

As filed with the Securities and Exchange Commission on November 1, 2016

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ARCH COAL, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

43-0921172

(I.R.S. Employer Identification No.)

**One CityPlace Drive, Ste. 300
St. Louis, Missouri**

(Address of principal executive offices)

63141

(Zip Code)

ARCH COAL, INC. 2016 OMNIBUS INCENTIVE PLAN

(Full title of the plan)

Robert G. Jones

**Senior Vice President—Law, General Counsel and Secretary
Arch Coal, Inc.**

One CityPlace Drive, Ste. 300

St. Louis, Missouri 63141

(Name and address of agent for service)

(314) 994-2700

(Telephone number, including area code, of agent for service)

With a copy to:

Michael Kaplan

Davis Polk & Wardwell LLP

450 Lexington Avenue

New York, NY 10017

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Amount to Be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee (3)
Class A Common Stock, par value \$0.01 per share, to be issued under the Arch Coal, Inc. 2016 Omnibus Incentive Plan	2,990,540	\$73.02	\$218,369,230.80	\$25,308.99

- (1) This Registration Statement on Form S-8 (this "Registration Statement") covers shares of Class A Common Stock, par value \$0.01 per share ("Class A Common Stock"), of Arch Coal, Inc. (the "Company" or the "Registrant") (i) issuable pursuant to the Arch Coal, Inc. 2016 Omnibus Incentive Plan (the "Plan"); (ii) to be issued in the future under the Plan and (iii) pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), any additional shares of Class A Common Stock that become issuable under the Plan by reason of any stock dividend, stock split, or other similar transaction.
- (2) Estimated pursuant to Rule 457(h) and Rule 457(c) under the Securities Act, solely for the purpose of computing the registration fee, based on the average of the high and low prices reported for a share of Class A Common Stock on the New York Stock Exchange on October 31, 2016.
- (3) Rounded to the nearest penny.



PART I

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Form S-8 instructions. The documents containing the information specified in Part I will be delivered to the participants in the Plan as required by Rule 428(b)(1).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") are incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, as amended.
- (b) The Registrant's Quarterly Reports on Form 10-Q for the periods ended March 31 and June 30, 2016.
- (c) The description of the Company's share capital which is contained in the Company's Registration Statement on Form 8-A (Registration No. 001-13105), dated October 4, 2016, including any amendments or supplements thereto.

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein), modifies or supersedes such statements. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Robert G. Jones, Senior Vice President—Law, General Counsel and Secretary of Arch Coal, Inc., has rendered an opinion as to the validity of the shares of Class A Common Stock being registered hereby. Mr. Jones is paid a salary by us and is a participant in various employee benefit plans offered to our employees generally.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Certificate of Incorporation provides that no director will be personally liable to the Company or the Company's stockholders for monetary damages for breach of fiduciary duty as a director, except as required by applicable law, as in effect from time to time. Currently, Delaware law requires that liability be imposed for the following:

- any breach of the director's duty of loyalty to the Company or to the Company's stockholders;
- any act or omission not in good faith or which involved intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; and
- any transaction from which the director derived an improper personal benefit.

The Bylaws provide that, to the fullest extent permitted by law, the Company will indemnify any officer or director of the Company against all damages, claims and liabilities arising out of the fact that the person is or was our director or officer, or served any other entity at the Company's request as a director, officer, employee, agent or fiduciary. The right to indemnification conferred pursuant to the indemnification provisions of the Bylaws shall also include the right to be paid by the Company the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware Law. Amending the indemnification provisions will not reduce the Company's indemnification obligations relating to actions taken before an amendment. The Registrant carries insurance policies insuring its directors and officers against certain liabilities that they may incur in their capacity as directors and officers.

Each indemnification agreement is substantially in the form included as Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed with the Commission on October 7, 2016. The description of the indemnification agreements is qualified in its entirety by reference to the full text of the form of indemnification agreement, which is incorporated by reference herein.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS.

The following exhibits are filed herewith or incorporated by reference as part of this Registration Statement:

<u>Exhibit Number</u>	
4.1	Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.1 to the Registrant's registration statement on Form 8-A filed on October 4, 2016)
4.2	Bylaws of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.2 to the Registrant's registration statement on Form 8-A filed on October 4, 2016).
5.1	Opinion of counsel (filed herewith).
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm (filed herewith).
23.2	Consent of counsel (included in the opinion filed as Exhibit 5.1 hereto).
24	Power of Attorney (included on the signature page to this Registration Statement).
99.1	Arch Coal, Inc. 2016 Omnibus Incentive Plan

ITEM 9. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;
- (iii) To include any material information with respect to the Plans not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of St. Louis, State of Missouri, on this 1st day of November, 2016.

ARCH COAL, INC.

By: /s/ John W. Eaves

Name: John W. Eaves

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person, whose signature appears below, constitutes and appoints John W. Eaves, John T. Drexler and Robert G. Jones, or any of them, the undersigned's true and lawful attorneys and agents, with full power of substitution and resubstitution in each, to do any and all acts and things in our name and on our behalf in our respective capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorneys and agents, or either one of them, may deem necessary or advisable to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this Registration Statement, including specifically, but without limitation, power and authority to sign for us or any of us in our names in the capacities indicated below, any and all amendments (including post-effective amendments) hereto, and each of the undersigned does hereby ratify and confirm all that said attorneys and agents, or either one of them or any substitute, shall do or cause to be done by virtue hereof. This Power of Attorney may be executed in any number of counterparts.

Pursuant to the requirements of the Securities Act of 1933, as amended, the following persons in the capacities and on the dates indicated have signed this Registration Statement below.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ John W. Eaves</u> John W. Eaves	Chief Executive Officer, Director <i>(Principal Executive Officer)</i>	November 1, 2016
<u>/s/ John T. Drexler</u> John T. Drexler	Senior Vice President and Chief Financial Officer <i>(Principal Financial Officer)</i>	November 1, 2016
<u>/s/ John W. Lorson</u> John W. Lorson	Vice President and Chief Accounting Officer <i>(Principal Accounting Officer)</i>	November 1, 2016
<u>/s/ James N. Chapman</u> James N. Chapman	Chairman of the Board of Directors	November 1, 2016
<u>/s/ Patrick J. Bartels, Jr.</u> Patrick J. Bartels, Jr	Director	November 1, 2016
<u>/s/ Sherman K. Edmiston III</u> Sherman K. Edmiston III	Director	November 1, 2016
<u>/s/ Richard A. Navarre</u> Richard A. Navarre	Director	November 1, 2016
<u>/s/ Patrick A. Kriegshauser</u> Patrick A. Kriegshauser	Director	November 1, 2016
<u>/s/ Scott D. Vogel</u> Scott D. Vogel	Director	November 1, 2016

EXHIBIT INDEX

**Exhibit
Number**

- 4.1 Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.1 to the Registrant's registration statement on Form 8-A filed on October 4, 2016)
 - 4.2 Bylaws of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.2 to the Registrant's registration statement on Form 8-A filed on October 4, 2016).
 - 5.1 Opinion of counsel (filed herewith).
 - 23.1 Consent of Ernst & Young LLP, independent registered public accounting firm (filed herewith).
 - 23.2 Consent of counsel (included in the opinion filed as Exhibit 5.1 hereto).
 - 24 Power of Attorney (included on the signature page to this Registration Statement).
 - 99.1 Arch Coal, Inc. 2016 Omnibus Incentive Plan
-



Robert G. Jones
Senior Vice President
Law & General Counsel

BJones@archcoal.com

November 1, 2016

Arch Coal, Inc.
One CityPlace Drive, Ste. 300
St. Louis, Missouri 63141

Ladies and Gentlemen:

I am Senior Vice President – Law, General Counsel and Secretary for Arch Coal, Inc., a Delaware corporation (the “Company”). This opinion letter is being furnished in connection with the preparation of the Registration Statement on Form S-8 (the “Registration Statement”) to be filed by the Company with the Securities and Exchange Commission for the registration under the Securities Act of 1933, as amended (the “Securities Act”), of 2,990,540 shares of the Company’s Class A Common Stock, par value \$0.01 per share (the “Shares”), which Shares are to be issued from time to time in connection with the Arch Coal, Inc. 2016 Omnibus Incentive Plan (the “Plan”).

This opinion is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In connection herewith, I have examined the Registration Statement on Form S-8 (the “Registration Statement”) to be filed by the Company with the Securities and Exchange Commission under the Securities Act. I have also examined the Company’s Certificate of Incorporation and Bylaws, and the corporate actions of the Company that provide for the issuance of the Shares, and have made such other investigation as I have deemed appropriate. I also have examined and relied upon certificates of public officials and, in rendering this opinion, have made the assumptions that are customary in opinion letters of this kind. I have not verified any of those assumptions.

