsible for the payment of any taxes and penalties incurred under Section 409A.

Term of Policy. This policy continues until terminated or amended by the Company's Board of Directors, *provided* that any termination and any amendment that reduces benefits or eliminates participants will not be effective until one year after notice is provided to participants; and no termination or amendment that reduces benefits or eliminates participants will be effective if a Change in Control occurs during such one-year notice period, or if any such change is adopted during the 24 months following any Change in Control.

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**QUANEX BUILDING PRODUCTS CORPORATION  
2020 OMNIBUS INCENTIVE PLAN**

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**ARTICLE I**  
**ESTABLISHMENT, PURPOSE AND DURATION**

1.1. **Establishment.** The Company hereby approves this incentive compensation plan known as the “Quanex Building Products Corporation 2020 Omnibus Incentive Plan” as set forth in this document. The Plan permits the grant of Options, SARs, Restricted Stock, RSUs, Performance Share Awards, Performance Unit Awards, Annual Incentive Awards, Cash-Based Awards and Other Stock-Based Awards. The Plan, as adopted by the Board on January 6, 2020, shall become effective upon and subject to stockholder approval at the Company’s 2020 annual meeting of stockholders (the “2020 Annual Meeting”).

1.2. **Purpose of the Plan.** The Plan is intended to advance the best interests of the Company, its Affiliates and its stockholders by providing those persons who have substantial responsibility for the management and growth of the Company and its Affiliates with additional performance incentives and an opportunity to obtain or increase their proprietary interest in the Company, thereby encouraging them to continue in their employment or affiliation with the Company or its Affiliates.

1.3. **Duration of Plan.** Subject to earlier termination pursuant to Section 15.1, Awards may be granted under the Plan at any time and from time to time on or prior to February 27, 2030, the tenth anniversary of the effective date of the Plan, on which date the Plan will expire except as to Awards then outstanding under the Plan. Such outstanding Awards shall remain in effect until they have been exercised or terminated, or have expired. For the avoidance of doubt, if this Plan is not approved by shareholders at the 2020 Annual Meeting, then the Quanex Building Products Corporation 2008 Omnibus Incentive Plan, as in effect immediately prior to the Board’s adoption of this Plan, shall continue to exist and operate according to all of the terms and conditions of such plan. If the Company’s stockholders approve the this Plan at the 2020 Annual Meeting, then the Company will cease granting awards under the Company’s 2008 Omnibus Incentive Plan.

## ARTICLE II DEFINITIONS

The words and phrases defined in this Article shall have the meaning set out below throughout the Plan, unless the context in which any such word or phrase appears reasonably requires a broader, narrower or different meaning.

2.1. **“Affiliate”** means any corporation, partnership, limited liability company or association, trust or other entity or organization which, directly or indirectly, controls, is controlled by, or is under common control with, the Company. For purposes of the preceding sentence, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity or organization, shall mean the possession, directly or indirectly, of the power (a) to vote more than fifty percent (50%) of the securities having ordinary voting power for the election of directors of the controlled entity or organization, or (b) to direct or cause the direction of the management and policies of the controlled entity or organization, whether through the ownership of voting securities or by contract or otherwise.

2.2. **“Annual Incentive Award”** means an Award granted to a Holder pursuant to Article X.

2.3. **“Award”** means, individually or collectively, a grant under the Plan of Options, SARs, Restricted Stock, RSUs, Performance Share Awards, Performance Unit Awards, Annual Incentive Awards, Other Stock-Based Awards and Cash-Based Awards, in each case subject to the terms and provisions of the Plan.

2.4. **“Award Agreement”** means an agreement that sets forth the terms and conditions applicable to an Award granted under the Plan.

2.5. **“Board”** means the board of directors of the Company.

2.6. **“Cash-Based Award”** means an Award granted pursuant to Article XII.

2.7. **“Change in Control” or “Change in Control of the Company”** means the occurrence of any of the following after the Effective Date, unless otherwise provided in an Award Agreement:

a. the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “Covered Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20 percent (20%) or more of either (i) the then outstanding shares of the common stock of the Company (the “Outstanding Company Common Stock”), or (ii) 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 (a) of this Section 2.7, the following acquisitions shall not constitute a Change in Control of the Company: (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 corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (c) of this Section 2.7; or

b. during any period of two consecutive years following the Effective Date, individuals who at the beginning of such period constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Covered Person other than the Board; or

c. the consummation of (i) a reorganization, merger or consolidation or sale of the Company, or (ii) a disposition of all or substantially all of the assets of the Company (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, direct or indirectly, more than 50 percent (50%) of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which 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 Covered Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20 percent (20%) or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation, 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 of the corporation resulting from such Business Combination, were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

d. the approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

2.8. "**Code**" means the United States Internal Revenue Code of 1986, as amended from time to time.

2.9. "**Committee**" means the Compensation Committee of the Board or a subcommittee thereof formed by the Compensation Committee to act as the Committee hereunder. The Committee shall consist of no fewer than two Directors, each of whom is (a) a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act, and (b) an "independent director" for purpose of the rules of the principal U.S. national securities exchange on which the shares of Stock are traded, to the extent required by such rules.

2.10. "**Company**" means Quanex Building Products Corporation, a Delaware corporation, or any successor (by reincorporation, merger or otherwise).

2.11. "**Corporate Change**" shall have the meaning ascribed to that term in Section 4.5(c).

2.12. "**Director**" means a director of the Company who is not an Employee.

2.13. "**Disability**" means as determined by the Committee in its discretion exercised in good faith, a physical or mental condition of the Holder that would entitle him to payment of disability income payments under the Company's long-term disability insurance policy or plan for Employees as then in effect; or if the Holder is not covered, for whatever reason, under the Company's long-term disability insurance policy or plan for Employees or in the event the Company does not maintain such a long-term disability insurance policy, "Disability" means a permanent and total disability as defined in Section 22(e) (3) of the Code. A determination of Disability may be made by a physician selected or approved by the Committee and, in this respect, the Holder shall submit to an examination by such physician upon request by the Committee.

- 2.14. **“Dividend Equivalent”** means a payment equivalent in amount to dividends paid to the Company’s stockholders.
- 2.15. **“Effective Date”** means the later of (a) the date the Plan is approved by the Board, (b) the date the Plan is approved by the stockholder(s) of the Company and (c) the effective date of the Company’s first effective registration statement filed under the Securities Act of 1933, as amended.
- 2.16. **“Employee”** means a person employed by the Company or any Affiliate as a common law employee.
- 2.17. **“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.
- 2.18. **“Fair Market Value”** of the Stock as of any particular date means (a) if the Stock is traded on a stock exchange, the closing sale price of the Stock on that date as reported on the principal securities exchange on which the Stock is traded or, if there is no closing price on that date, then on the last preceding date on which such a closing price was reported, or (b) if the Stock is traded in the over-the-counter market, the average between the high bid and low asked price on the most recent date, either preceding or succeeding, on which shares of Stock were traded in the over-the-counter market. In the event the Stock is not publicly traded at the time a determination of value is required to be made hereunder, the determination of its Fair Market Value shall be made by the Committee in such manner as it deems appropriate.
- 2.19. **“Holder”** means a person who has been granted an Award or any person who is entitled to receive shares of Stock or cash under an Award.
- 2.20. **“Minimum Statutory Tax Withholding Obligation”** means, with respect to an Award, the amount the Company or an Affiliate is required to withhold for federal, state and local taxes based upon the applicable minimum statutory withholding rates required by the relevant tax authorities.
- 2.21. **“Option”** means a “nonqualified stock option” to purchase Stock granted pursuant to Article V that does not satisfy the requirements of Section 422 of the Code.
- 2.22. **“Option Price”** shall have the meaning ascribed to that term in Section 5.3.
- 2.23. **“Other Stock-Based Award”** means an equity-based or equity-related Award not otherwise described by the terms and provisions of the Plan that is granted pursuant to Article XI.
- 2.24. **“Performance Goals”** means one or more of the criteria described in Section 9.2 on which the performance goals applicable to an Award are based.
- 2.25. **“Performance Share”** means any grant pursuant to Article IX of a unit valued by reference to a designated number of shares of Stock, which value may be paid to the Holder upon achievement of such performance goals as the Committee shall establish.
- 2.26. **“Performance Share Award”** means an Award designated as a performance share award granted to a Holder pursuant to Article IX.
- 2.27. **“Performance Unit”** means any grant pursuant to Article IX of a unit valued by reference to a designated amount of cash or property other than shares of Stock, which value may be paid to the Holder upon achievement of such performance goals during the performance period as the Committee shall establish.

