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

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**FORM 8-K**

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

**Date of report (Date of earliest event reported): October 27, 2010 (October 21, 2010)**

**Arch Coal, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other  
jurisdiction of  
incorporation)

1-13105  
(Commission File Number)

43-0921172  
(I.R.S. Employer  
Identification No.)

CityPlace One  
One CityPlace Drive, Suite 300  
St. Louis, Missouri 63141  
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (314) 994-2700

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

***(e) Amendment to Arch Coal, Inc. 1997 Stock Incentive Plan***

On October 21, 2010, the Board of Directors of Arch Coal, Inc. (the "Company") approved an amendment (the "Amendment") to the Arch Coal, Inc. 1997 Stock Incentive Plan (as amended and restated, the "Plan").

The Amendment added minimum vesting requirements to certain "Full Value Awards" (as defined in the Plan) granted after October 21, 2010. Under the Plan, any new Full Value Awards (subject to a de minimus exception as provided in the Plan) shall have the following minimum vesting periods: (i) for any Full Value Award that is Performance-Based Compensation (as defined in the Plan), the Performance Period (as defined in the Plan) shall not end, and such award shall not vest, prior to one year after the date of the grant; and (ii) any other Full Value Award shall have a minimum vesting period of three years from the date of grant.

A description of the Plan (prior to the above-described amendment) is set forth in the proxy statement with respect to the Company's 2010 annual meeting of stockholders held on April 22, 2010. That description, as supplemented by the above description of the Amendment, is qualified in its entirety by reference to the Plan. A copy of the Plan, as amended and restated on October 21, 2010, is filed as an exhibit hereto and incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

The following exhibit is attached hereto and filed herewith.

Exhibit No.	Description
10.1	Arch Coal, Inc. 1997 Stock Incentive Plan (as amended and restated on October 21, 2010).

**Signatures**

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

Dated: October 27, 2010

Arch Coal, Inc.

By: /s/ Robert G. Jones

Robert G. Jones

Senior Vice President, General Counsel and Secretary

## Exhibit Index

Exhibit No.	Description
10.1	Arch Coal, Inc. 1997 Stock Incentive Plan (as amended and restated on October 21, 2010).

ARCH COAL, INC.  
1997 STOCK INCENTIVE PLAN  
(As Amended and Restated on October 21, 2010)

**SECTION 1**  
**Statement of Purpose**

- 1.1. The Arch Coal, Inc. 1997 Stock Incentive Plan (the "Plan") has been established by Arch Coal, Inc. in order to:
- (a) attract and retain executive, managerial and other salaried employees, as well as non-employee Directors;
  - (b) motivate Participants, by means of appropriate incentives, to achieve long-range goals;
  - (c) provide incentive compensation opportunities that are competitive with those of other major corporations; and
  - (d) further identify a Participant's interests with those of the Company's other stockholders through compensation based on the Company's common stock; thereby promoting the long-term financial interest of the Company and its Related Companies, including the growth in value of the Company's equity and enhancement of long-term stockholder return.

**SECTION 2**  
**Definitions**

- 2.1. Unless the context indicates otherwise, the following terms shall have the meaning set forth below:
- (a) **Acquiring Corporation.** The term "Acquiring Corporation" shall mean the surviving, continuing successor or purchasing corporation in an acquisition or merger with the Company in which the Company is not the surviving corporation.
  - (b) **Award.** The term "Award" shall mean any award or benefit granted to any Participant under the Plan, including, without limitation, the grant of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Stock, Performance Units, Merit Awards, Phantom Stock Awards and Stock acquired through purchase under Section 12.
  - (c) **Award Agreement.** The term "Award Agreement" shall mean any written agreement, contract, or other instrument or document evidencing any Award, which shall not become effective until executed or acknowledged by a Participant.
  - (d) **Board.** The term "Board" shall mean the Board of Directors of the Company acting as such but shall not include the Committee or other committees of the Board acting on behalf of the Board.
  - (e) **Cause.** The term "Cause" shall mean (a) the continued failure by the Participant 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), or (b) the engaging by the Participant in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise.
  - (f) **Change in Control.** A "Change in Control" shall be deemed to have occurred upon any of the following events: (1) consummation of any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of Stock would be converted into cash, securities or other property, other than a merger in which the holders of the Stock immediately prior to the merger will have more than 50% of the ownership of
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common stock of the surviving corporation immediately after the merger, (2) 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, (3) adoption of any plan or proposal for the liquidation or dissolution of the Company, or (4) when any "person" (as defined in Section 13(d) of the Exchange Act), other than a Significant Stockholder, or any subsidiary of the Company or employee benefit plan or trust maintained by the Company or any of its subsidiaries, shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 20% of the Stock outstanding at the time, without the prior approval of the Board.