Based upon and subject to the foregoing and the additional qualifications and other matters set forth below, I am of the opinion that the Shares have been duly and validly authorized and reserved for issuance, and that the Shares, when offered and sold by the Company in accordance with the terms of the Plan, will be validly issued, fully paid and nonassessable.

The opinion expressed above is limited to the laws of the State of Missouri, the Federal laws of the United States of America and, to the extent required by the foregoing, the General Corporation Law of the State of Delaware as in effect (and published or otherwise generally available) on the date hereof, and I assume no obligation to revise or supplement the opinion should such law be changed by legislative action, judicial decision

Arch Coal, Inc.
One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

direct: 314.994.2716
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or otherwise. In rendering the opinion, I have not considered, and hereby disclaim any opinion as to, the application or impact of any laws, cases, decisions, rules or regulations of any other jurisdiction, court or administrative agency.

I hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the references to my name in the Registration Statement. In giving such consent, I do not thereby concede that I am in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

By: /s/ Robert G. Jones

Robert G. Jones
Senior Vice President – Law, General Counsel and Secretary

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Omnibus Equity Plan of Arch Coal, Inc. of our reports dated March 15, 2016 with respect to the consolidated financial statements and schedule of Arch Coal, Inc. and the effectiveness of internal control over financial reporting of Arch Coal, Inc. (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 1 to the financial statements) included in its Annual Report (Form 10-K) for the year ended December 31, 2015, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

St. Louis, Missouri
November 1, 2016

ARCH COAL, INC.
2016 OMNIBUS INCENTIVE PLAN

ARTICLE I
PURPOSE AND ADOPTION OF THE PLAN

1.01. Purpose. The purpose of the Arch Coal, Inc. Omnibus Incentive Plan (as amended from time to time, the “Plan”) is to assist in attracting and retaining highly competent employees, directors and Consultants, to act as an incentive in motivating selected employees, directors and Consultants of the Company and its Subsidiaries to achieve long-term corporate objectives and to enable stock-based and cash-based incentive awards to qualify as “qualified performance-based compensation” for purposes of the tax deduction limitations under Section 162(m) of the Code (“Section 162(m) Compensation”).

1.02. Adoption and Term. The Plan was originally effective April 1, 1997. The Plan as amended and restated herein was approved by the Board to be effective as of October 5, 2016 (the “Effective Date”). The Plan shall remain in effect until the tenth anniversary of the Effective Date, or until terminated by action of the Board, whichever occurs sooner. Further, all Awards outstanding under the Plan immediately prior to the Effective Date shall continue to be subject to and governed by the provisions of the Plan in effect prior to this restatement and the terms and conditions set forth in the applicable Award Agreement.

ARTICLE II
DEFINITIONS

For the purpose of the Plan, capitalized terms shall have the following meanings:

2.01. Award means any one or a combination of Non-Qualified Stock Options or Incentive Stock Options described in *Article VI*, Stock Appreciation Rights described in *Article VI*, Restricted Shares and Restricted Stock Units described in *Article VII*, other stock-based Awards described in *Article VIII*, cash-based incentive Awards described in *Article IX* or any other award made under the terms of the Plan.

2.02. Award Agreement means a written agreement between the Company and a Participant or a written acknowledgment from the Company to a Participant evidencing the terms and conditions of an individual Award granted under and subject to the Plan. Such agreement or acknowledgement may be in a paper or electronic format approved by the Company and may be delivered by email or other electronic means (including posting on a website maintained by the Company or a third party under contract with the Company and to which a participant has access), along with all other documents relating to the Plan or any Award that the Company is required to deliver to its security holders (including, without limitation, annual reports, prospectuses and proxy statements).

2.03. Award Period means, with respect to an Award, the period of time, if any, set forth in the Award Agreement during which specified target performance goals must be achieved or other conditions set forth in the Award Agreement must be satisfied.

2.04. Beneficiary means an individual, trust or estate who or which, by a written designation of the Participant filed with the Company, or if no such written designation is filed, by operation of law, succeeds to the rights and obligations of the Participant under the Plan and the Award Agreement upon the Participant's death.

2.05. Board means the Board of Directors of the Company.

2.06. Cause unless otherwise defined in the applicable Award Agreement, shall have the same meaning as that term is defined in a Participant's offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means, as determined by the Committee in good faith, the Participant's (a) continued failure to substantially perform his or her duties with the Company (other than any such failure resulting from his or her incapacity due to physical or mental illness), (b) engaging in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise, (c) conviction of or the entering of a plea of nolo contendere to the commission of a felony, or (d) fraud in the performance of his or her duties with the Company.

2.07. Change in Control means the occurrence of any one or more of the following events:

(a) any Person, other than an employee benefit plan or trust maintained by the Company, becomes the beneficial owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's outstanding securities entitled to vote generally in the election of directors;

(b) the consummation of a merger or consolidation of the Company with any other corporation or entity, other than a merger or consolidation that would result in the voting securities of the Company continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or, if applicable, the ultimate parent thereof) at least 50% of the combined voting power and total fair market value of the securities of the Company or such surviving entity or parent outstanding after such merger or consolidation;

(c) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company;

(d) the stockholders of the Company shall approve any plan or proposal for the liquidation or dissolution of the Company; or

(e) at any time during a period of two (2) consecutive years, Continuing Directors shall cease for any reason to constitute at least a majority of the Board. For such purpose, "Continuing Directors" shall be directors who were in office at the beginning of such two year period and new directors whose election or nomination for

election by the Company's stockholders was approved by a vote of at least two-thirds of the Continuing Directors then in office.

Notwithstanding the foregoing, (A) with respect to any payment pursuant to a Section 409A Covered Award that is triggered upon a Change in Control, a transaction shall not be deemed to be a Change in Control unless such transaction constitutes a "change in control event" within the meaning of Section 409A of the Code, and (B) the Confirmation (as defined in the Plan of Reorganization) and consummation of the Plan of Reorganization shall not be deemed to constitute a "Change in Control" for purposes of the Plan.

2.08. Class A Common Stock means the Class A Common Stock of the Company, par value \$0.01 per share.

2.09. Code means the Internal Revenue Code of 1986, as amended. References to a section of the Code shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes said section.

2.10. Committee means the Personnel and Compensation Committee of the Board.

2.11. Company means Arch Coal, Inc., a Delaware corporation, and its successors.

2.12. Consultant means any natural person who provides bona fide consulting or advisory services to the Company or its Subsidiaries pursuant to a written agreement, which are not in connection with the offer and sale of securities in a capital-raising transaction, and do not, directly or indirectly, promote or maintain a market for the Company's or its Subsidiaries' securities.

2.13. Date of Grant means the date designated by the Committee as the date as of which it grants an Award, which shall not be earlier than the date on which the Committee approves the granting of such Award.

2.14. Disability unless otherwise defined in the applicable Award Agreement, shall have the same meaning as that term is defined in a Participant's offer letter or other applicable employment agreement; or, if there is no such definition, "Disability" means that, as a result of incapacity due to physical or mental illness, the Participant shall have been absent from his or her duties with the Company for six consecutive months.

2.15. Dividend Equivalent Account means a bookkeeping account in accordance with *Section 12.17* and related to an Award that is credited with the amount of any cash dividends or stock distributions that would be payable with respect to the shares of Class A Common Stock subject to such Awards had such shares been outstanding shares of Class A Common Stock.

2.16. Exchange Act means the Securities Exchange Act of 1934, as amended.

2.17. Exercise Price means, with respect to Options, the amount established by the Committee in the Award Agreement in accordance with *Section 6.01(b)* which is required to purchase each share of Class A Common Stock upon exercise of the Option, or with respect to a Stock Appreciation Right, the amount established by the Committee in the Award Agreement in accordance with *Section 6.02(b)* which is to be subtracted from the Fair Market Value on the date of exercise in order to determine the amount of the payment to be made to the Participant.

2.18. Fair Market Value means, on any date, (a) the closing sale price of a share of Class A Common Stock as reported on an established stock exchange on which the Class A Common Stock is regularly traded on such date or, if there were no sales on such date, on the last date preceding such date on which a sale was reported; or (b) if shares of Class A Common Stock are not listed for trading on an established stock exchange, Fair Market Value shall be determined by the Committee in good faith and otherwise in accordance with Section 409A of the Code, and any regulations and other guidance thereunder.

2.19. Full Value Award means any Award the net value of which to the Participant is equal to the aggregate Fair Market Value of the total number of Shares subject to the Award.