- 2.28. **“Performance Unit Award”** means an Award designated as a performance unit award granted to a Holder pursuant to Article IX.
- 2.29. **“Period of Restriction”** means the period during which Restricted Stock or another Award is subject to a substantial risk of forfeiture (based on the passage of time, the achievement of performance goals, or upon the occurrence of other events as determined by the Committee, in its discretion), as provided in Article VII.
- 2.30. **“Permissible under Section 409A”** means with respect to a particular action (such as, the grant, payment, vesting, settlement or deferral of an amount or award under the Plan) that such action shall not subject the compensation at issue to be subject to the additional tax or interest applicable under Section 409A.
- 2.31. **“Plan”** means the Quanex Building Products Corporation 2020 Omnibus Incentive Plan, effective as of February 27, 2020.
- 2.32. **“Prior Plan”** means the Quanex Building Products Corporation 2008 Omnibus Incentive Plan, as amended and restated from time to time.
- 2.33. **“Restricted Stock”** means shares of restricted Stock issued or granted under the Plan pursuant to Article VII.
- 2.34. **“Restricted Stock Award”** means an Award of shares of Stock subject to restrictions, granted pursuant to Article VII.
- 2.35. **“RSU”** means a restricted stock unit credited to a Holder’s ledger account maintained by the Company pursuant to Article VIII.
- 2.36. **“RSU Award”** means an Award granted pursuant to Article VIII.
- 2.37. **“SAR”** means a stock appreciation right granted under the Plan pursuant to Article VI.
- 2.38. **“Section 409A”** means Section 409A of the Code and Department of Treasury rules and regulations issued thereunder, as may be amended from time to time.
- 2.39. **“Stock”** means the common stock of the Company, \$0.01 par value per share (or such other par value as may be designated by act of the Company’s stockholders). In addition, for purposes of the Plan and the Awards, the term Stock shall also be deemed to include any rights to purchase (“Rights”) any junior participating preferred stock of the Company that may then be trading together with the Stock as provided in any agreement entered into by the Company relating to the Rights.
- 2.40. **“Substantial Risk of Forfeiture”** shall have the meaning ascribed to that term in Section 409A.
- 2.41. **“Substitute Awards”** means Awards granted or shares of Stock issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, in each case by a company acquired by the Company or any subsidiary of the Company or with which the Company or any subsidiary of the Company combines.
- 2.42. **“Termination of Employment”** means the termination of the Award recipient’s employment relationship with the Company and all Affiliates.

**ARTICLE III**  
**ELIGIBILITY AND PARTICIPATION**

3.1. **Eligibility.** The persons who are eligible to receive Awards under the Plan are Employees and Directors.

3.2. **Participation.** Subject to the terms and provisions of the Plan, the Committee may, from time to time, select the Employees and Directors to whom Awards shall be granted and shall determine the nature and amount of each Award.

**ARTICLE IV  
GENERAL PROVISIONS RELATING TO AWARDS**

4.1. **Authority to Grant Awards.** The Committee may grant Awards to those Employees and Directors as the Committee shall from time to time determine, under the terms and conditions of the Plan. Subject only to any applicable limitations set out in the Plan, the number of shares of Stock or other value to be covered by any Award to be granted under the Plan shall be as determined by the Committee in its sole discretion.

4.2. **Dedicated Shares; Maximum Awards.**

a. *Shares of Stock Under the Plan.* Subject to adjustment as provided in Section 4.5(b), a total of 3,035,053 shares of Stock shall be authorized for Awards granted under the Plan, less one (1) share for every one (1) share that was subject to an option or stock appreciation right granted after December 15, 2019 under the Prior Plan and 2.51 shares for every one (1) share that was subject to an award other than an option or stock appreciation right granted after December 15, 2019 under the Prior Plan. Any shares of Stock that are subject to Options or SARs shall be counted against this limit as one (1) share for every one (1) share granted, and any shares of Stock that are subject to Awards other than Options or SARs shall be counted against this limit as 2.51 shares for every one (1) share granted. Any shares issued hereunder may consist, in whole or in part, of authorized and unissued shares, treasury shares or shares purchased in the open market or otherwise.

b. If any shares of Stock subject to an Award are forfeited, an Award expires or an Award is settled for cash (in whole or in part), or if after December 15, 2019, any shares of Stock subject to an award under the Prior Plan are forfeited, a Prior Plan award expires or a Prior Plan award is settled for cash (in whole or in part), then in each such case the shares of Stock subject to such Award (or Prior Plan award) shall, to the extent of such forfeiture, expiration or cash settlement, be added to the shares of Stock available for Awards under the Plan, in accordance with Section 4.2(d) below. In the event that withholding tax liabilities arising from an Award other than an Option or SAR or, after December 15, 2019, withholding tax liabilities arising from an award other than an option or stock appreciation right under the Prior Plan are satisfied by the tendering of shares (either actually or by attestation) or by the withholding of shares by the Company, the shares of Stock so tendered or withheld shall be added to the shares of Stock available for Awards under the Plan in accordance with Section 4.2(d) below. Notwithstanding anything to the contrary contained herein, the following shares shall not be added to the shares of Stock authorized for grant under paragraph (a) of this Section: (i) shares of Stock tendered by a participant or withheld by the Company in payment of the purchase price of an Option, or after December 15, 2019, such shares related to a Prior Plan award; (ii) shares of Stock tendered by a participant or withheld by the Company to satisfy any tax withholding obligation with respect to Options or SARs, or after December 15, 2019, such shares related to a Prior Plan award; (iii) shares of Stock subject to an SAR that are not issued in connection with its stock settlement on exercise thereof, or after December 15, 2019, such shares related to a Prior Plan award; and (iv) shares of Stock reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of Options, or after December 15, 2019, such shares related to a Prior Plan award.

c. Substitute Awards shall not reduce the shares authorized for grant under the Plan, nor shall shares subject to a Substitute Award be added to the shares of Stock available for Awards under the Plan as provided in paragraph (b) above. Additionally, if a company acquired by the Company or any Company subsidiary or with which the Company or any Company subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the shares authorized for grant under the Plan (and shares subject to such Awards shall not be added to the shares available for Awards under the Plan as provided in paragraphs (b) above); provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or Directors prior to such acquisition or combination.

d. Any shares of Stock that again become available for Awards under the Plan pursuant to this Section shall be added as (i) one (1) share for every one (1) share subject to Options or SARs granted under the Plan or options or stock appreciation rights granted under the Prior Plan, and (ii) as 2.51 shares for every one (1) share subject to Awards other than Options or SARs granted under the Plan or awards other than options or stock appreciation rights granted under the Prior Plan.

e. *Director Awards.* Notwithstanding any other provision of the Plan to the contrary, the aggregate grant date fair value (computed as of the date of grant in accordance with applicable financial accounting rules) of all Awards granted to any Director during any single calendar year plus the aggregate amount of all cash payments made to such Director for services rendered for the same year shall not exceed \$400,000. For the avoidance of doubt, compensation shall be counted towards this limit for the year it is earned, and not a later year in the event settlement is deferred.

4.3. **Non-Transferability.** Except as provided below, no Award and no shares of Stock that have not been issued or as to which any applicable restriction, performance or deferral period has not lapsed, may be sold, assigned, transferred, pledged or otherwise encumbered, other than by will or the laws of descent and distribution, and such Award may be exercised during the life of the Holder only by the Holder or the Holder's guardian or legal representative. To the extent, and under such terms and conditions, as determined by the Committee, a Holder may assign or transfer an Award without consideration (each transferee thereof, a "Permitted Assignee") (a) to the Holder's spouse, children or grandchildren (including any adopted and step children or grandchildren), parents, grandparents or siblings, (b) to a trust for the benefit of one or more of the Holder or the persons referred to in clause (a), (c) to a partnership, limited liability company or corporation in which the Holder or the persons referred to in clause (a) are the only partners, members or shareholders or (d) for charitable donations; provided that such Permitted Assignee shall be bound by and subject to all of the terms and conditions of the Plan and the Award Agreement relating to the transferred Award and shall execute an agreement satisfactory to the Company evidencing such obligations; and provided further that such Holder shall remain bound by the terms and conditions of the Plan and the Award Agreement. The Company shall cooperate with any Permitted Assignee and the Company's transfer agent in effectuating any transfer permitted under this Section.