- (g) **Code.** The term "Code" means the Internal Revenue Code of 1986, as amended. A reference to any provision of the Code shall include reference to any successor provision of the Code.
- (h) **Committee.** The term "Committee" means the Personnel & Compensation Committee of the Board.
- (i) **Company.** The term "Company" means Arch Coal, Inc., a Delaware corporation.
- (j) **Date of Termination.** A Participant's "Date of Termination" shall be the date on which his or her employment or service with all Employer and Related Companies terminates for any reason; provided that, for purposes of this Plan only, a Participant's employment or service shall not be considered terminated by reason of the Participant's leave of absence from an Employer or a Related Company that is approved in advance by the Participant's Employer. Notwithstanding the above, to the extent any Award constitutes nonqualified deferred compensation which is subject to the limitations and restrictions of Code Section 409A, a Participant's "Date of Termination" shall be the date he or she has a separation from service as determined in accordance with the rules promulgated under Code Section 409A and the resolutions of the Board regarding such determination.
- (k) **De Minimus Awards.** The term "De Minimus Awards" shall mean, collectively, one or more Awards pursuant to which an aggregate of up to 5.0% of the total number of shares of Stock available for grants of Awards may be issued.
- (l) **Director.** The term "Director" shall mean a member of the Board of Directors of the Employer.
- (m) **Disability.** Except as otherwise provided by the Committee, a Participant shall be considered to have a "Disability" during the period in which he or she is unable, by reason of a medically determined physical or mental impairment, to carry out his or her duties with an Employer, which condition, in the discretion of the Committee, shall generally be an event which qualifies as a "long term disability" under applicable long term disability benefit programs of the Company.
- (n) **Employee.** The term "Employee" shall mean a person with an employment relationship with an Employer.
- (o) **Employer.** The Company and each Subsidiary which, with the consent of the Company, participates in the Plan for the benefit of its eligible Employees and Directors are referred to collectively as the "Employers" and individually as an "Employer".
- (p) **Exchange Act.** The term "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- (q) **Exercise Price.** The term "Exercise Price" means (1) with respect to each share of Stock subject to an Option, the price fixed by the Committee in the applicable Award Agreement at which such share may be purchased from the Company pursuant to the exercise of such Option, which price at no time may be less than 100% of the Fair Market Value of the Stock on the date the Option is granted, except as permitted and contemplated by Section 21 of the Plan, and (2) with respect to

each share of Stock subject to a Stock Appreciation Right, the price as specified in accordance with Section 7.1(b) of the Plan.

- (r) **Fair Market Value.** The “Fair Market Value” of the Stock on any given date shall be the last sale price, regular way, or, in case no such sale takes place on such date, the average of the closing bid and asked prices, regular way, of the Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Stock is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Stock is listed or admitted to trading or, if the Stock is not listed or admitted to trading on any national securities exchange, the last quoted sale price on such date or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market on such date, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System or such other system then in use, or, if on any such date the Stock is not quoted by any such organization, the average of the closing bid and asked prices on such date as furnished by a professional market maker making a market in the Stock. If the Stock is not publicly held or so listed or publicly traded, “Fair Market Value” per share of Stock shall mean the Fair Market Value per share as reasonably determined by the Committee.
- (s) **Full Value Award.** The term “Full Value Award” shall mean any Award the net value of which to the Participant is equal to the aggregate Fair Market Value of the total number of shares of Stock subject to the Award.
- (t) **Immediate Family.** With respect to a particular Participant, the term “Immediate Family” shall mean, whether through consanguinity or adoptive relationships, the Participant’s spouse, children, stepchildren, siblings and grandchildren.
- (u) **Incentive Stock Option.** The term “Incentive Stock Option” shall mean any Incentive Stock Option granted under the Plan.
- (v) **Merit Award.** The term “Merit Award” shall mean any performance-based Award granted under Section 10 or Section 11 of the Plan or any other performance-based Award other than Incentive Stock Options, Non-Qualified Stock Options, Restricted Stock, Restricted Stock Units, or Stock Appreciation Rights.
- (w) **Non-Employee Director.** The term “Non-Employee Director” shall mean a person who qualifies as such under Rule 16b-3(b)(3) under the Exchange Act or any successor provision, and who also qualifies as an “outside director” under Section 162(m) of the Code.
- (x) **Non-Qualified Stock Option.** The term “Non-qualified Stock Option” shall mean any Non-Qualified Stock Option granted under the Plan.
- (y) **NYSE.** The term “NYSE” refers to the New York Stock Exchange, Inc.
- (z) **Option.** The term “Option” shall mean any Incentive Stock Option or Non-Qualified Stock Option granted under the Plan.
- (aa) **Participant.** The term “Participant” means an Employee or Director who has been granted an award under the Plan.
- (bb) **Performance-Based Compensation.** The term “Performance-Based Compensation” shall have the meaning ascribed to it in Section 162(m)(4) (C) of the Code.
- (cc) **Performance Goals.** The term “Performance Goals” means the goals established by the Committee under an Award which, if met, will entitle the Participant to payment under such