2.20. Immediate Family means, whether through consanguinity or adoptive relationships, a Participant's spouse, children, stepchildren, siblings and grandchildren.

2.21. Incentive Stock Option means a stock option within the meaning of Section 422 of the Code.

2.22. Merger means any merger, reorganization, consolidation, exchange, transfer of assets or other transaction having similar effect involving the Company.

2.23. Non-Qualified Stock Option means a stock option which is not an Incentive Stock Option.

2.24. Options means all Non-Qualified Stock Options and Incentive Stock Options granted at any time under the Plan.

2.25. Outstanding Class A Common Stock means, at any time, the issued and outstanding shares of Class A Common Stock.

2.26. Participant means a person designated to receive an Award under the Plan in accordance with *Section 5.01*.

2.27. Performance Goals means the goals established by the Committee under an Award which, if met, shall entitle the Participant to payment under such Award and shall qualify such payment as Section 162(m) Compensation. Such goals will be based upon such specified levels of achievement as the Committee may from time to time determine with respect to one or more of the following: aggregate product price; book value; capital expenditures; operating income (on a gross or net basis); net income (on a

gross or net basis and on a pre-tax or post-tax basis); debt reduction; earnings per share; cash flow; cost/expense reduction; earnings before or after interest, taxes, depreciation and amortization (EBITDA) or any combination thereof; economic value added; enterprise value; environmental objective projects; individual objective performance measures; market share; environmental compliance; safety performance; production rates; operating cost per ton; operating margins; revenues (on a gross or net basis); share price (including, but not limited to, changes in share price and total shareholder return); strategic business objectives; transactions relating to acquisitions or divestitures; working capital; financial return measures; any one of such Goals may be measured with respect to the Company or any one or more of its Subsidiaries and divisions and either in absolute terms or as compared to another company or companies, or an index established or designed by the Committee.

2.28. Person has the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a “group” as defined in Section 13(d) thereof.

2.29. Plan has the meaning given to such term in *Section 1.01*.

2.30. Plan of Reorganization means the Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed on July 6, 2016 by the Company and the other entities listed in Schedule A thereto, including the Plan Supplement and all exhibits, supplements, appendices and schedules to any of the foregoing, as any of them may be amended or modified from time to time thereunder or in accordance with applicable law.

2.31. Restricted Shares means Class A Common Stock subject to restrictions imposed in connection with Awards granted under *Article VII*.

2.32. Restricted Stock Unit means a unit representing the right to receive Class A Common Stock or the value thereof in the future subject to restrictions imposed in connection with Awards granted under *Article VII*.

2.33. Retirement means a Participant’s voluntary Termination of Service on or after the date on which the Participant attains age 55 and has ten years of continuous service with the Company or a Subsidiary, and such Participant has not been terminated for Cause.

2.34. Rule 16b-3 means Rule 16b-3 promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act, as the same may be amended from time to time, and any successor rule.

2.35. Section 409A Covered Award means an Award granted under the Plan that constitutes “non-qualified deferred compensation” pursuant to Section 409A of the Code.

2.36. Securities Act means the Securities Act of 1933, as amended.

2.37. Stock Appreciation Rights means awards granted in accordance with *Article VI*.

2.38. Subsidiary means a subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.39. Substitute Award means any Award granted in assumption of or in substitution for an award of a company or business acquired by the Company or a Subsidiary or with which the Company or a Subsidiary combined.

2.40. Termination of Service means the voluntary or involuntary termination of a Participant's service as an employee, director or Consultant with the Company or a Subsidiary for any reason, including death, Disability, Retirement or as the result of the divestiture of the Participant's employer or any similar transaction in which the Participant's employer ceases to be the Company or a Subsidiary; *provided*, that unless otherwise set forth in an Award Agreement, if a Participant ceases to provide services in one capacity and commences to provide services to the Company or a Subsidiary in another capacity (*e.g.*, an employee becomes a Consultant upon termination of employment), then a Termination of Service shall not be deemed to have occurred until such time as the Participant is no longer providing services to the Company or Subsidiary in such other capacity. Whether entering military or other government service shall constitute Termination of Service shall be determined in each case by the Committee in its sole discretion.

ARTICLE III ADMINISTRATION

3.01. Committee.

(a) Duties and Authority. The Committee shall have exclusive and final authority to administer, manage and control the operation, interpretation and administration of the Plan, which authority shall include, but shall not be limited to:

(i) Subject to the provisions of the Plan, the authority and discretion to select employees, directors and Consultants to receive Awards, to determine the time or times of receipt, to determine the types of Awards and the number of shares covered by the Awards, to establish the terms, conditions, performance criteria, restrictions, and other provisions of such Awards, and to provide at any time for accelerated vesting or lapse of restrictions applicable to Awards. In making such Award determinations, the Committee may take into account the nature of services rendered by the respective individual, his or her present and potential contribution to the Company's success and such other factors as the Committee deems relevant.

(ii) Subject to the provisions of the Plan, the authority and discretion to determine the extent to which Awards under the Plan will be structured to conform to the requirements applicable to Section 162(m) Compensation, and to

take such action, establish such procedures, and impose such restrictions at the time such awards are granted as the Committee determines to be necessary or appropriate to conform to such requirements.

(iii) The authority and discretion to interpret the Plan and the Awards granted under the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements made pursuant to the Plan, to make all other determinations, factual or otherwise, that it deems necessary or advisable for the administration of the Plan and to correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award, in each case, in the manner and to the extent the Committee deems necessary or advisable to carry it into effect.

Any interpretation of the Plan by the Committee and any decision made by it under the Plan shall be final and binding on all persons. The express grant in the Plan of any specific power to the Committee shall not be construed as limiting any power or authority of the Committee. The Committee may only act at a meeting by unanimous consent if comprised of two members, and otherwise by a majority of its members. Any determination of the Committee may be made without a meeting by the unanimous written consent of its members.

(b) Delegation. To the extent permitted by applicable law, the Committee may delegate such of its powers and authority under the Plan as it deems appropriate to a subcommittee of the Committee or designated officers or employees of the Company. In addition, the full Board may exercise any of the powers and authority of the Committee under the Plan. In the event of such delegation of authority or exercise of authority by the Board, references in the Plan to the Committee shall be deemed to refer, as appropriate, to the delegate of the Committee or the Board. Actions taken by the Committee or any subcommittee thereof, and any delegation by the Committee to designated officers or employees, under this *Section 3.01* shall comply with Section 16(b) of the Exchange Act, the performance-based provisions of Section 162(m) of the Code, and the regulations promulgated under each of such statutory provisions, or the respective successors to such statutory provisions or regulations, as in effect from time to time, to the extent applicable.

(c) Indemnification. Each person who is or shall have been a member of the Board or the Committee, or an officer or employee of the Company to whom authority was delegated in accordance with the Plan, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such individual in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf; *provided, however*, that the foregoing indemnification shall not apply to any loss, cost, liability, or expense that is a result of his

or her own willful misconduct. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or Bylaws, conferred in a separate agreement with the Company, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

3.02. Limitation on Vesting for Awards. Notwithstanding any provision of the Plan to the contrary, any Option or Stock Appreciation Right shall not vest more quickly than one (1)-year following the Date of Grant; *provided, however*, that vesting prior to such date may occur (1) in the event of the Participant's death, Disability or involuntary Termination of Service or (2) upon a Change in Control. The provisions of this *Section 3.02* shall not apply to (a) Substitute Awards, or (b) Awards involving an aggregate number of shares of Class A Common Stock not exceeding 5.0% of the number of shares available for Awards under the first sentence of *Section 4.01*.

ARTICLE IV SHARES

4.01. Number of Shares Issuable. The total number of shares of Class A Common Stock authorized to be issued under the Plan in connection with Awards, including Incentive Stock Option Awards, shall be 2,990,540. The foregoing share limits shall be subject to adjustment in accordance with *Section 12.07*. The shares to be offered under the Plan shall be authorized and unissued Class A Common Stock, or issued Class A Common Stock that shall have been reacquired by the Company.

4.02. Shares Subject to Terminated Awards. If any portion or all of an Award is forfeited, cancelled, exchanged, settled in cash in lieu of shares, or surrendered or, if an Award otherwise terminates or expires without a distribution of shares to the Participant, the shares of Class A Common Stock underlying such Award shall, to the extent of any such forfeiture, cancellation, exchange, cash settlement, surrender, termination or expiration, again be available for Awards under the Plan. Any shares of Class A Common Stock that were subject to a Stock Appreciation Right that were not issued upon the exercise of such Stock Appreciation Right shall be available for the grant of new Awards under the Plan. In addition, shares of Class A Common Stock surrendered to or withheld by the Company in payment or satisfaction of the Exercise Price of an Option or Stock Appreciation Right, or tax withholding obligation with respect to an Award, shall be available for the grant of new Awards under the Plan. Notwithstanding anything to the contrary herein, Awards that may be settled solely in cash shall not be deemed to use any shares of Class A Common Stock which may be issued under the Plan.