4.4. **Requirements of Law.** The Company shall not be required to sell or issue any shares of Stock under any Award if issuing those shares of Stock would constitute or result in a violation by the Holder or the Company of any provision of any law, statute or regulation of any governmental authority. Specifically, in connection with any applicable statute or regulation relating to the registration of securities, upon exercise of any Option or pursuant to any other Award, the Company shall not be required to issue any shares of Stock unless the Committee has received evidence satisfactory to it to the effect that the Holder will not transfer the shares of Stock except in accordance with applicable law, including receipt of an opinion of counsel satisfactory to the Company to the effect that any proposed transfer complies with applicable law. The determination by the Committee on this matter shall be final, binding and conclusive. The Company may, but shall in no event be obligated to, register any shares of Stock covered by the Plan pursuant to applicable securities laws of any country or any political subdivision. In the event the shares of Stock issuable on exercise of an Option or pursuant to any other Award are not registered, the Company may imprint on the certificate evidencing the shares of Stock any legend that counsel for the Company considers necessary or advisable to comply with applicable law, or, should the shares of Stock be represented by book or electronic entry rather than a certificate, the Company may take such steps to restrict transfer of the shares of Stock as counsel for the Company considers necessary or advisable to comply with applicable law. The Company shall not be obligated to take any other affirmative action in order to cause or enable the exercise of an Option or any other Award, or the issuance of shares of Stock pursuant thereto, to comply with any law or regulation of any governmental authority.

4.5. **Changes in the Company's Capital Structure; Change in Control.**

a. The existence of outstanding Awards shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of bonds, debentures, preferred or prior preference shares ahead of or affecting the Stock or Stock rights, the dissolution or liquidation of the Company, any sale or transfer of all or any part of its assets or business or any other corporate act or proceeding, whether of a similar character or otherwise.

b. In the event of any merger, reorganization, consolidation, recapitalization, dividend or distribution (whether in cash, shares or other property, other than a regular cash dividend), stock split, reverse stock split, spin-off or similar transaction or other change in corporate structure affecting the shares of Stock or the value thereof, such adjustments and other substitutions shall be made to the Plan and to Awards in a manner the Committee deems equitable or appropriate taking into consideration the accounting and tax consequences, including such adjustments in the aggregate number, class and kind of securities that may be delivered under the Plan, and, in the aggregate or to any participant, in the number, class, kind and option or exercise price of securities subject to outstanding Awards granted under the Plan (including, if the Committee deems appropriate, the substitution of similar options to purchase the shares of, or other awards denominated in the shares of, another company); provided, however, that the number of shares of Stock subject to any Award shall always be a whole number.

c. If while unexercised Options or other Awards remain outstanding under the Plan (i) the Company shall not be the surviving entity in any merger, consolidation or other reorganization (or survives only as a subsidiary of an entity other than an entity that was wholly-owned by the Company immediately prior to such merger, consolidation or other reorganization); (ii) the Company sells, leases or exchanges all or substantially all of its assets to any other person or entity (other than an entity wholly-owned by the Company); (iii) the Company is to be dissolved; or (iv) the Company is a party to any other corporate transaction (as defined under Section 424(a) of the Code and applicable Department of Treasury regulations) that is not described in clauses (i), (ii) or (iii) of this sentence (each such event is referred to herein as a "*Corporate Change*"), then, except as otherwise provided in an Award Agreement or another agreement between the Holder and the Company (provided that such exceptions shall not apply in the case of a reincorporation merger), or as a result of the Committee's effectuation of one or more of the alternatives described below, there shall be no acceleration of the time at which any Award then outstanding may be exercised, and subject to the consummation of such Corporate Change, the Committee, acting in its sole and absolute discretion without the consent or approval of any Holder, shall act to effect one or more of the following alternatives, which may vary among individual Holders and which may vary among Awards held by any individual Holder (provided that, with respect to a reincorporation merger in which Holders of the Company's ordinary shares will receive one ordinary share of the successor corporation for each ordinary share of the Company, none of such alternatives shall apply and, without Committee action, each Award shall automatically convert into a similar award of the successor corporation exercisable for the same number of ordinary shares of the successor as the Award was exercisable for ordinary shares of Stock of the Company):

i. accelerate the time at which some or all of the Awards then outstanding may be exercised so that such Awards may be exercised in full for a limited period of time on or before a specified date (with any such exercise subject to the consummation of such Corporate Change except in the case of a Corporate Change pursuant to (c)(iii) above), after which specified date all such Awards that remain unexercised and all rights of Holders thereunder shall terminate;

ii. require the mandatory surrender to the Company by all or selected Holders of some or all of the then outstanding Awards held by such Holders (irrespective of whether such Awards are then exercisable under the provisions of the Plan or the applicable Award Agreement evidencing such Award), subject to the consummation of the Corporate Change, in which event the Committee shall thereupon cancel such Award and the Company shall pay to each such Holder an amount of cash per share equal to the excess, if any, of the per share price offered to stockholders of the Company in connection with such Corporate Change over the exercise prices under such Award for such shares;

iii. with respect to all or selected Holders, have some or all of their then outstanding Awards (whether vested or unvested) assumed or have a new award of a similar nature substituted for some or all of their then outstanding Awards under the Plan (whether vested or unvested) by an entity which is a party to the transaction resulting in such Corporate Change and which is then employing such Holder or which is affiliated or associated with such Holder in the same or a substantially similar manner as the Company prior to the Corporate Change, or a parent or subsidiary of such entity, provided that (1) such assumption or substitution is on a basis where the excess of the aggregate fair market value of the Stock subject to the Award immediately after the assumption or substitution over the aggregate exercise price of such Stock is equal to the excess of the aggregate fair market value of all Stock subject to the Award immediately before such assumption or substitution over the aggregate exercise price of such Stock, and (2) the assumed rights under such existing Award or the substituted rights under such new Award, as the case may be, will have the same terms and conditions as the rights under the existing Award assumed or substituted for, as the case may be;

iv. provide that the number and class or series of Stock covered by an Award (whether vested or unvested) theretofore granted shall be adjusted so that such Award when exercised shall thereafter cover the number and class or series of Stock or other securities or property (including, without limitation, cash) to which the Holder would have been entitled pursuant to the terms of the agreement or plan relating to such Corporate Change if, immediately prior to such Corporate Change, the Holder had been the holder of record of the number of shares of Stock then covered by such Award; or

v. make such adjustments to Awards then outstanding as the Committee deems appropriate to reflect such Corporate Change (provided, however, that the Committee may determine in its sole and absolute discretion that no such adjustment is necessary).

Any adjustment effected by the Committee under Section 4.5 shall be designed to provide the Holder with the intrinsic value of his or her Award, as determined prior to the Corporate Change, or, if applicable, equalize the Fair Market Value of the Award before and after the Corporate Change.

In effecting one or more of the alternatives set out in paragraphs (C), (D) or (E) immediately above, and except as otherwise may be provided in an Award Agreement or other agreement between the Company and a Holder, the Committee, in its sole and absolute discretion and without the consent or approval of any Holder, may accelerate the time at which some or all Awards then outstanding may be exercised, subject to the consummation of the Corporate Change.

d. After a merger of one or more corporations into the Company or after a consolidation of the Company and one or more corporations in which the Company shall be the surviving corporation, each Holder shall be entitled to have his Restricted Stock appropriately adjusted based on the manner in which the shares of Stock were adjusted under the terms of the agreement of merger or consolidation.

e. Except as provided in Section 4.5(b), the issuance by the Company of stock of any class or series, or securities convertible into, or exchangeable for, stock of any class or series, for cash or property, or for labor or services either upon direct sale or upon the exercise of rights or warrants to subscribe for them, or upon conversion or exchange of stock or obligations of the Company convertible into, or exchangeable for, stock or other securities, shall not affect, and no adjustment by reason of such issuance shall be made with respect to, the number, class or series, or price of shares of Stock then subject to outstanding Options or other Awards.