Award and will qualify such payment as “Performance-Based Compensation” as that term is used in Code Section 162(m)(4)(C). 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: operating income; net income; debt reduction; earnings per share; cash flow; cost reduction; earnings before interest, taxes, depreciation and amortization (EBITDA); environmental compliance; safety performance; production rates; operating cost per ton; total shareholder return; financial return measures; provided, any one of which 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.

- (dd) **Performance Period.** The term “Performance Period” shall mean the period over which applicable performance is to be measured.
- (ee) **Performance Stock.** The term “Performance Stock” shall have the meaning ascribed to it in Section 10 of the Plan.
- (ff) **Performance Units.** The term “Performance Units” shall have the meaning ascribed to it in Section 11 of the Plan.
- (gg) **Phantom Stock Award.** The term “Phantom Stock Award” shall mean any Phantom Stock Award granted under the Plan.
- (hh) **Plan.** The term “Plan” shall mean this Arch Coal, Inc. 1997 Stock Incentive Plan as the same may be from time to time amended or revised.
- (ii) **Related Companies.** The term “Related Companies” means any Significant Stockholder and their subsidiaries; and any other company during any period in which it is a Subsidiary or a division of the Company, including any entity acquired by, or merged with or into, the Company or a Subsidiary.
- (jj) **Restricted Period.** The term “Restricted Period” shall mean the period of time for which shares of Restricted Stock or Restricted Stock Units are subject to forfeiture pursuant to the Plan or during which Options and Stock Appreciation Rights are not exercisable.
- (kk) **Restricted Stock.** The term “Restricted Stock” shall have the meaning ascribed to it in Section 8 of the Plan.
- (ll) **Restricted Stock Units.** The term “Restricted Stock Units” shall have the meaning ascribed to it in Section 9 of the Plan.
- (mm) **Retirement.** “Retirement” of a Participant shall occur when a Participant’s Date of Termination occurs on or after the date on which the Participant attains age 55 and such Participant has not been terminated for Cause.
- (nn) **SEC.** “SEC” means the Securities and Exchange Commission.
- (oo) **Significant Stockholder.** The term “Significant Stockholder” shall mean any shareholder of the Company who, immediately prior to the Effective Date, owned more than 5% of the common stock of the Company.
- (pp) **Stock.** The term “Stock” shall mean shares of common stock, \$.01 par value per share, of the Company.

- (qq) **Stock Appreciation Rights.** The term “Stock Appreciation Rights” shall mean any Stock Appreciation Right granted under the Plan.
- (rr) **Subsidiary.** The term “Subsidiary” shall mean any present or future subsidiary corporation of the Company within the meaning of Code Section 424(f).
- (ss) **Tax Date.** The term “Tax Date” shall mean the date a withholding tax obligation arises with respect to an Award.

### **SECTION 3**

#### **Eligibility**

- 3.1. Subject to the discretion of the Committee and the terms and conditions of the Plan, the Committee shall determine and designate from time to time, the Employees, Directors or other persons as contemplated by Section 21 of the Plan who will be granted one or more Awards under the Plan.