4.03. Substitute Awards and Shares Issuable under Acquired Company Plans. Substitute Awards shall not be counted against or otherwise reduce the number of shares available for future issuance under the Plan. In addition, if a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by shareholders 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 available for future issuance under the Plan. Awards using such available shares under acquired plans shall not be made after the date awards could have been made under the terms of the acquired plan, absent the acquisition or combination, and shall only be made to individuals who were not eligible to participate in the Plan prior to such acquisition or combination.

ARTICLE V PARTICIPATION

5.01. Eligible Participants and Award Limits. Participants in the Plan shall be such employees, directors and Consultants of the Company and its Subsidiaries as the Committee, in its sole discretion, may designate from time to time. The Committee's designation of a Participant in any year shall not require the Committee to designate such person to receive Awards or grants in any other year. The designation of a Participant to receive Awards or grants under one portion of the Plan does not require the Committee to include such Participant under other portions of the Plan. The Committee shall consider such factors as it deems pertinent in selecting Participants and in determining the type and amount of their respective Awards.

5.02. Subject to adjustment in accordance with *Section 12.07*, in any calendar year, no Participant (other than a non-employee director of the Company) shall be granted (a) Options or Stock Appreciation Rights in excess of 1,500,000 shares of Class A Common Stock; (b) Awards of Restricted Stock or Restricted Stock Units in excess of 1,000,000 shares of Class A Common Stock; (c) Other Stock-Based Awards in excess of 1,000,000 shares of Class A Common Stock; and (d) cash-based Awards under *Article IX* or any other Award that may be settled solely in cash in excess of \$7,500,000. Notwithstanding the foregoing, the Committee may grant Awards to a Participant in excess of the preceding Award limits if the Committee expressly determines that a particular Award shall not be designed to qualify as Section 162(m) Compensation.

5.03. Subject to adjustment in accordance with *Section 12.07*, in any calendar year, no Participant who is a non-employee director of the Company shall be granted Options, Stock Appreciation Rights, Awards of Restricted Stock, Restricted Stock Units and Other Stock-Based Awards that, together with any cash retainers or fees earned by such Participant for such year, have an aggregate fair value as of the grant date (as determined in accordance with applicable accounting standards) in excess of \$750,000.

ARTICLE VI STOCK OPTIONS

6.01. Option Awards.

(a) Grant of Options. The Committee may grant, to such Participants as the Committee may select, Options entitling the Participant to purchase shares of Class A

Common Stock from the Company in such number, at such price, and on such terms and subject to such conditions, not inconsistent with the terms of the Plan, as may be established by the Committee. The terms of any Option granted under the Plan shall be set forth in an Award Agreement.

(b) Exercise Price of Options. The Exercise Price of each share of Class A Common Stock which may be purchased upon exercise of any Option granted under the Plan shall not be less than 100% of the Fair Market Value of the Class A Common Stock on the Date of Grant.

(c) Designation of Options. The Committee shall designate, at the time of the grant of each Option, the Option as an Incentive Stock Option or a Non-Qualified Stock Option; *provided, however*, that an Option may be designated as an Incentive Stock Option only if the applicable Participant is an employee of the Company on the Date of Grant.

(d) Special Incentive Stock Option Rules. To the extent that the aggregate Fair Market Value (determined as of the time the Option is granted) of the shares of Class A Common Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company and its parent and subsidiary corporations) exceeds \$100,000, such Incentive Stock Options shall constitute Non-Qualified Stock Options. For purposes of this *Section 6.01(d)*, Incentive Stock Options shall be taken into account in the order in which they were granted. If pursuant to the above, an Incentive Stock Option is treated as an Incentive Stock Option in part and a Non-Qualified Stock Option in part, the Participant may designate at the time of exercise which portion shall be deemed to be exercised, and in the absence of such express designation in writing, the portion of the Option treated as an Incentive Stock Option shall be deemed to be exercised first. Further, no Incentive Stock Option shall be granted to any person who, at the time the Option is granted, owns stock (including stock owned by application of the constructive ownership rules in Section 424(d) of the Code) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, unless at the time the Incentive Stock Option is granted the Exercise Price of the Option is at least one hundred ten percent (110%) of the Fair Market Value of the Class A Common Stock subject to the Incentive Stock Option and the Incentive Stock Option, by its terms, is not exercisable for more than five years from the Date of Grant.

6.02. Stock Appreciation Rights.

(a) Stock Appreciation Right Awards. The Committee is authorized to grant to any Participant one or more Stock Appreciation Rights. Upon exercise of a Stock Appreciation Right with respect to a share of Class A Common Stock, the Participant shall be entitled to receive an amount equal to the excess, if any, of (1) the Fair Market Value of a share of Class A Common Stock on the date of exercise over (2) the Exercise Price of such Stock Appreciation Right established in the Award Agreement, which amount shall be payable as provided in *Section 6.02(c)*.

(b) Exercise Price. The Exercise Price of any Stock Appreciation Right granted under the Plan shall be determined by the Committee, but shall not be less than 100% of the Fair Market Value of the Class A Common Stock on the Date of Grant.

(c) Payment of Incremental Value. Any payment which may become due from the Company by reason of a Participant's exercise of a Stock Appreciation Right may be paid to the Participant as determined by the Committee (i) all in cash, (ii) all in Class A Common Stock, or (iii) in any combination of cash and Class A Common Stock. In the event that all or a portion of the payment is made in Class A Common Stock, the number of shares of Class A Common Stock delivered in satisfaction of such payment shall be determined by dividing the amount of such payment or portion thereof by the Fair Market Value on the exercise date. No fractional share of Class A Common Stock shall be issued to make any payment in respect of Stock Appreciation Rights; if any fractional share would be issuable, the combination of cash and Class A Common Stock payable to the Participant shall be adjusted as directed by the Committee to avoid the issuance of any fractional share.

6.03. Terms of Stock Options and Stock Appreciation Rights.

(a) Conditions on Exercise. An Award Agreement with respect to Options or Stock Appreciation Rights may contain such waiting periods, exercise dates and restrictions on exercise (including, but not limited to, periodic installments) as may be determined by the Committee at the time of grant.

(b) Duration. Options and Stock Appreciation Rights shall terminate upon the first to occur of the following events:

(i) Expiration of the Award as provided in the Award Agreement; or

(ii) Termination of the Award in the event of a Participant's Disability, Retirement, death or other Termination of Service as provided in the Award Agreement or, if not provided in the Award Agreement, as provided in *Article XI*; or

(iii) Ten years from the Date of Grant (five years in certain cases, as described in *Section 6.01(d)*).

(c) Extension of Exercise Time. The Committee, in its sole discretion, shall have the right (but shall not be obligated), exercisable on or at any time after the Date of Grant, to extend the exercise period of an Option or Stock Appreciation Right beyond the termination or expiration of the Option or Stock Appreciation Right under the terms of the Award Agreement; *provided*, in no event shall the exercise period be extended beyond the date set forth in *Section 6.03(b)(iii)*.

(d) Vesting of Awards. An Option or Stock Appreciation Right may be exercised, and payment shall be made upon exercise of such Option or Stock Appreciation Right, only to the extent that the Option or Stock Appreciation Right has vested in accordance with the terms of the Award Agreement.

(e) Rights as a Shareholder. A Participant or a transferee of an Option or Stock Appreciation Rights pursuant to *Section 12.04* shall have no rights as a shareholder with respect to Class A Common Stock covered by an Option or Stock Appreciation Right until the Participant or transferee shall have become the holder of record of any such shares, and no adjustment shall be made for dividends in cash or other property or distributions or other rights with respect to any such Class A Common Stock for which the record date is prior to the date on which the Participant or a transferee of the Option or Stock Appreciation Right shall have become the holder of record of any such shares covered by the Option or Stock Appreciation Right; *provided, however*, that Participants are entitled to share adjustments to reflect capital changes under *Section 12.07*.