f. *Change in Control; Impact on Certain Awards.* Unless otherwise provided in an Award Agreement or other agreement between a Holder and the Company, the Committee shall have the right to provide that in the event of a Change in Control of the Company: (i) Options and SARs outstanding as of the date of the Change in Control shall be cancelled and terminated without payment if the Fair Market Value of one share as of the date of the Change in Control is less than the per share Option exercise price or SAR grant price, and (ii) all performance-based Awards shall be (A) considered to be earned and payable based on achievement of performance goals or based on target performance (either in full or pro rata based on the portion of performance period completed as of the date of the Change in Control), and any limitations or other restrictions shall lapse and such performance-based Awards shall be immediately settled or distributed or (B) converted into Restricted Stock or Restricted Stock Unit Awards based on achievement of performance goals or based on target performance (either in full or pro rata based on the portion of performance period completed as of the date of the Change in Control).

i. *Assumption or Substitution of Certain Awards.* Unless otherwise provided in an Award Agreement or other agreement between a Holder and the Company, in the event of a Change in Control of the Company in which the successor company assumes or substitutes for an outstanding Award (or in which the Company is the ultimate parent corporation and continues the Award), if a Holder's employment with such successor company (or the Company) or a subsidiary thereof terminates within 24 months following such Change in Control (or such other period set forth in the Award Agreement or other Company agreement, including prior thereto if applicable) and under the circumstances specified in the Award Agreement or other Company agreement: (x) Options and SARs outstanding as of the date of such termination of employment will immediately vest, become fully exercisable, and may thereafter be exercised for 24 months (or the period of time set forth in the Award Agreement or other Company agreement); (y) the restrictions, limitations and other conditions applicable to Awards other than Options and SARs outstanding as of the date of such termination of employment shall lapse and the Award shall become free of all restrictions, limitations and conditions and become fully vested. For the purposes of this Section 4.5(f), an Award shall be considered assumed or substituted for if following the Change in Control the Award confers the right to purchase or receive, for each share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash or other securities or property) received in the transaction constituting the Change in Control by holders of shares for each share of Stock held on the effective date of such transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares); provided, however, that if such consideration received in the transaction constituting a Change in Control is not solely common stock of the successor company, the Committee may, with the consent of the successor company, provide that the consideration to be received upon the exercise or vesting of an Award, for each share of Stock subject thereto, will be solely common stock of the successor company with a fair market value substantially equal to the per share consideration received by holders of shares in the transaction constituting a Change in Control. The determination of whether fair market value is substantially equal shall be made by the Committee in its sole discretion and its determination shall be conclusive and binding.

ii. Unless otherwise provided in an Award Agreement or other agreement between a Holder and the Company, in the event of a Change in Control of the Company to the extent the successor company does not assume or substitute for an outstanding Award (or in which the Company is the ultimate parent corporation and does not continue the Award), then immediately prior to the Change in Control: (x) those Options and SARs outstanding as of the date of the Change in Control that are not assumed or substituted for (or continued) shall immediately vest and become fully exercisable; (y) restrictions, limitations and other conditions applicable to Awards other than Options and SARs that are not assumed or substituted for (or continued) shall lapse and the Award shall become free of all restrictions, limitations and conditions and become fully vested; and (z) any performance-based Award shall be either deemed fully earned at the target amount or earned based on performance as of the date on which the Change of Control occurs, as set forth in the Award Agreement or other Company agreement.

iii. The Committee, in its discretion, may determine that, upon the occurrence of a Change in Control, each Option and SAR outstanding shall terminate within a specified number of days after notice to the Holder, and/or that each Holder shall receive, with respect to each share subject to such Option or SAR, an amount equal to the excess of the Fair Market Value of such share immediately prior to the occurrence of such Change in Control over the exercise price per share of such Option and/or SAR; such amount to be payable in cash, in one or more kinds of stock or property (including the stock or property, if any, payable in the transaction) or in a combination thereof, as the Committee, in its discretion, shall determine.

4.6. **Election Under Section 83(b) of the Code.** If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to a Restricted Stock Award as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service. Notwithstanding the foregoing, the Committee may provide in an Award Agreement that a Restricted Stock Award is conditioned upon the Holder making or refraining from making an election with respect to the Award under Section 83(b) of the Code.

4.7. **Forfeiture for Cause.** Notwithstanding any other provision of the Plan or an Award Agreement, if the Committee finds by a majority vote that a Holder, before or after his Termination of Employment (a) committed fraud, embezzlement, theft, felony or an act of dishonesty in the course of his employment by the Company or an Affiliate which conduct damaged the Company or an Affiliate or (b) disclosed trade secrets of the Company or an Affiliate, then as of the date the Committee makes its finding, any Awards awarded to the Holder that have not been exercised by the Holder (including all Awards that have not yet vested) will be forfeited to the Company. The findings and decision of the Committee with respect to such matter, including those regarding the acts of the Holder and the damage done to the Company, will be final for all purposes. No decision of the Committee, however, will affect the finality of the discharge of the individual by the Company or an Affiliate. Notwithstanding the foregoing, this provision is not intended to, and shall be interpreted in a manner that does not, limit or restrict a participant from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the Securities Exchange Act of 1934).

4.8. **Forfeiture Events.** The Committee may specify in an Award Agreement that the Holder's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, Termination of Employment for cause, termination of the Holder's provision of services to the Company or its Affiliates, violation of material policies of the Company and its Affiliates, breach of noncompetition, confidentiality, or other restrictive covenants that may apply to the Holder, or other conduct by the Holder that is detrimental to the business or reputation of the Company and its Affiliates.

4.9. **Award Agreements.** Each Award shall be embodied in a written agreement (which may also be in electronic form) that shall be subject to the terms and conditions of the Plan. The Award Agreement shall be signed by an executive officer of the Company, other than the Holder, on behalf of the Company, and may be signed by the Holder to the extent required by the Committee. The Award Agreement may specify the effect of a Change in Control of the Company on the Award. The Award Agreement may contain any other provisions that the Committee in its discretion shall deem advisable which are not inconsistent with the terms and provisions of the Plan.

4.10. **Amendments of Award Agreements.** The terms of any outstanding Award under the Plan may be amended from time to time by the Committee in its discretion in any manner that it deems appropriate and that is consistent with the terms of the Plan. However, no such amendment shall adversely affect in a material manner any right of a Holder without his or her written consent.

4.11. **Rights as Stockholder.** Except as otherwise provided in the Plan, a Holder shall not have any rights as a stockholder with respect to Stock covered by an Option, a SAR, an RSU, a Performance Share, a Performance Share Unit, or an Other Stock-Based Award until the date, if any, such Stock is issued by the Company; and, except as otherwise provided in Section 4.5, no adjustment for dividends, or otherwise, shall be made if the record date therefor is prior to the date of issuance of such Stock.

4.12. **Issuance of Shares of Stock.** Shares of Stock, when issued, may be represented by a certificate or by book or electronic entry.

4.13. **Restrictions on Stock Received.** The Committee may impose such conditions and/or restrictions on any shares of Stock issued pursuant to an Award as it may deem advisable or desirable. These restrictions may include, but shall not be limited to, a requirement that the Holder hold the shares of Stock for a specified period of time.

4.14. **Compliance With Section 409A.** This Plan is intended to comply and shall be administered in a manner that is intended to comply with Section 409A, and all Awards are intended to be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Section 409A.

4.15. **Prohibition on Repricing.** Other than pursuant to Section 4.5(b), the Committee shall not without the approval of the Company's stockholders (a) lower the Option Price per share of an Option/SAR after it is granted, (b) cancel an Option/SAR when the Option Price per share exceeds the Fair Market Value of one share in exchange for cash or another Award (other than in connection with a Change in Control), or (c) take any other action with respect to an Option/SAR that would be treated as a repricing under the rules and regulations of the principal U.S. national securities exchange on which the shares of Stock are listed.

**ARTICLE V**  
**OPTIONS**

5.1. **Authority to Grant Options.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Options under the Plan to eligible persons in such number and upon such terms as the Committee shall determine.

5.2. **Option Agreement.** Each Option grant under the Plan shall be evidenced by an Award Agreement that shall specify (a) the Option Price, (b) the duration of the Option, (c) the number of shares of Stock to which the Option pertains, (d) the exercise restrictions, if any, applicable to the Option and (e) such other provisions as the Committee shall determine that are not inconsistent with the terms and provisions of the Plan.