### **SECTION 4**

#### **Operation and Administration**

- 4.1. The Plan, as amended and restated herein, has been adopted by the Board to be effective as of January 1, 2010, subject to approval by the shareholders of the Company. To the extent required pursuant to Section 162(m) of the Code, the Plan shall be resubmitted to shareholders for reapproval no later than at the first shareholders’ meeting that occurs during the fifth year following the year of the initial approval and thereafter at five year intervals, in each case, as may be required to qualify any Award hereunder as Performance-Based Compensation. The Plan shall be unlimited in duration and remain in effect until termination by the Board; provided however, that no Incentive Stock Option may be granted under the Plan after January 1, 2020.
- 4.2. Plenary authority to administer, manage and control the operation and administration of the Plan shall be vested in the Committee, which authority shall include, but shall not be limited to:
- (a) Subject to the provisions of the Plan, the authority and discretion to select Employees and Directors 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. In making such Award determinations, the Committee may take into account the nature of services rendered by the respective Employee or Director, his or her present and potential contribution to the Company’s success and such other factors as the Committee deems relevant.
  - (b) 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 Performance-Based Compensation as described in Code Section 162(m), 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.
  - (c) 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 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.
- 4.3. 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. Provided, however, that except as

otherwise permitted under Treasury Regulation 1.162-27(e)(2)(iii)(C), the Committee may not increase any Award once made if payment under such Award is intended to constitute Performance-Based Compensation.

- 4.4. 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. In addition, the Committee may authorize one or more of its members or any officer of an Employer to execute and deliver documents and perform other administrative acts pursuant to the Plan.
- 4.5. No member or authorized delegate of the Committee shall be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his or her own fraud or gross misconduct. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, shall be indemnified by the Employers against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Committee or its members or authorized delegates by reason of the performance of any action pursuant to the Plan if the Committee or its members or authorized delegates did not act in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification shall not duplicate but may supplement any coverage available under any applicable insurance policy, contract with the indemnitee or the Company's By-laws.
- 4.6. Notwithstanding any other provision of the Plan to the contrary, but without giving effect to Awards made pursuant to Section 21, the maximum number of shares of Stock with respect to which any Participant may receive any Award of (i) an Option or a Stock Appreciation Right under the Plan during any calendar year is 350,000; (ii) the maximum number of shares with respect to which any Participant may receive Awards of Restricted Stock or Restricted Stock Units during any calendar year is 100,000; (iii) the maximum number of shares with respect to which any Participant may receive Merit Awards during any calendar year is 200,000; and (iv) the maximum number of shares or cash value with respect to which any Participant may receive other Awards during any calendar year is 100,000 or \$3,000,000, respectively (including the Awards described in Sections 4.6(i) through 4.6(iii), which may be further granted pursuant to this Section 4.6(iv)).
- 4.7. To the extent that the Committee determines that it is necessary or desirable to conform any Awards under the Plan with the requirements applicable to "Performance-Based Compensation", as that term is used in Code Section 162(m)(4)(C), it may, at or prior to the time an Award is granted, establish Performance Goals for a particular Performance Period. If the Committee establishes Performance Goals for a Performance Period, it may approve a payment from that particular Performance Period upon attainment of the Performance Goal.
- 4.8. Notwithstanding any other provision of the Plan to the contrary, subject to the provisions of Section 20, any Full Value Award issued on or after October 21, 2010 shall have the following minimum vesting periods: (i) for any Full Value Award that is Performance-Based Compensation, the Performance Period shall not end, and such Award shall not vest, prior to one year after the date of grant; and (ii) any other Full Value Award shall have a minimum vesting period of three years from the date of grant; provided, however, that, subject to the provisions of Section 16, De Minimus Awards may be granted without being subject to the minimum vesting periods set forth in this Section 4.8.

## **SECTION 5**

### **Shares Available Under the Plan**

- 5.1. The shares of Stock with respect to which Awards may be made under the Plan shall be shares of currently authorized but unissued or treasury shares acquired by the Company, including shares purchased in the open market or in private transactions. Subject to the provisions of Section 16, the total number of shares of Stock available for grant of Awards shall not exceed 22,500,000 shares of Stock. Except as otherwise provided herein, if any Award shall expire or terminate for any reason without having been exercised in full, the unissued shares of Stock subject thereto (whether or not cash or other consideration is paid in

respect of such Award) shall again be available for the purposes of the Plan. Any shares of Stock which are used as full or partial payment to the Company upon exercise of an Award shall be available for purposes of the Plan.