6.04. Exercise Procedures. Each Option or Stock Appreciation Right granted under the Plan shall be exercised prior to the close of business on the expiration date of the Option or Stock Appreciation Right by notice to the Company or by such other method as provided in the Award Agreement or as the Committee may establish or approve from time to time. The Exercise Price of shares purchased upon exercise of an Option granted under the Plan shall be paid in full in cash by the Participant pursuant to the Award Agreement; *provided, however*, that the Committee may (but shall not be required to) permit payment to be made (a) by tendering (either by actual delivery or attestation) previously acquired shares of Class A Common Stock, (b) by a “net exercise” method under which the Company reduces the number of shares of Class A Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate Exercise Price, or (c) such other consideration as the Committee deems appropriate and in compliance with applicable law (including payment under an arrangement constituting a brokerage transaction as permitted under the provisions of Regulation T applicable to cashless exercises promulgated by the Federal Reserve Board, unless prohibited by Section 402 of the Sarbanes-Oxley Act of 2002). In the event that any Class A Common Stock shall be transferred to the Company to satisfy all or any part of the Exercise Price, the part of the Exercise Price deemed to have been satisfied by such transfer of Class A Common Stock shall be equal to the product derived by multiplying the Fair Market Value as of the date of exercise times the number of shares of Class A Common Stock transferred to the Company. The Participant may not transfer to the Company in satisfaction of the Exercise Price any fractional share of Class A Common Stock. Any part of the Exercise Price paid in cash upon the exercise of any Option shall be added to the general funds of the Company and may be used for any proper corporate purpose. Unless the Committee shall otherwise determine, any Class A Common Stock transferred to the Company as payment of all or part of the Exercise Price upon the exercise of any Option shall be held as treasury shares.

ARTICLE VII
RESTRICTED SHARES AND RESTRICTED STOCK UNITS

7.01. Award of Restricted Stock and Restricted Stock Units. The Committee may grant to any Participant an Award of Restricted Shares consisting of a specified number of shares of Class A Common Stock issued to the Participant subject to such terms, conditions and forfeiture and transfer restrictions, whether based on performance standards, periods of service, retention by the Participant of ownership of specified shares

of Class A Common Stock or other criteria, as the Committee shall establish. The Committee may also grant Restricted Stock Units representing the right to receive shares of Class A Common Stock in the future subject to such terms, conditions and restrictions, whether based on performance standards, periods of service, retention by the Participant of ownership of specified shares of Class A Common Stock or other criteria, as the Committee shall establish. With respect to performance-based Awards of Restricted Shares or Restricted Stock Units intended to qualify as “performance-based” compensation for purposes of Section 162(m) of the Code, performance targets will consist of specified levels of one or more of the Performance Goals. The terms of any Restricted Share and Restricted Stock Unit Awards granted under the Plan shall be set forth in an Award Agreement which shall contain provisions determined by the Committee and not inconsistent with the Plan.

7.02. Restricted Shares.

(a) Issuance of Restricted Shares. As soon as practicable after the Date of Grant of a Restricted Share Award by the Committee, the Company shall cause to be transferred on the books of the Company, or its agent, Class A Common Stock, registered on behalf of the Participant, evidencing the Restricted Shares covered by the Award, but subject to forfeiture to the Company as of the Date of Grant if an Award Agreement with respect to the Restricted Shares covered by the Award is not duly executed by the Participant and timely returned to the Company. All Class A Common Stock covered by Awards under this *Article VII* shall be subject to the restrictions, terms and conditions contained in the Plan and the Award Agreement entered into by the Participant. Until the lapse or release of all restrictions applicable to an Award of Restricted Shares, the share certificates representing such Restricted Shares may be held in custody by the Company, its designee, or, if the certificates bear a restrictive legend, by the Participant. Upon the lapse or release of all restrictions with respect to an Award as described in *Section 7.02(d)*, one or more share certificates, registered in the name of the Participant, for an appropriate number of shares as provided in *Section 7.02(d)*, free of any restrictions set forth in the Plan and the Award Agreement shall be delivered to the Participant.

(b) Shareholder Rights. Beginning on the Date of Grant of the Restricted Share Award and subject to execution of the Award Agreement as provided in *Section 7.02(a)*, the Participant shall become a shareholder of the Company with respect to all shares subject to the Award Agreement and shall have all of the rights of a shareholder, including, but not limited to, the right to vote such shares and the right to receive dividends; *provided, however*, that unless otherwise provided in the applicable Award Agreement, any dividends or distributions of Shares with respect to any Restricted Shares as to which the restrictions have not yet lapsed, shall be subject to the same restrictions as such Restricted Shares and held or restricted as provided in *Section 7.02(a)*.

(c) Restriction on Transferability. None of the Restricted Shares may be assigned or transferred (other than by will or the laws of descent and distribution, or to an inter vivos trust with respect to which the Participant is treated as the owner under Sections 671 through 677 of the Code, except to the extent that Section 16 of the

Exchange Act limits a Participant's right to make such transfers), pledged or sold prior to lapse of the restrictions applicable thereto.

(d) Delivery of Shares upon Vesting. Upon expiration or earlier termination of the forfeiture period without a forfeiture and the satisfaction of or release from any other conditions prescribed by the Committee, or at such earlier time as provided under the provisions of the applicable Award Agreement, the restrictions applicable to the Restricted Shares shall lapse. As promptly as administratively feasible thereafter, subject to the requirements of *Section 12.05*, the Company shall deliver to the Participant or, in case of the Participant's death, to the Participant's Beneficiary, one or more share certificates for the appropriate number of shares of Class A Common Stock, free of all such restrictions, except for any restrictions that may be imposed by law.

(e) Forfeiture of Restricted Shares. All Restricted Shares shall be forfeited and returned to the Company and all rights of the Participant with respect to such Restricted Shares shall terminate unless the Participant continues in the service of the Company or a Subsidiary as an employee until the expiration of the forfeiture period for such Restricted Shares and satisfies any and all other conditions set forth in the Award Agreement. Subject to *Section 3.02*, the Committee shall determine the forfeiture period (which may, but need not, lapse in installments) and any other terms and conditions applicable with respect to any Restricted Share Award.

7.03. Restricted Stock Units.

(a) Settlement of Restricted Stock Units. Payments shall be made to Participants with respect to their Restricted Stock Units as soon as practicable after the Committee has determined that the terms and conditions applicable to such Award have been satisfied or at a later date if distribution has been deferred. Payments to Participants with respect to Restricted Stock Units shall be made in the form of Class A Common Stock, or cash or a combination of both, as the Committee may determine. The amount of any cash to be paid in lieu of Class A Common Stock shall be determined on the basis of the Fair Market Value of the Class A Common Stock on the date any such payment is processed. As to shares of Class A Common Stock which constitute all or any part of such payment, the Committee may impose such restrictions concerning their transferability and/or their forfeiture as may be provided in the applicable Award Agreement or as the Committee may otherwise determine, provided such determination is made on or before the date certificates for such shares are first delivered to the applicable Participant.

(b) Shareholder Rights. Until the lapse or release of all restrictions applicable to an Award of Restricted Stock Units, no shares of Class A Common Stock shall be issued in respect of such Awards and no Participant shall have any rights as a shareholder of the Company with respect to the shares of Class A Common Stock covered by such Award of Restricted Stock Units.

(c) Dividend Equivalents. For any Restricted Stock Unit granted under the Plan, the Committee shall have the discretion, upon the Date of Grant or thereafter, to

establish a Dividend Equivalent Account with respect to the Restricted Stock Unit, in accordance with *Section 12.17*.

(d) Deferral of Payment. If approved by the Committee and set forth in the applicable Award Agreement, a Participant may elect to defer the amount payable with respect to the Participant's Restricted Stock Units in accordance with such terms as may be established by the Committee, subject to the requirements of Section 409A of the Code.

ARTICLE VIII OTHER STOCK-BASED AWARDS

8.01. Grant of Other Stock-Based Awards. Other stock-based awards, consisting of Substitute Awards, stock purchase rights, Awards of Class A Common Stock, phantom stock arrangements, or Awards valued in whole or in part by reference to, or otherwise based on, Class A Common Stock, may be granted either alone or in addition to or in conjunction with other Awards under the Plan. Subject to the provisions of the Plan, the Committee shall have sole and complete authority to determine the persons to whom and the time or times at which such Awards shall be made, the number of shares of Class A Common Stock to be granted pursuant to such Awards, and all other conditions of the Awards. Any such Award shall be confirmed by an Award Agreement executed by the Committee and the Participant, which Award Agreement shall contain such provisions as the Committee determines to be necessary or appropriate to carry out the intent of the Plan with respect to such Award.

8.02. Terms of Other Stock-Based Awards. In addition to the terms and conditions specified in the Award Agreement, Awards made pursuant to this *Article VIII* shall be subject to the following:

(a) Any Class A Common Stock subject to Awards made under this *Article VIII* may not be sold, assigned, transferred, pledged or otherwise encumbered prior to the date on which the shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses;

(b) For any such Award, the Committee shall have the discretion, upon the Date of Grant or thereafter, to establish a related Dividend Equivalent Account, in accordance with *Section 12.17*; and

(c) Subject to *Section 3.02*, the Award Agreement with respect to any Award may contain provisions dealing with the disposition of such Award in the event of a Termination of Service prior to the exercise, payment or other settlement of such Award, with such provisions taking account of the specific nature and purpose of the Award.