5.3. **Option Price.** Except in the case of Substitute Awards, the price at which shares of Stock may be purchased under an Option (the “Option Price”) shall not be less than one hundred percent (100%) of the Fair Market Value of the shares of Stock on the date the Option is granted. Subject to the limitations set forth in the preceding sentences of this Section 5.3, the Committee shall determine the Option Price for each grant of an Option under the Plan.

5.4. **Duration of Option.** An Option shall not be exercisable after the earlier of (a) the general term of the Option specified in the applicable Award Agreement (which shall not exceed ten years) or (b) the period of time specified in the applicable Award Agreement that follows the Holder’s Termination of Employment or severance of affiliation relationship with the Company. Notwithstanding the foregoing, if that on the last business day of the term of an Option (i) the exercise of the Option is prohibited by applicable law or (ii) shares may not be purchased or sold by certain employees or directors of the Company due to the “black-out period” of a Company policy or a “lock-up” agreement undertaken in connection with an issuance of securities by the Company, the term of the Option shall be extended for a period of 30 days following the end of the legal prohibition, black-out period or lock-up agreement.

5.5. **Amount Exercisable.** Each Option may be exercised at the time, in the manner and subject to the conditions the Committee specifies in the Award Agreement in its sole discretion.

5.6. **Exercise of Option.** Subject to the terms and provisions of the Plan and the applicable Award Agreement, Options may be exercised in whole or in part from time to time by the delivery of written or electronic notice in the manner designated by the Committee stating (a) that the Holder wishes to exercise such Option on the date such notice is so delivered, (b) the number of shares of Stock with respect to which the Option is to be exercised and (c) the address to which any certificate representing such shares of Stock should be mailed. For the notice to be effective the notice must be accompanied by payment of the Option Price by any combination of the following: (i) cash, certified check, bank draft or postal or express money order for an amount equal to the Option Price under the Option, (ii) an election to make a cashless or net exercise (if approved in advance by the Committee or an executive officer of the Company, and in such form as permitted by the Committee) or (iii) any other form of payment which is acceptable to the Committee and permitted by applicable law.

Notwithstanding the foregoing, an Award Agreement may provide that if on the last day of the term of an Option the Fair Market Value of one share of Stock exceeds the Option Price per share, the Holder has not exercised the Option (or a tandem SAR, if applicable) and the Option has not expired, the Option shall be deemed to have been exercised by the Holder on such day with payment made by withholding shares otherwise issuable in connection with the exercise of the Option. In such event, the Company shall deliver to the Holder the number of shares for which the Option was deemed exercised, less the number of shares required to be withheld for the payment of the total purchase price and required withholding taxes (subject to the requirements of Section 16.3); provided, however, any fractional share shall be settled in cash.

**ARTICLE VI**  
**STOCK APPRECIATION RIGHTS**

6.1. **Authority to Grant SAR Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant SARs under the Plan to eligible persons in such number and upon such terms as the Committee shall determine. Subject to the terms and conditions of the Plan, the Committee shall have complete discretion in determining the number of SARs granted to each Holder and, consistent with the provisions of the Plan, in determining the terms and conditions pertaining to such SARs.

6.2. **General Terms.** Subject to the terms and conditions of the Plan, a SAR granted under the Plan shall confer on the recipient a right to receive, upon exercise thereof, an amount equal to the excess of (a) the Fair Market Value of one share of the Stock on the date of exercise over (b) the grant price of the SAR, which shall not be less than one hundred percent (100%) of the Fair Market Value of one share of the Stock on the date of grant of the SAR (except for Substitute Awards).

6.3. **SAR Agreement.** Each Award of SARs granted under the Plan shall be evidenced by an Award Agreement that shall specify (a) the grant price of the SAR, (b) the term of the SAR, (c) the vesting and termination provisions of the SAR and (d) such other provisions as the Committee shall determine that are not inconsistent with the terms and provisions of the Plan. The Committee may impose such additional conditions or restrictions on the exercise of any SAR as it may deem appropriate.

6.4. **Term of SAR.** The term of a SAR granted under the Plan shall be determined by the Committee, in its sole discretion; provided that no SAR shall be exercisable on or after the tenth anniversary date of its grant. Notwithstanding the foregoing, in the event that on the last business day of the term of a SAR (a) the exercise of the SAR is prohibited by applicable law or (b) shares may not be purchased or sold by certain employees or directors of the Company due to the "black-out period" of a Company policy or a "lock-up" agreement undertaken in connection with an issuance of securities by the Company, the term of the SAR shall be extended for a period of 30 days following the end of the legal prohibition, black-out period or lock-up agreement.

6.5. **Exercise of SAR.** A SAR may be exercised upon whatever terms and conditions the Committee, in its sole discretion, imposes. Notwithstanding the foregoing, an Award Agreement may provide that if on the last day of the term of a SAR the Fair Market Value of one share of Stock exceeds the grant price per share of the SAR, the Holder has not exercised the SAR or the tandem Option (if applicable), and the SAR has not otherwise expired, the SAR shall be deemed to have been exercised by the Holder on such day. In such event, the Company shall make payment to the Holder in accordance with this Section, reduced by the number of shares (or cash) required for withholding taxes (subject to the requirements of Section 16.3); any fractional share shall be settled in cash.

6.6. **Payment of SAR Amount.** Upon the exercise of a SAR, a Holder shall be entitled to receive payment from the Company in an amount determined by multiplying the excess of the Fair Market Value of a share of Stock on the date of exercise over the grant price of the SAR by the number of shares of Stock with respect to which the SAR is exercised. At the discretion of the Committee, the payment upon SAR exercise may be in cash, in Stock of equivalent value, in some combination thereof or in any other manner approved by the Committee in its sole discretion. The Committee's determination regarding the form of SAR payout shall be set forth in the Award Agreement pertaining to the grant of the SAR.

6.7. **Termination of Employment.** Each Award Agreement shall set forth the extent to which the Holder of a SAR shall have the right to exercise the SAR following the Holder's Termination of Employment. Such provisions shall be determined in the sole discretion of the Committee, may be included in the Award Agreement entered into with the Holder, need not be uniform among all SARs issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination.

**ARTICLE VII**  
**RESTRICTED STOCK AWARDS**

7.1. **Restricted Stock Awards.** The Committee may make Awards of Restricted Stock to eligible persons selected by it. The amount of, the vesting and the transferability restrictions applicable to any Restricted Stock Award shall be determined by the Committee in its sole discretion. The Committee may also grant Restricted Stock Awards that are intended to qualify as Performance-Based Compensation, subject to any of the Performance Goals set forth in Section 9.2, in its sole discretion, or may grant Restricted Stock Awards subject to other performance- and/or time-based vesting restrictions. If the Committee imposes vesting or transferability restrictions on a Holder's rights with respect to Restricted Stock, the Committee may issue such instructions to the Company's share transfer agent in connection therewith as it deems appropriate. The Committee may also cause the certificate for shares of Stock issued pursuant to a Restricted Stock Award to be imprinted with any legend which counsel for the Company considers advisable with respect to the restrictions or, should the shares of Stock be represented by book or electronic entry rather than a certificate, the Company may take such steps to restrict transfer of the shares of Stock as counsel for the Company considers necessary or advisable to comply with applicable law.

7.2. **Restricted Stock Award Agreement.** Each Restricted Stock Award shall be evidenced by an Award Agreement that contains any vesting, transferability restrictions and other provisions not inconsistent with the Plan as the Committee may specify.

7.3. **Holder's Rights as Stockholder.** Subject to the terms and conditions of the Plan, each recipient of a Restricted Stock Award shall have all the rights of a stockholder with respect to the shares of Restricted Stock included in the Restricted Stock Award during the Period of Restriction established for the Restricted Stock Award. Dividends payable with respect to Restricted Stock in cash or property shall be subject to the same vesting conditions and risks of forfeiture as the underlying Restricted Stock Award. Dividends payable in shares of Stock or rights to acquire shares of Stock shall be added to and become a part of the Restricted Stock, subject to the foregoing restriction. During the Period of Restriction, certificates representing the Restricted Stock shall be registered in the Holder's name and bear a restrictive legend to the effect that ownership of such Restricted Stock, and the enjoyment of all rights appurtenant thereto, are subject to the restrictions, terms, and conditions provided in the Plan and the applicable Award Agreement. Such certificates shall be deposited by the recipient with the Secretary of the Company or such other officer of the Company as may be designated by the Committee, together with all stock powers or other instruments of assignment, each endorsed in blank, which will permit transfer to the Company of all or any portion of the Restricted Stock which shall be forfeited in accordance with the Plan and the applicable Award Agreement.