## **SECTION 6**

### **Options**

- 6.1. The grant of an "Option" under this Section 6 entitles the Participant to purchase shares of Stock at a price fixed at the time the Option is granted, or at a price determined under a method established at the time the Option is granted, subject to the terms of this Section 6. Options granted under this Section 6 may be either Incentive Stock Options or Non-Qualified Stock Options, and subject to Subsection 6.6 and Sections 15 and 20, shall not be exercisable for at least six months from the date of grant, as determined in the discretion of the Committee. An "Incentive Stock Option" is an Option that is intended to satisfy the requirements applicable to an "incentive stock option" described in Section 422(b) of the Code. A "Non-Qualified Option" is an Option that is not intended to be an "incentive stock option" as that term is described in Section 422(b) of the Code.
- 6.2. The Committee shall designate the Employees and Directors to whom Options are to be granted under this Section 6 and shall determine the number of shares of Stock to be subject to each such Option. To the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company and all Related Companies) exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options, but only to the extent required by Section 422 of the Code.
- 6.3. The determination and payment of the purchase price of a share of Stock under each Option granted under this Section shall be subject to the following terms of this Subsection 6.3:
  - (a) The purchase price shall be established by the Committee or shall be determined by a method established by the Committee at the time the Option is granted; provided, however, that in no event shall the price per share be less than the Fair Market Value per share on the date of the grant except as otherwise permitted by Section 21 of the Plan;
  - (b) The full purchase price of each share of Stock purchased upon the exercise of any Option shall be paid at the time of such exercise and, as soon as practicable thereafter, a certificate representing the shares so purchased shall be delivered to the person entitled thereto; and
  - (c) The purchase price shall be paid either in cash, in shares of Stock (valued at Fair Market Value as of the day of exercise), through a combination of cash and Stock (so valued) or through such cashless exercise arrangement as may be approved by the Committee and established by the Company.
- 6.4. Except as otherwise expressly provided in the Plan, an Option granted under this Section 6 shall be exercisable in accordance with the following terms of this Subsection 6.4.
  - (a) The terms and conditions relating to exercise of an Option shall be established by the Committee and shall be set forth in the applicable Award Agreement, and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise of the Option, or achievement of Stock ownership objectives by the Participant. No Option may be exercised by a Participant after the expiration date applicable to that Option.
  - (b) The exercise of an Option will result in the surrender of the corresponding rights under a tandem Stock Appreciation Right, if any.

- 6.5. The exercise period of any Option shall be determined by the Committee and shall be set forth in the applicable Award Agreement but the term of any Option shall not extend more than ten years after the date of grant.

**SECTION 7**  
**Stock Appreciation Rights**

- 7.1. Subject to the terms of this Section 7, a Stock Appreciation Right granted under the Plan entitles the Participant to receive, in cash or Stock (as determined in accordance with Subsection 7.4), value equal to all or a portion of the excess of: (a) the Fair Market Value of a specified number of shares of Stock at the time of exercise; over (b) a specified price which shall not be less than 100% of the Fair Market Value of the Stock at the time the Stock Appreciation Right is granted, or, if granted in tandem with an Option, the exercise price with respect to shares under the tandem Option.
- 7.2. Subject to the provisions of the Plan, the Committee shall designate the Employees and Directors to whom Stock Appreciation Rights are to be granted under the Plan, shall determine the exercise price or a method by which the price shall be established with respect to each such Stock Appreciation Right, and shall determine the number of shares of Stock on which each Stock Appreciation Right is based. A Stock Appreciation Right may be granted in connection with all or any portion of a previously or contemporaneously granted Option or not in connection with an Option. If a Stock Appreciation Right is granted in connection with an Option then, in the discretion of the Committee, the Stock Appreciation Right may, but need not, be granted in tandem with the Option.
- 7.3. The exercise of Stock Appreciation Rights shall be subject to the following:
- (a) If a Stock Appreciation Right is not in tandem with an Option, then the Stock Appreciation Right shall be exercisable in accordance with the terms established by the Committee in connection with such rights and as set forth in the applicable Award Agreement but, subject to Sections 15 and 20, shall not be exercisable for six months from the date of grant and the term of any Stock Appreciation Right shall not extend more than ten years from the date of grant; and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise of the Stock Appreciation Rights, or achievement of objectives relating to Stock ownership by the Participant; and
- (b) If a Stock Appreciation Right is in tandem with an Option, then the Stock Appreciation Right shall be exercisable only at the time the tandem Option is exercisable and the exercise of the Stock Appreciation Right will result in the surrender of the corresponding rights under the tandem Option.
- 7.4. Upon the exercise of a Stock Appreciation Right, the value to be distributed to the Participant, in accordance with Subsection 7.1, shall be distributed in shares of Stock (valued at their Fair Market Value at the time of exercise), in cash, or in a combination of Stock or cash, in the discretion of the Committee.