ARTICLE IX
CASH-BASED INCENTIVE AWARDS

9.01. Cash-Based Incentive Awards Generally. The Committee is authorized to grant cash-based incentive Awards to Participants that may be earned upon achievement of performance conditions, and with such other terms and conditions, as determined by the Committee consistent with the provisions of the Plan.

9.02. Section 162(m) of the Code. If the Committee intends that a cash-based incentive Award qualify as Section 162(m) Compensation, such Award shall be subject to the provisions of this *Section 9.02*.

(a) Performance Targets. The Committee shall establish objective performance targets based on specified levels of one or more of the Performance Goals. Such performance targets shall be established by the Committee on a timely basis to ensure that the targets are considered “preestablished” for purposes of Section 162(m) of the Code.

(b) Amounts of Awards. In conjunction with the establishment of performance targets established by the Committee, the Committee shall adopt an objective formula (on the basis of percentages of Participants’ salaries, shares in a bonus pool or otherwise) for computing the respective amounts payable under the Plan to Participants if and to the extent that the performance targets are attained. Such formula shall comply with the requirements applicable to Section 162(m) Compensation and, to the extent based on percentages of a bonus pool, such percentages shall not exceed 100% in the aggregate.

(c) Payment of Awards. Awards will be payable to Participants in cash each year upon prior written certification by the Committee of attainment of the specified performance targets for the preceding fiscal year or other applicable performance period.

(d) Negative Discretion. Notwithstanding the attainment by the Company of the specified performance targets, the Committee shall have the discretion, which need not be exercised uniformly among the Participants, to reduce or eliminate the Award that would be otherwise paid; *provided* that such discretion to reduce or eliminate a Participant’s Award shall cease to apply as of the date on which the Award Agreement for such Award is entered into between the Company and such Participant or is acknowledged in writing by the Company, as applicable.

(e) Guidelines. The Committee may adopt from time to time written policies for its implementation of this *Section 9.02*. Such guidelines shall reflect the intention of the Company that all payments hereunder qualify as Section 162(m) Compensation.

(f) Non-Exclusive Arrangement. The adoption and operation of this *Article IX* shall not preclude the Board or the Committee from approving other cash-based incentive compensation arrangements for the benefit of individuals who are Participants hereunder as the Board or Committee, as the case may be, deems appropriate and in the best interests of the Company.

ARTICLE X
CHANGE IN CONTROL

10.01. Award Agreement Controls. Except as otherwise provided in the applicable Award Agreement, in the event of a Change in Control, each Award held by a Participant shall be treated in accordance with this *Article X*.

10.02. Vesting. If, in connection with such Change in Control, an Award held by a Participant is xiv) continued or assumed by the Company (if it is the surviving corporation) or by the successor or surviving corporation or its parent or xv) substituted or replaced by the successor or surviving corporation or its parent with cash, securities, rights or other property to be paid or issued, as the case may be, by the successor or surviving corporation (or a parent or subsidiary thereof), with substantially the same terms and value as such Award (including, without limitation, any applicable performance targets or criteria with respect thereto), then on such Participant's Termination of Service within two years after such Change in Control by the Company or the successor or surviving corporation or its parent, as applicable, without Cause or due to such Participant's death or Disability, such Award shall become fully vested and nonforfeitable. If, in connection with such Change in Control, such Award is not continued, assumed, substituted or replaced on the terms set forth in the immediately preceding sentence, such Award shall become fully vested and nonforfeitable on such Change in Control (with any applicable performance targets or criteria deemed met at target performance or, if greater, based on actual performance measured as of the date of such Change in Control).

10.03. Exercisability and Settlement. Each Award held by a Participant that vests in accordance with *Section 10.02* shall (a) in the case of an Option or Stock Appreciation Right, become fully exercisable as of the applicable vesting date and shall remain exercisable in accordance with its terms, or (b) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after the applicable vesting date; *provided* that any Section 409A Covered Award shall be settled in accordance with its original schedule to the extent required to avoid incurring additional tax, interest or penalties under Section 409A of the Code.

ARTICLE XI
TERMINATION OF SERVICE

11.01. Award Agreement Controls. Except as otherwise provided in the applicable Award Agreement, in the event of a Participant's Termination of Service, each Award held by such Participant shall be treated in accordance with this *Article XI*.

11.02. By Company without Cause. In the event of a Participant's Termination of Service by the Company without Cause, each Award held by such Participant shall become fully vested and nonforfeitable; *provided, however*, that any such Award that is subject to performance-based vesting conditions shall become vested and nonforfeitable on a prorated basis (based on the portion of the performance period lapsed as of the date of such Termination of Service and assuming target attainment of such conditions). To

the extent that such Award vests in accordance with the immediately preceding sentence (or had vested prior to such Termination of Service), such Award (a) in the case of an Option or Stock Appreciation Right, shall remain exercisable through the 90th day after such Termination of Service (or, if earlier, the last day of its remaining term), or (b) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after such Termination of Service.

11.03. Death or Disability. In the event of a Participant's Termination of Service due to such Participant's death or Disability, each Award held by such Participant shall be treated in accordance with this Section 11.03.

(a) Each such Award that is not subject to performance-based vesting conditions shall become vested and nonforfeitable to the same extent as such Award would have become vested and nonforfeitable on the next applicable vesting date had such Termination of Service not occurred; *provided, however*, that the Committee, in its discretion, may instead provide, at the time of grant of any such Award pursuant to the applicable Award Agreement, that such Award shall become vested and nonforfeitable on a prorated basis (based on the portion of the service period lapsed as of the date of such Termination of Service). To the extent that such Award vests in accordance with the immediately preceding sentence (or had vested prior to such Termination of Service), such Award (i) in the case of an Option or Stock Appreciation Right, shall remain exercisable through the one year anniversary of such Termination of Service (or, if earlier, the last day of its remaining term), or (ii) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after such Termination of Service.

(b) Each such Award that is subject to performance-based vesting conditions shall be eligible to vest and become nonforfeitable on a prorated basis as of the date on which such Award would have vested had such Participant not experienced a Termination of Service (based on the portion of the service period lapsed as of the date of such Termination of Service and assuming target attainment of such conditions). To the extent that any such Award vests in accordance with the immediately preceding sentence (or had vested prior to such Termination of Service), such Award (i) in the case of an Option or Stock Appreciation Right, shall remain exercisable through the one year anniversary of the date on which such Award vests, or (ii) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after the date on which such Award vests.

11.04. Retirement. In the event of a Participant's Termination of Service due to such Participant's Retirement, each Award held by such Participant shall be treated in accordance with this Section 11.04.

(a) Each such Award that is not subject to performance-based vesting conditions shall become vested and nonforfeitable on a prorated basis as of the date of such Termination of Service (based on the portion of the service period lapsed as of the date of such Termination of Service). To the extent that any such Award vests in accordance with the immediately preceding sentence (or had vested prior to such Termination of Service), such Award (i) in the case of an Option or Stock Appreciation Right, shall remain exercisable through the one year anniversary of such Termination of Service (or, if earlier, the last day of its remaining term), or (ii) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after such Termination of Service.

(b) Each such Award that is subject to performance-based vesting conditions shall be eligible to vest and become nonforfeitable on a prorated basis as of the date on which such Award would have vested had such Participant not experienced a Termination of Service (based on the portion of the service period lapsed as of the date of such Termination of Service and actual performance measured as of the end of the applicable performance period). To the extent that any such Award vests in accordance with the immediately preceding sentence (or had vested prior to such Termination of Service), such Award (i) in the case of an Option or Stock Appreciation Right, shall remain exercisable through the one year anniversary of the date on which such Award vests, or (ii) in the case of Restricted Stock Units or an Other Stock-Based Award, shall be settled on or within 60 days after the date on which such Award vests.

11.05. By Participant. In the event of a Participant's Termination of Service by such Participant (other than due to Retirement), such Award, to the extent not previously vested, shall be forfeited. To the extent that such Award was previously vested, such Award shall (a) in the case of an Option or Stock Appreciation Right, remain exercisable through the 90th day after such Termination of Service (or, if earlier, the last day of its remaining term), or (b) in the case of Restricted Stock Units or an Other Stock-Based Award, be settled in accordance with its terms.

11.06. By Company for Cause. In the event of a Participant's Termination of Service by the Company for Cause, each Award held by such Participant, whether vested or unvested, shall be forfeited in its entirety.