**ARTICLE VIII**  
**RESTRICTED STOCK UNIT AWARDS**

8.1. **Authority to Grant RSU Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant RSU Awards under the Plan to eligible persons in such amounts and upon such terms as the Committee shall determine. The amount of, the vesting and the transferability restrictions applicable to any RSU Award shall be determined by the Committee in its sole discretion. The Committee shall maintain a bookkeeping ledger account which reflects the number of RSUs credited under the Plan for the benefit of a Holder.

8.2. **RSU Award.** An RSU Award shall be similar in nature to a Restricted Stock Award except that no shares of Stock are actually transferred to the Holder until a later date specified in the applicable Award Agreement. Each RSU shall have a value equal to the Fair Market Value of a share of Stock. A Holder who holds an RSU Award shall only have those rights specifically provided for in the Award Agreement; provided, however, in no event shall the Holder have voting rights with respect to such Award.

8.3. **RSU Award Agreement.** Each RSU Award shall be evidenced by an Award Agreement that contains any Substantial Risk of Forfeiture, transferability restrictions, form and time of payment provisions and other provisions not inconsistent with the Plan as the Committee may specify.

8.4. **Dividend Equivalents.** An Award Agreement for an RSU Award may specify that the Holder shall be entitled to the payment of Dividend Equivalents under the Award. Any Dividend Equivalents, cash dividends, stock and any other property (other than cash) distributed as a dividend or otherwise with respect to any Restricted Stock Unit Award that is subject to any vesting condition shall either (a) not be paid or credited or (b) be accumulated, and in any event shall be subject to restrictions and risk of forfeiture to the same extent as the Restricted Stock Units with respect to which such cash, stock or other property has been distributed and shall not be paid unless and until the time such restrictions and risk of forfeiture lapse.

8.5. **Form of Payment Under RSU Award.** Payment under an RSU Award shall be made in either cash or shares of Stock as specified in the applicable Award Agreement.

8.6. **Time of Payment Under RSU Award.** A Holder's payment under an RSU Award shall be made at such time as is specified in the applicable Award Agreement. The Award Agreement shall specify that the payment will be made (a) by a date that is no later than the date that is two and one-half (2 1/2) months after the end of the calendar year in which the RSU Award payment is no longer subject to a Substantial Risk of Forfeiture or (b) at a time that is Permissible under Section 409A.

**ARTICLE IX**  
**PERFORMANCE SHARE AWARDS AND PERFORMANCE UNIT AWARDS**

9.1. **Authority to Grant Performance Share Awards and Performance Unit Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Performance Share Awards and Performance Unit Awards under the Plan to eligible persons in such amounts and upon such terms as the Committee shall determine. If the Committee imposes vesting or transferability restrictions on a Holder's rights with respect to Performance Share or Performance Unit Awards, the Committee may issue such instructions to the Company's share transfer agent in connection therewith as it deems appropriate. The Committee may also cause the certificate for shares of Stock issued pursuant to a Performance Share or Performance Unit Award to be imprinted with any legend which counsel for the Company considers advisable with respect to the restrictions or, should the shares of Stock be represented by book or electronic entry rather than a certificate, the Company may take such steps to restrict transfer of the shares of Stock as counsel for the Company considers necessary or advisable to comply with applicable law.

9.2. **Performance Goals.** The Performance Goals upon which the payment or vesting of an Award is subject may be based on one or more of the following Performance Goals, which may be based on one or more business criteria that apply to the Holder, one or more business units, segments, or divisions of the Company, the Company as a whole, or a subsidiary of the Company, with reference to one or more of the following: earnings per share; total stockholder return; cash return on capitalization; increased revenue; revenue ratios (per employee or per customer); net income; stock price; market share; return on equity; return on assets; return on capital; return on capital compared to cost of capital; return on capital employed; return on invested capital; stockholder value; net cash flow; operating income; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; cash flow; cash flow from operations; cost reductions and cost ratios (per employee or per customer); sales; return on assets or net assets; gross profits; gross or net profit margin; gross profit growth; net operating profit (before or after taxes); economic value-added models or equivalent metrics; cash flow; operating margin; year-end cash; cash margin; debt reduction; operating efficiencies; cost reductions or savings; customer satisfaction; customer growth; employee satisfaction; productivity or productivity ratios; strategic partnerships or transactions; financial ratios, including those measuring liquidity, activity, profitability or leverage; acquisitions and divestitures; the achievement of specified milestones or the completion of specified projects identified as contributing substantially to the Company's success or value or the attainment of the Company's strategic goals; or any other goals as may be determined and approved by the Committee. Goals may also be measured on an absolute or relative basis and may be based on performance relative to a peer group of companies, an index, or comparisons of any of the indicators of performance relative to performance of other companies. Unless otherwise stated, such a Performance Goal need not be based upon an increase or positive result under a particular business criterion and could include, for example, maintaining the status quo or limiting economic losses (measured, in each case, by reference to specific business criteria). The Committee may provide for exclusion of the impact of an event or occurrence which the Committee determines should appropriately be excluded, including (a) restructurings, discontinued operations, and other unusual or infrequently occurring charges or events; (b) an event either not directly related to the operations of the Company, a Company subsidiary, division, business segment or business unit or not within the reasonable control of management; or (c) the cumulative effects of tax or accounting changes in accordance with U.S. generally accepted accounting principles. Prior to the payment of any Award that is based on Performance Goals, the Committee must certify in writing that applicable Performance Goals and any of the material terms thereof were, in fact, satisfied. Subject to the foregoing provisions, the terms, conditions and limitations applicable to any Performance Share or Performance Unit Awards made pursuant to the Plan shall be determined by the Committee.

9.3. **Time of Establishment of Performance Goals.** The Performance Goal(s) (and any exclusions) applicable to an Award shall be established by the Committee prior to the earlier to occur of (a) 90 days after the commencement of the period of service to which the Performance Goal relates or (b) the lapse of 25 percent of the period of service, and in any event while the outcome is substantially uncertain, unless otherwise determined by the Committee.

9.4. **Written Agreement.** Each Performance Share Award or Performance Unit Award shall be evidenced by an Award Agreement that contains any vesting, transferability restrictions and other provisions not inconsistent with the Plan as the Committee may specify.

9.5. **Form of Payment Under Performance Share or Unit Award.** Payment under a Performance Share Award or a Performance Unit Award shall be made in cash and/or shares of Stock as specified in the Holder's Award Agreement.

9.6. **Time of Payment Under Performance Share or Unit Award.** A Holder's payment under a Performance Share Award or Performance Unit Award shall be made at such time as is specified in the applicable Award Agreement. The Award Agreement shall specify that the payment will be made (a) by a date that is no later than the date that is two and one-half (2 1/2) months after the end of the calendar year in which the Award payment is no longer subject to a Substantial Risk of Forfeiture or (b) at a time that is Permissible under Section 409A.

9.7. **Holder's Rights.** A Holder who holds a Performance Share Award or Performance Unit Award shall only have those rights specifically provided for in the Award Agreement; provided, however, in no event shall the Holder have voting rights with respect to such Award. Any Dividend Equivalents, cash dividends, stock and any other property (other than cash) distributed as a dividend or otherwise with respect to any Performance Share or Performance Unit Award shall either (a) not be paid or credited or (b) be accumulated, and in any event shall be subject to restrictions and risk of forfeiture to the same extent as the underlying Award with respect to which such cash, stock or other property has been distributed and shall not be paid unless and until the time such restrictions and risk of forfeiture lapse.

9.8. **Adjustments.** The Committee may adjust (upwards or downwards) the amount payable pursuant to a performance-based Award.

**ARTICLE X**  
**ANNUAL INCENTIVE AWARDS**

10.1. **Authority to Grant Annual Incentive Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Annual Incentive Awards under the Plan to key executive Employees who, by the nature and scope of their positions, regularly directly make or influence policy decisions which significantly impact the overall results or success of the Company in such amounts and upon such terms as the Committee shall determine. The amount of any Annual Incentive Awards shall be based on the attainment of such Performance Goals as the Committee may determine.

10.2. **Written Agreement.** Each Annual Incentive Award shall be evidenced by an Award Agreement that contains any vesting, transferability restrictions and other provisions not inconsistent with the Plan as the Committee may specify.