**SECTION 8**  
**Restricted Stock**

- 8.1. Subject to the terms of this Section 8, Restricted Stock Awards under the Plan are grants of Stock to Participants, the vesting of which is subject to certain conditions established by the Committee and set forth in the applicable Award Agreement, with some or all of those conditions relating to events (such as continued service or satisfaction of performance criteria) occurring after the date of the grant of the Award, provided, however, that to the extent that vesting of a Restricted Stock Award is contingent on continued service, the required service period shall generally (unless otherwise determined by the Committee) not be less than one year following the grant of the Award unless such grant is in substitution for an Award under this Plan or a predecessor plan of the Company or a Related Company. To the extent, if any, required by the General Corporation Law of the State of Delaware, a Participant's receipt of an Award of newly issued

shares of Restricted Stock shall be made subject to payment by the Participant of an amount equal to the aggregate par value of such newly issued shares of Stock.

- 8.2. The Committee shall designate the Employees and Directors to whom Restricted Stock is to be granted, and the number of shares of Stock that are subject to each such Award. The Award of shares under this Section 8 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.
- 8.3. Shares of Restricted Stock granted to Participants under the Plan shall be subject to the following terms and conditions:
- (a) Restricted Stock granted to Participants may not be sold, assigned, transferred, pledged or otherwise encumbered during the Restricted Period;
  - (b) The Participant as owner of such shares shall have all the rights of a stockholder, including but not limited to the right to vote such shares and, except as otherwise provided in the Award Agreement or as provided by the Plan, the right to receive all dividends and other distributions paid on such shares.
  - (c) Each certificate issued in respect of shares of Restricted Stock granted under the Plan shall be registered in the name of the Participant but, at the discretion of the Committee, each such certificate may be deposited with the Company with a stock power endorsed in blank or in a bank designated by the Committee;
  - (d) The Committee may award Restricted Stock as Performance-Based Compensation, which shall be Restricted Stock that will be earned (or for which earning is accelerated) upon the achievement of Performance Goals established by the Committee and the Committee may specify the number of shares that will be earned upon achievement of different levels of performance; except as otherwise provided by the Committee, achievement of maximum targets during the Performance Period shall result in the Participant's earning of the full amount of Restricted Stock comprising such Performance-Based Compensation and, in the discretion of the Committee, achievement of the minimum target but less than the maximum target, the Committee may result in the Participant's earning of a portion of the Award; and
  - (e) Except as otherwise provided by the Committee and set forth in the applicable Award Agreement, any Restricted Stock which is not earned by the end of a Restricted Period or Performance Period, as the case may be, shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Restricted Period or Performance Period, as the case may be, the Committee may determine, in its sole discretion, that the Participant will be entitled to settlement of all or any portion of the Restricted Stock as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Restricted Stock or make such other adjustments as the Committee, in its sole discretion, deems desirable. Subject to the limitations of the Plan and the Award of Restricted Stock, upon the vesting of Restricted Stock, such Restricted Stock will be transferred free of all restrictions to the Participant (or his or her legal representative, beneficiary or heir).

**SECTION 9**  
**Restricted Stock Units**

- 9.1. Subject to the terms of this Section 9, a Restricted Stock Unit entitles a Participant to receive shares for the units at the end of a Restricted Period, or at a later date if distribution has been deferred, to the extent provided by the Award with the vesting of such units to be contingent upon such conditions as may be established by the Committee and set forth in the Award Agreement (such as continued service or satisfaction of performance criteria) occurring after the date of grant of the Award, provided, however, that to the extent that the vesting of a Restricted Stock Unit is contingent on continued service, the required

employment period shall generally not be less than one year following the date of grant of the Award unless such grant is in substitution for an Award under this Plan or a predecessor plan of the Company or a Related Company. Notwithstanding the foregoing, Restricted Stock Units may be settled in the form of Stock, or cash or a combination of both, as the Committee may determine. The amount of any cash to be paid in lieu of shares of Stock shall be determined on the basis of the Fair Market Value of the Stock on the date any such payment is processed. The Award of Restricted Stock Units under this Section 9 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.