11.07. Section 409A Covered Awards. Notwithstanding anything to the contrary in this Article XI, any Section 409A Covered Award shall be settled in accordance with its original schedule to the extent required to avoid incurring additional tax, interest or penalties under Section 409A of the Code.

ARTICLE XII
TERMS APPLICABLE GENERALLY TO AWARDS GRANTED UNDER THE PLAN

12.01. Plan Provisions Control Award Terms. Except as provided in *Section 12.16*, the terms of the Plan shall govern all Awards granted under the Plan, and in no event shall the Committee have the power to grant any Award under the Plan which is contrary to any of the provisions of the Plan. In the event any provision of any Award granted under the Plan shall conflict with any provision in the Plan as constituted on the Date of Grant of such Award, the provision in the Plan as constituted on the Date of Grant of such Award shall control. Except as provided in *Section 12.03* and *Section 12.07*, the terms of any Award granted under the Plan may not be changed after the Date of Grant of such Award so as to materially decrease the value of the Award without the express written approval of the holder.

12.02. Award Agreement. No person shall have any rights under any Award granted under the Plan unless and until the Company and the Participant to whom such Award shall have been granted shall have executed and delivered an Award Agreement or received any other Award acknowledgment authorized by the Committee expressly granting the Award to such person and containing provisions setting forth the terms of the Award.

12.03. Modification of Award After Grant. No Award granted under the Plan to a Participant may be modified (unless such modification does not materially decrease the value of the Award) after the Date of Grant except by express written agreement between the Company and the Participant; *provided* that any such modification (a) shall not be inconsistent with the terms of the Plan, and (b) shall be approved by the Committee. Notwithstanding the foregoing, the Committee may modify any Award to the extent required to comply with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations.

12.04. Limitation on Transfer. Except as provided in *Section 7.02(c)* in the case of Restricted Shares, Awards under the Plan are not transferable except by will or by the laws of descent and distribution. To the extent that a Participant who receives an Award under the Plan has the right to exercise such Award, the Award may be exercised during the lifetime of the Participant only by the Participant. Notwithstanding the foregoing provisions of this *Section 12.04*, the Committee may, subject to any restrictions under applicable securities laws, permit Awards of Options (other than an Incentive Stock Option) to be transferred by a Participant for no consideration to or for the benefit of the Participant's Immediate Family (including, without limitation, to a trust for the benefit of a Participant's Immediate Family or to a partnership comprised solely of members of the Participant's Immediate Family), subject to such limits as the Committee may establish, provided the transferee shall remain subject to all of the terms and conditions applicable to such Award prior to such transfer.

12.05. Taxes. The Company shall be entitled, if the Committee deems it necessary or desirable, to withhold (or secure payment from the Participant in lieu of withholding) up to the maximum statutory amount to satisfy federal, state and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of the Plan, and the Company may defer payment or issuance of the cash or shares upon exercise or vesting of an Award unless indemnified to its satisfaction against any liability for any such tax. The amount of such withholding or tax payment shall be determined by the Committee and shall be payable by the Participant at such time as the Committee determines in accordance with the following rules:

(a) The Participant shall have the right to elect to meet his or her withholding requirement (1) by having withheld from such Award at the appropriate time that number of shares of Class A Common Stock, rounded down to the next whole share, whose Fair Market Value is equal to the amount of withholding taxes due, (2) by direct payment to the Company in cash of the amount of any taxes required to be withheld with respect to such Award or (3) by a combination of shares and cash.

(b) In the case of Participants who are subject to Section 16 of the Exchange Act, the Committee may impose such limitations and restrictions as it deems necessary or appropriate with respect to the delivery or withholding of shares of Class A Common Stock to meet tax withholding obligations.

12.06. Surrender of Awards. Any Award granted under the Plan may be surrendered to the Company for cancellation on such terms as the Committee and the Award holder approve. With the consent of the Participant, the Committee may substitute a new Award under the Plan in connection with the surrender by the Participant of an equity compensation award previously granted under the Plan or any other plan sponsored by the Company; *provided, however*, that no such substitution shall be permitted without the approval of the Company's shareholders if such approval is required by the rules of any applicable stock exchange.

12.07. Adjustments to Reflect Capital Changes or Transactions.

(a) Recapitalization. In the event of any “equity restructuring” (within the meaning of FASB ASC Topic 718, Compensation—Stock Compensation) that causes the per share value of the Class A Common Stock to change, such as a stock dividend, stock split, spinoff, rights offering or recapitalization through an extraordinary dividend, the Committee shall make such adjustments as it deems equitable and appropriate to (i) the aggregate number and kind of shares of Class A Common Stock or other securities issued or reserved for issuance under the Plan, (ii) the number and kind of shares of Class A Common Stock or other securities subject to outstanding Awards, (iii) the Exercise Price of outstanding Options or Stock Appreciation Rights, and (iv) the annual award limits specified in *Section 5.02* or any other maximum limitations prescribed by the Plan with respect to certain types of Awards or the grants to individuals of certain types of Awards. In the event of any other change in corporate capitalization, including a merger, consolidation, reorganization, or partial or complete liquidation of the Company, such equitable adjustments described in the foregoing sentence may be made as determined to be appropriate and equitable by the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) to prevent dilution or enlargement of the rights of Participants. No adjustment shall be made pursuant to this *Section 12.07* in connection with the conversion of any convertible securities of the Company, or in a manner that would cause an Award to be subject to adverse tax consequences under Sections 409A or 422 of the Code. The Committee shall have the power and sole discretion to determine the amount of the adjustment to be made in each case under this *Section 12.07(a)*.

(b) Options to Purchase Shares or Stock of Acquired Companies. After any Merger in which the Company or a Subsidiary shall be a surviving corporation, the Committee may grant substituted Options under the provisions of the Plan, pursuant to Section 424 of the Code, replacing old options granted under a plan of another party to the Merger whose shares or stock subject to the old options may no longer be issued following the Merger. The foregoing adjustments and manner of application of the foregoing provisions shall be determined by the Committee in its sole discretion. Any such adjustments may provide for the elimination of any fractional shares which might otherwise become subject to any Options.

12.08. No Right to Continued Service. No person shall have any claim of right to be granted an Award under the Plan. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the service of the Company or any of its Subsidiaries.

12.09. Awards Not Includable for Benefit Purposes. Payments received by a Participant pursuant to the provisions of the Plan shall not be included in the determination of benefits under any pension, group insurance or other benefit plan applicable to the Participant which is maintained by the Company or any of its Subsidiaries, except as may be provided under the terms of such plans or determined by the Board.

12.10. Governing Law. All determinations made and actions taken pursuant to the Plan shall be governed by the laws of the State of Delaware and construed in accordance therewith.

12.11. No Strict Construction. No rule of strict construction shall be implied against the Company, the Committee, or any other person in the interpretation of any of the terms of the Plan, any Award granted under the Plan or any rule or procedure established by the Committee.

12.12. Compliance with Rule 16b-3. It is intended that, unless the Committee determines otherwise, Awards under the Plan be eligible for exemption under Rule 16b-3. The Board is authorized to amend the Plan and to make any such modifications to Award Agreements to comply with Rule 16b-3, as it may be amended from time to time, and to make any other such amendments or modifications as it deems necessary or appropriate to better accomplish the purposes of the Plan in light of any amendments made to Rule 16b-3.

12.13. Captions. The captions (*i.e.*, all Section headings) used in the Plan are for convenience only, do not constitute a part of the Plan, and shall not be deemed to limit, characterize or affect in any way any provisions of the Plan, and all provisions of the Plan shall be construed as if no captions have been used in the Plan.

12.14. Severability. Whenever possible, each provision in the Plan and every Award at any time granted under the Plan shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Plan or any Award at any time granted under the Plan shall be held to be prohibited by or invalid under applicable law, then (a) such provision shall be deemed amended to accomplish the objectives of the provision as originally written to the fullest extent permitted by law and (b) all other provisions of the Plan and every other Award at any time granted under the Plan shall remain in full force and effect.

12.15. Amendment and Termination.

(a) Amendment. The Board shall have complete power and authority to amend the Plan at any time; *provided, however*, that the Board shall not, without the requisite affirmative approval of shareholders of the Company, make any amendment which requires shareholder approval under the Code or under any other applicable law or rule of any stock exchange which lists the Class A Common Stock or any other securities of the Company. No termination or amendment of the Plan may, without the consent of the Participant to whom any Award shall theretofore have been granted under the Plan, adversely affect the right of such individual under such Award, except to the extent that such action is required to cause the Plan to comply with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations.