10.3. **Form of Payment Under Annual Incentive Award.** Payment under an Annual Incentive Award shall be made in cash and/or shares of Stock as specified in the Holder's Award Agreement.

10.4. **Time of Payment Under Annual Incentive Award.** A Holder's payment under an Annual Incentive Award shall be made at such time as is specified in the applicable Award Agreement. The Award Agreement shall specify that the payment will be made (a) by a date that is no later than the date that is two and one-half (2 1/2) months after the end of the calendar year in which the Annual Incentive Award payment is no longer subject to a Substantial Risk of Forfeiture or (b) at a time that is Permissible under Section 409A.

**ARTICLE XI**  
**OTHER STOCK-BASED AWARDS**

11.1. **Authority to Grant Other Stock-Based Awards.** The Committee may grant to eligible persons other types of equity-based or equity-related Awards not otherwise described by the terms and provisions of the Plan (including the grant or offer for sale of unrestricted shares of Stock) in such amounts and subject to such terms and conditions, as the Committee shall determine. Such Awards may involve the transfer of actual shares of Stock to Holders, or payment in cash or otherwise of amounts based on the value of shares of Stock and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States.

11.2. **Value of Other Stock-Based Award.** Each Other Stock-Based Award shall be expressed in terms of shares of Stock or units based on shares of Stock, as determined by the Committee.

11.3. **Payment of Other Stock-Based Award.** Payment, if any, with respect to an Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash or shares of Stock as the Committee determines.

11.4. **Termination of Employment.** The Committee shall determine the extent to which a Holder's rights with respect to Other Stock-Based Awards shall be affected by the Holder's Termination of Employment. Such provisions shall be determined in the sole discretion of the Committee and need not be uniform among all Other Stock-Based Awards issued pursuant to the Plan.

**ARTICLE XII**  
**CASH-BASED AWARDS**

12.1. **Authority to Grant Cash-Based Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Cash-Based Awards under the Plan to eligible persons in such amounts and upon such terms as the Committee shall determine.

12.2. **Value of Cash-Based Award.** Each Cash-Based Award shall specify a payment amount or payment range as determined by the Committee.

12.3. **Payment of Cash-Based Award.** Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award, in cash.

12.4. **Termination of Employment.** The Committee shall determine the extent to which a Holder's rights with respect to Cash-Based Awards shall be affected by the Holder's Termination of Employment. Such provisions shall be determined in the sole discretion of the Committee and need not be uniform among all Cash-Based Awards issued pursuant to the Plan.

**ARTICLE XIII**  
**SUBSTITUTION AWARDS**

Awards may be granted under the Plan from time to time in substitution for stock options and other awards held by employees of other entities who are about to become Employees, or whose employer is about to become an Affiliate as the result of a merger or consolidation of the Company with another corporation, or the acquisition by the Company of substantially all the assets of another corporation, or the acquisition by the Company of at least fifty percent (50%) of the issued and outstanding stock of another corporation as the result of which such other corporation will become a subsidiary of the Company. The terms and conditions of the substitute Awards so granted may vary from the terms and conditions set forth in the Plan to such extent as the Board at the time of grant may deem appropriate to conform, in whole or in part, to the provisions of the Award in substitution for which they are granted.

**ARTICLE XIV  
ADMINISTRATION**

14.1. **Awards.** The Plan shall be administered by the Committee or, in the absence of the Committee, the Plan shall be administered by the Board. The members of the Committee shall serve at the discretion of the Board. The Committee shall have full and exclusive power and authority to administer the Plan and to take all actions that the Plan expressly contemplates or are necessary or appropriate in connection with the administration of the Plan with respect to Awards granted under the Plan.

To the extent not inconsistent with applicable law or the rules and regulations of the principal U.S. national securities exchange on which the shares of Stock are traded, the Committee may (a) delegate to a committee of one or more directors of the Company any of the authority of the Committee under the Plan, including the right to grant, cancel or suspend Awards and (b) authorize one or more executive officers to do one or more of the following with respect to Employees who are not Directors or executive officers of the Company (i) designate Employees to be recipients of Awards; (ii) determine the number of shares subject to such Awards to be received by such Employees; and (iii) cancel or suspend Awards to such Employees; provided that any resolution of the Committee authorizing such officer(s) must specify the total number of shares subject to Awards that such officer(s) may so award and the Committee may not authorize any officer to designate himself or herself as the recipient of an Award.

14.2. **Authority of the Committee.** The Committee shall have full and exclusive power to interpret and apply the terms and provisions of the Plan and Awards made under the Plan, and to adopt such rules, regulations and guidelines for implementing the Plan as the Committee may deem necessary or proper, all of which powers shall be exercised in the best interests of the Company and in keeping with the objectives of the Plan. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the vote of a majority of those members present at any meeting shall decide any question brought before that meeting. Any decision or determination reduced to writing and signed by a majority of the members shall be as effective as if it had been made by a majority vote at a meeting properly called and held. All questions of interpretation and application of the Plan, or as to Awards granted under the Plan, shall be subject to the determination, which shall be final and binding, of a majority of the whole Committee. No member of the Committee shall be liable for any act or omission of any other member of the Committee or for any act or omission on his own part, including but not limited to the exercise of any power or discretion given to him under the Plan, except those resulting from his own gross negligence or willful misconduct. In carrying out its authority under the Plan, the Committee shall have full and final authority and discretion, including but not limited to the following rights, powers and authorities to (a) determine the persons to whom and the time or times at which Awards will be made; (b) determine the number and exercise price of shares of Stock covered in each Award subject to the terms and provisions of the Plan; (c) determine the terms, provisions and conditions of each Award, which need not be identical and need not match the default terms set forth in the Plan; (d) accelerate the time at which any outstanding Award will vest; (e) prescribe, amend and rescind rules and regulations relating to administration of the Plan; and (f) make all other determinations and take all other actions deemed necessary, appropriate or advisable for the proper administration of the Plan.

The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award to a Holder in the manner and to the extent the Committee deems necessary or desirable to further the Plan's objectives. Further, the Committee shall make all other determinations that may be necessary or advisable for the administration of the Plan. As permitted by law and the terms and provisions of the Plan, the Committee may delegate its authority as identified in this Section 14.2. The Committee may employ attorneys, consultants, accountants, agents, and other persons, any of whom may be an Employee, and the Committee, the Company, and its officers and Board shall be entitled to rely upon the advice, opinions, or valuations of any such persons.

14.3. **Decisions Binding.** All determinations and decisions made by the Committee or the Board, as the case may be, pursuant to the provisions of the Plan and all related orders and resolutions of the Committee or the Board, as the case may be, shall be final, conclusive and binding on all persons, including the Company, its stockholders, its Affiliates, Holders and the estates and beneficiaries of Holders.

14.4. **No Liability.** Under no circumstances shall the Company, its Affiliates, the Board or the Committee incur liability for any indirect, incidental, consequential or special damages (including lost profits) of any form incurred by any person, whether or not foreseeable and regardless of the form of the act in which such a claim may be brought, with respect to the Plan or the Company's, an Affiliate's, the Committee's or the Board's roles in connection with the Plan.

**ARTICLE XV**  
**AMENDMENT OR TERMINATION OF PLAN**

15.1. **Amendment, Modification, Suspension, and Termination.** The Board may, from time to time, alter, amend, suspend or terminate the Plan as it shall deem advisable, subject to any requirement for stockholder approval imposed by applicable law, including the rules and regulations of the principal U.S. national securities exchange on which the shares of Stock are traded; provided that the Board may not amend the Plan in any manner that would result in noncompliance with Rule 16b-3 under the Exchange Act; and further provided that the Board may not, without the approval of the Company's stockholders to the extent required by such applicable law, amend the Plan to (a) increase the number of shares that may be the subject of Awards under the Plan (except for adjustments pursuant to Section 4.5(b)), (b) expand the types of awards available under the Plan, (c) materially expand the class of persons eligible to participate in the Plan, (d) amend Section 4.15 to eliminate the requirements relating to minimum exercise price, minimum grant price and stockholder approval, or (e) increase the maximum permissible term of any Option or SAR. The Board may not (except pursuant to Section 4.5(b) or in connection with a Change in Control), without the approval of the Company's stockholders, cancel an Option or SAR in exchange for cash when the exercise or grant price per share exceeds the Fair Market Value of one share or take any action with respect to an Option or SAR that would be treated as a repricing under the rules and regulations of the principal securities exchange on which the shares of Stock are traded, including a reduction of the exercise price of an Option or the grant price of a SAR or the exchange of an Option or SAR for another Award.