- 9.2. The Committee shall designate the Employees and Directors to whom Restricted Stock Units shall be granted and the number of units that are subject to each such Award. During any period in which Restricted Stock Units are outstanding and have not been settled in Stock, the Participant shall not have the rights of a stockholder, but, in the discretion of the Committee, may be granted the right to receive a payment from the Company in lieu of a dividend in an amount equal to any cash dividends that might be paid during the Restricted Period.
- 9.3. Except as otherwise provided by the Committee, any Restricted Stock Unit which is not earned by the end of a Restricted Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Restricted Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Restricted Stock Units as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Restricted Stock Units or make such other adjustments as the Committee, in its sole discretion, deems desirable.
- 9.4. Notwithstanding anything to the contrary in this Section 9, an election to defer receipt of shares at the end of a Restricted Period may be made by a Participant only in accordance with the terms of a separate written nonqualified deferred compensation plan sponsored by the Company and only to the extent made in accordance with the election timing rules under Code Section 409A. Unless otherwise subject to such a deferral election, Restricted Stock Units shall be settled on or after the last day of the Restricted Period set forth in the Award Agreement, but in no event later than the March 15<sup>th</sup> of the calendar year following the calendar year in which the Restricted Period ends. Any acceleration of the settlement of a Restricted Stock Unit Award described in Section 9.3 shall be made only to the extent permissible under Code Section 409A.

#### **SECTION 10** **Performance Stock**

- 10.1. Subject to the terms of this Section 10, an Award of Performance Stock provides for the distribution of Stock to a Participant upon the achievement of performance objectives, which may include Performance Goals, established by the Committee and set forth in the applicable Award Agreement.
- 10.2. The Committee shall designate the Employees and Directors to whom Awards of Performance Stock are to be granted, and the number of shares of Stock that are subject to each such Award. The Award of shares of Performance Stock under this Section 10 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.
- 10.3. Except as otherwise provided by the Committee and set forth in the applicable Award Agreement, any Award of Performance Stock which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Performance Stock as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Performance Stock or make such other adjustments as the Committee, in its sole discretion, deems desirable.
- 10.4. Except as otherwise provided by the Committee under Section 10.3 or in an Award Agreement, settlement of any earned Performance Stock shall occur on or after the last day of the Performance Period, but in no

event later than the March 15<sup>th</sup> of the calendar year following the calendar year in which the Performance Period ends. Any acceleration of the settlement of a Performance Share described in Section 10.3 shall be made only to the extent permissible under Code Section 409A.

**SECTION 11**  
**Performance Units**

- 11.1. Subject to the terms of this Section 11, the Award of Performance Units under the Plan entitles the Participant to receive value for the units at the end of a Performance Period to the extent provided under the Award. The number of Performance Units earned, and value received from them, will be contingent on the degree to which the performance measures set forth in the Award Agreement are met.
- 11.2. The Committee shall designate the Employees and Directors to whom Performance Units are to be granted, and the number of Performance Units to be subject to each such Award.
- 11.3. For each Participant, the Committee will determine the value of Performance Units, which may be stated either in cash or in units representing shares of Stock; the performance measures used for determining whether the Performance Units are earned; the Performance Period during which the performance measures will apply; the relationship between the level of achievement of the performance measures and the degree to which Performance Units are earned; whether, during or after the Performance Period, any revision to the performance measures or Performance Period should be made to reflect significant events or changes that occur during the Performance Period; and the number of earned Performance Units that will be settled in cash and/or shares of Stock.
- 11.4. Settlement of Performance Units shall be subject to the following:
- (a) The Committee will compare the actual performance to the performance measures established for the Performance Period and determine the number of Performance Units as to which settlement is to be made;
  - (b) Settlement of Performance Units earned shall be wholly in cash, wholly in Stock or in a combination of the two, as determined by the Committee, and shall be distributed in the form set forth in the Award Agreement. If the Award Agreement does not provide for a form of payment, payment shall be made in a single lump sum payment. Except as otherwise provided by the Committee under Section 11.5 or in an Award Agreement, settlement of any earned Performance Units shall occur on or after the last day of the Performance Period, but in no event later than the March 15<sup>th</sup> of the calendar year following the calendar year in which the Performance Period ends. Any acceleration of the settlement of a Performance Unit described in Section 11.5 shall be made only to the extent permissible under Code Section 409A; and
  - (c) Shares of Stock distributed in settlement of Performance Units shall be subject to such vesting requirements and other conditions, if any, as the Committee shall determine, including, without limitation, restrictions of the type that may be imposed with respect to Restricted Stock under Section 8.
- 11.5. Except as otherwise provided by the Committee and set forth in the applicable Award Agreement, any Award of Performance Units which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Performance Units as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Performance Units or make such other adjustments as the Committee, in its sole discretion, deems desirable.