(b) Termination. The Board shall have the right and the power to terminate the Plan at any time. No Award shall be granted under the Plan after the termination of the Plan, but the termination of the Plan shall not have any other effect and any Award

outstanding at the time of the termination of the Plan may be exercised after termination of the Plan at any time prior to the expiration date of such Award to the same extent such Award would have been exercisable had the Plan not terminated.

(c) No Repricing Without Shareholder Approval. Notwithstanding any provision herein to the contrary, the repricing of Options or Stock Appreciation Rights is prohibited without prior approval of the Company's shareholders. For this purpose, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (i) changing the terms of an Option or Stock Appreciation Right to lower its Exercise Price; (ii) any other action that is treated as a "repricing" under generally accepted accounting principles; and (iii) repurchasing for cash or canceling an Option or Stock Appreciation Right at a time when its Exercise Price is greater than the Fair Market Value of the underlying Class A Common Stock in exchange for another Award, unless the cancellation and exchange occurs in connection with a change in capitalization or similar change under *Section 12.07* above. Such cancellation and exchange as described in clause (iii) of the preceding sentence would be considered a "repricing" regardless of whether it is treated as a "repricing" under generally accepted accounting principles and regardless of whether it is voluntary on the part of the Participant.

12.16. Foreign Qualified Awards. Awards under the Plan may be granted to such employees of the Company and its Subsidiaries who are residing in foreign jurisdictions as the Committee in its sole discretion may determine from time to time. The Committee may adopt such supplements to the Plan as may be necessary or appropriate to comply with the applicable laws of such foreign jurisdictions and to afford Participants favorable treatment under such laws; *provided, however*, that no Award shall be granted under any such supplement with terms or conditions inconsistent with the provision set forth in the Plan.

12.17. Dividend Equivalents. For any Award granted under the Plan other than an Option or Stock Appreciation Right, the Committee shall have the discretion, upon the Date of Grant or thereafter, to establish a Dividend Equivalent Account with respect to the Award, and the applicable Award Agreement or an amendment thereto shall confirm such establishment. If a Dividend Equivalent Account is established, the following terms shall apply:

(a) Terms and Conditions. Dividend Equivalent Accounts shall be subject to such terms and conditions as the Committee shall determine and as shall be set forth in the applicable Award Agreement. Such terms and conditions may include, without limitation, for the Participant's Account to be credited as of the record date of each cash dividend on the Class A Common Stock with an amount equal to the cash dividends which would be paid with respect to the number of shares of Class A Common Stock then covered by the related Award if such shares of Class A Common Stock had been owned of record by the Participant on such record date.

(b) Unfunded Obligation. Dividend Equivalent Accounts shall be established and maintained only on the books and records of the Company and no assets or funds of

the Company shall be set aside, placed in trust, removed from the claims of the Company's general creditors, or otherwise made available until such amounts are actually payable as provided hereunder.

(c) Performance Award Limitations. Notwithstanding any other provision of this *Section 12.17* or the Plan to the contrary, amounts credited to a Participant's Dividend Equivalent Account with respect to any unvested portions of an Award whose vesting is subject to the achievement of specified Performance Goals or other performance-based criteria shall be subject to the same vesting or forfeiture restrictions as the shares or units underlying the Award to which such dividend equivalents relate.

12.18. Adjustment of Performance Goals and Targets.

(a) Notwithstanding any provision of the Plan to the contrary, the Committee shall have the authority to adjust any Performance Goal, performance target or other performance-based criteria established with respect to any Award under the Plan if circumstances occur (including, but not limited to, unusual or nonrecurring events, changes in tax laws or accounting principles or practices or changed business or economic conditions) that cause any such Performance Goal, performance target or performance-based criteria to be inappropriate in the judgment of the Committee; *provided*, that with respect to any Award that is intended to qualify as Section 162(m) Compensation, any adjustment by the Committee shall be consistent with the requirements of Section 162(m) of the Code.

(b) The Committee may provide in any Award intended to qualify as Section 162(m) Compensation that any evaluation of performance may include or exclude the impact, if any, on reported financial results of any of the following events that occurs during a performance period: (a) asset write downs, (b) litigation or claim judgments or settlements, (c) changes in tax laws, accounting principles or other laws or provisions, (d) reorganization or restructuring programs, (e) acquisitions or divestitures, (f) foreign exchange gains and losses or (g) gains and losses that are treated as unusual in nature or that occur infrequently. Such inclusions or exclusions shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for qualification of the Award as Section 162(m) Compensation.

12.19. Legality of Issuance. Notwithstanding any provision of the Plan or any applicable Award Agreement to the contrary, the Committee shall have the sole discretion to impose such conditions, restrictions and limitations (including suspending exercises of Options and the tolling of any applicable exercise period during such suspension) on the issuance of Class A Common Stock with respect to any Award unless and until the Committee determines that such issuance complies with (a) any applicable registration requirements under the Securities Act (or the Committee has determined that an exemption therefrom is available), (b) any applicable listing requirement of any stock exchange on which the Class A Common Stock is listed, (c) any applicable corporate policy or administrative rules, and (d) any other applicable provision of state, federal or foreign law, including foreign securities laws where applicable.

12.20. Restrictions on Transfer. Regardless of whether the offering and sale of Class A Common Stock under the Plan have been registered under the Securities Act or have been registered or qualified under the securities laws of any state, the Company may impose restrictions upon the sale, pledge, or other transfer of such Class A Common Stock (including the placement of appropriate legends on stock certificates) if, in the judgment of the Company and its counsel, such restrictions are necessary or desirable to achieve compliance with the provisions of the Securities Act, the securities laws of any state, the United States or any other applicable foreign law.

12.21. Further Assurances. As a condition to receipt of any Award under the Plan, a Participant shall agree, upon demand of the Company, to do all acts and execute, deliver and perform all additional documents, instruments and agreements which may be reasonably required by the Company, to implement the provisions and purposes of the Plan.

12.22. Compliance with Section 409A. Although the Company does not guarantee to a Participant the particular tax treatment of an Award granted under the Plan, the Plan is, and Awards made under the Plan are, intended to comply with, or be exempt from, the requirements of Section 409A of the Code, and the Plan and any Award Agreements shall be interpreted in a manner consistent with such intent. In addition, and notwithstanding any provision of the Plan to the contrary, the Company reserves the right to amend the Plan or any Award granted under the Plan, by action of the Committee, without the consent of any affected Participant, to the extent deemed necessary or appropriate for purposes of maintaining compliance with Section 409A of the Code and the regulations promulgated thereunder. All Section 409A Covered Awards shall be paid in a manner intended to comply with Section 409A of the Code. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code or this *Section 12.22*. Notwithstanding anything in the Plan or in an Award Agreement to the contrary, the following provisions shall apply to Section 409A Covered Awards:

(a) A Termination of Service shall not be deemed to have occurred for purposes of any provision of a Section 409A Covered Award providing for payment upon or following a termination of the Participant's service unless such termination is also a "Separation from Service" within the meaning of Section 409A of the Code and, for purposes of any such provision of Section 409A Covered Award, references to a "termination," "termination of employment" or like terms shall mean Separation from Service. Notwithstanding any provision to the contrary in the Plan or Award Agreement, if the Participant is deemed on the date of the Participant's Termination of Service to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology set forth in Section 409A, then with regard to any such payment under a Section 409A Covered Award, to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment shall not be made prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of the Participant's Separation from Service, and (ii) the date of the

Participant's death. All payments delayed pursuant to this *Section 12.22(a)* shall be paid to the Participant on the first day of the seventh month following the date of the Participant's Separation from Service or, if earlier, on the date of the Participant's death.

(b) Whenever a payment under a Section 409A Covered Award specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company.

(c) If under the Section 409A Covered Award an amount is to be paid in two or more installments, for purposes of Section 409A of the Code, each installment shall be treated as a separate payment.

12.23. Recovery of Compensation in Connection with Financial Restatement. Notwithstanding any other provision of the Plan or any applicable Award Agreement to the contrary, if the Board determines that the Company is required to restate its financial statements due to material noncompliance with any financial reporting requirement under the law, whether such noncompliance is the result of misconduct or other circumstances, a Participant shall be required to reimburse the Company for any amounts earned or payable with respect to an Award to the extent required by and otherwise in accordance with applicable law and any Company policies. Without limiting the foregoing, all Awards granted or other compensation paid by the Company under the Plan will be subject to any compensation recapture policies required by applicable law (including the Sarbanes-Oxley Act of 2002) or that are established by the Board or the Committee from time to time, in their respective sole discretion, including any clawback policy adopted or implemented by the Board or Committee in respect of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and such regulations as are promulgated thereunder from time to time to the extent required therein and the implementing regulations.