15.2. **Awards Previously Granted.** Notwithstanding any other provision of the Plan to the contrary, no termination, amendment, suspension, or modification of the Plan or an Award Agreement shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Holder holding such Award.

**ARTICLE XVI  
MISCELLANEOUS**

16.1. **Unfunded Plan/No Establishment of a Trust Fund.** Holders shall have no right, title, or interest whatsoever in or to any investments that the Company or any of its Affiliates may make to aid in meeting obligations under the Plan. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and any Holder, beneficiary, legal representative, or any other person. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts, except as expressly set forth in the Plan. No property shall be set aside nor shall a trust fund of any kind be established to secure the rights of any Holder under the Plan. The Plan is not intended to be subject to the Employee Retirement Income Security Act of 1974, as amended.

16.2. **No Employment Obligation.** The granting of any Award shall not constitute an employment contract, express or implied, nor impose upon the Company or any Affiliate any obligation to employ or continue to employ, or utilize the services of, any Holder. The right of the Company or any Affiliate to terminate the employment of any person shall not be diminished or affected by reason of the fact that an Award has been granted to him, and nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company or its Affiliates to terminate any Holder's employment at any time or for any reason not prohibited by law.

16.3. **Tax Withholding.** The Company or any Affiliate shall be entitled to deduct from other compensation payable to each Holder any sums required by federal, state, local or foreign tax law to be withheld with respect to the vesting or exercise of an Award or lapse of restrictions on an Award. In the alternative, the Company may require the Holder (or other person validly exercising the Award) to pay such sums for taxes directly to the Company or any Affiliate in cash or by check within one day after the date of vesting, exercise or lapse of restrictions. In the discretion of the Committee, and with the consent of the Holder, the Company may reduce the number of shares of Stock issued to the Holder upon such Holder's exercise of an Option to satisfy the tax withholding obligations of the Company or an Affiliate; provided that the Fair Market Value of the shares of Stock held back shall not exceed the Company's or the Affiliate's Minimum Statutory Tax Withholding Obligation, except as provided below. The Committee may, in its discretion, permit a Holder to satisfy any Minimum Statutory Tax Withholding Obligation arising upon the vesting of an Award by delivering to the Holder a reduced number of shares of Stock in the manner specified herein. If permitted by the Committee and acceptable to the Holder, at the time of vesting of shares under the Award, the Company shall (a) calculate the amount of the Company's or an Affiliate's Minimum Statutory Tax Withholding Obligation on the assumption that all such shares of Stock vested under the Award are made available for delivery; (b) reduce the number of such shares of Stock made available for delivery so that the Fair Market Value of the shares of Stock withheld on the vesting date approximates the Company's or an Affiliate's Minimum Statutory Tax Withholding Obligation; and (c) in lieu of the withheld shares of Stock, remit cash to the United States Treasury and/or other applicable governmental authorities, on behalf of the Holder, in the amount of the Minimum Statutory Tax Withholding Obligation. The Company shall withhold only whole shares of Stock to satisfy its Minimum Statutory Tax Withholding Obligation. Where the Fair Market Value of the withheld shares of Stock does not equal the amount of the Minimum Statutory Tax Withholding Obligation, the Company shall withhold shares of Stock with a Fair Market Value slightly less than the amount of the Minimum Statutory Tax Withholding Obligation and the Holder must satisfy the remaining minimum withholding obligation in some other manner permitted under this Section 16.3. The withheld shares of Stock not made available for delivery by the Company shall be retained as treasury shares or will be cancelled and the Holder's right, title and interest in such shares of Stock shall terminate. The Company shall have no obligation upon vesting or exercise of any Award or lapse of restrictions on an Award until the Company or an Affiliate has received payment sufficient to cover the Minimum Statutory Tax Withholding Obligation with respect to that vesting, exercise or lapse of restrictions. Neither the Company nor any Affiliate shall be obligated to advise a Holder of the existence of the tax or the amount which it will be required to withhold.

16.4. **Dividend Equivalents.** Subject to the provisions of the Plan and any Award Agreement, the recipient of an Award other than an Option or SAR may, if so determined by the Committee, be entitled to receive Dividend Equivalents with respect to the number of shares covered by the Award, as determined by the Committee, in its sole discretion. The Committee may provide that the Dividend Equivalents (if any) shall be deemed to have been reinvested in additional shares or otherwise reinvested. Notwithstanding the foregoing, Dividend Equivalents credited in connection with an Award that is subject to any vesting requirements (whether time or performance based) shall be subject to the same restrictions and risk of forfeiture as the underlying Award and shall not vest unless and until the underlying Award vests.

16.5. **Deferral.** The Committee shall be authorized to establish procedures pursuant to which the payment of any Award may be deferred; *provided* that procedures shall be Permissible under Section 409A.

16.6. **Gender and Number.** If the context requires, words of one gender when used in the Plan shall include the other and words used in the singular or plural shall include the other.

16.7. **Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

16.8. **Headings.** Headings of Articles and Sections are included for convenience of reference only and do not constitute part of the Plan and shall not be used in construing the terms and provisions of the Plan.

16.9. **Other Compensation Plans.** The adoption of the Plan shall not affect any other option, incentive or other compensation or benefit plans in effect for the Company or any Affiliate, nor shall the Plan preclude the Company from establishing any other forms of incentive compensation arrangements for Employees or Directors.

16.10. **Retirement and Welfare Plans.** Neither Awards made under the Plan nor shares of Stock or cash paid pursuant to such Awards, may be included as “compensation” for purposes of computing the benefits payable to any Holder under the Company’s or any Affiliate’s retirement plans (both qualified and non-qualified) or welfare benefit plans unless such other plan expressly provides that such compensation shall be taken into account in computing a participant’s benefit.

16.11. **Other Awards.** The grant of an Award shall not confer upon the Holder the right to receive any future or other Awards under the Plan, whether or not Awards may be granted to similarly situated Holders, or the right to receive future Awards upon the same terms or conditions as previously granted.

16.12. **Successors.** All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

16.13. **Law Limitations/Governmental Approvals.** The granting of Awards and the issuance of shares of Stock under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

16.14. **Delivery of Title.** The Company shall have no obligation to issue or deliver evidence of title for shares of Stock issued under the Plan prior to (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and (b) completion of any registration or other qualification of the Stock under any applicable national or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable.

16.15. **Inability to Obtain Authority.** The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares of Stock hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such shares of Stock as to which such requisite authority shall not have been obtained.

16.16. **Investment Representations.** The Committee may require any person receiving Stock pursuant to an Award under the Plan to represent and warrant in writing that the person is acquiring the shares of Stock for investment and without any present intention to sell or distribute such Stock.

16.17. **Persons Residing Outside of the United States.** Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company or any of its Affiliates operates or has Employees, the Committee, in its sole discretion, shall have the power and authority to (a) determine which Affiliates shall be covered by the Plan; (b) determine which persons employed outside the United States are eligible to participate in the Plan; (c) amend or vary the terms and provisions of the Plan and the terms and conditions of any Award granted to persons who reside outside the United States; (d) establish subplans and modify exercise procedures and other terms and procedures to the extent such actions may be necessary or advisable-any subplans and modifications to Plan terms and procedures established under this Section 16.17 by the Committee shall be attached to the Plan document as Appendices; and (e) take any action, before or after an Award is made, that it deems advisable to obtain or comply with any necessary local government regulatory exemptions or approvals. Notwithstanding the above, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other applicable law.

16.18. **Arbitration of Disputes.** Any controversy arising out of or relating to the Plan or an Award Agreement shall be resolved by arbitration conducted pursuant to the arbitration rules of the American Arbitration Association. The arbitration shall be final and binding on the parties.

16.19. **Governing Law.** The provisions of the Plan and the rights of all persons claiming thereunder shall be construed, administered and governed under the laws of the State of Texas. Unless otherwise provided in the Award Agreement, recipients of an Award under the Plan are deemed to submit to the exclusive jurisdiction and venue of the federal or state courts of Texas, to resolve any and all issues that may arise out of or relate to the Plan or any related Award Agreement.