**SECTION 12**  
**Stock Purchase Program**

- 12.1. The Committee may, from time to time, establish one or more programs under which Employees and Directors will be permitted to purchase shares of Stock under the Plan, and shall designate the Employees and Directors eligible to participate under such Stock purchase programs. The purchase price for shares of Stock available under such programs, and other terms and conditions of such programs, shall be established by the Committee. The purchase price may not be less than 75% of the Fair Market Value of the Stock at the time of purchase (or, in the Committee's discretion, the average Stock value over a period determined by the Committee), and further provided that if newly issued shares of Stock are sold, the purchase price may not be less than the aggregate par value of such newly issued shares of Stock.
- 12.2. The Committee may impose such restrictions with respect to shares purchased under this Section 12, as the Committee, in its sole discretion, determines to be appropriate. Such restrictions may include, without limitation, restrictions of the type that may be imposed with respect to Restricted Stock under Section 8.

**SECTION 13**  
**Stock Awards**

- 13.1. The Committee may from time to time make an Award of Stock under the Plan to selected Employees or Directors for such reasons and in such amounts as the Committee, in its sole discretion, may determine. The consideration to be paid by an Employee or Director for any such Award, if any, shall be fixed by the Committee from time to time, but, if required by the General Corporation Law of the State of Delaware, it shall not be less than the aggregate par value of the shares of Stock awarded to him or her.

**SECTION 14**  
**Phantom Stock Awards**

- 14.1. The Committee may make Phantom Stock Awards to selected Employees and Directors which may be based solely on the value of the underlying shares of Stock, solely on any earnings or appreciation thereon, or both. Subject to the provisions of the Plan, the Committee shall have the sole and complete authority to determine the number of hypothetical or target shares as to which each such Phantom Stock Award is subject and to determine the terms and conditions of each such Phantom Stock Award. There may be more than one Phantom Stock Award in existence at any one time with respect to a selected Employee or Director, and the terms and conditions of each such Phantom Stock Award may differ from each other.
- 14.2. The Committee shall establish and shall set forth in the applicable Award Agreement the vesting or performance measures for each Phantom Stock Award on the basis of such criteria and to accomplish such objectives as the Committee may from time to time, in its sole discretion, determine. Such measures may be based on years of service or periods of employment, or the achievement of individual or corporate performance objectives, but shall, in each instance, be based upon one or more of the business criteria as determined pursuant to Section 4.7. The vesting and performance measures determined by the Committee shall be established at the time a Phantom Stock Award is made. Phantom Stock Awards may not be sold, assigned, transferred, pledged, or otherwise encumbered, except as provided in Section 17, during the Performance Period.
- 14.3. Settlement of Phantom Stock earned shall be wholly in cash, wholly in Stock or in a combination of the two, as determined by the Committee, and shall be distributed in the form set forth in the Award Agreement. If the Award Agreement does not provide for a form of payment, payment shall be made in a single lump sum payment. Except as otherwise provided by the Committee under Section 14.4 or in an Award Agreement, settlement of any earned Phantom Stock shall occur on or after the last day of the Performance Period, but in no event later than the March 15<sup>th</sup> of the calendar year following the calendar year in which the Performance Period ends. Any acceleration of the settlement of Phantom Stock described in Section 14.4 shall be made only to the extent permissible under Code Section 409A.

- 14.4. Except as otherwise provided by the Committee and set forth in the applicable Award Agreement, any Award of Phantom Stock which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all or a portion of the Phantom Stock for which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of Phantom Stock or make such other adjustment as the Committee, in its sole discretion, deems desirable.

**SECTION 15**  
**Termination of Service**

- 15.1. If a Participant's service is terminated by the Participant's Employer for Cause, all of the Participant's unvested Awards, including any unexercised Options, shall be forfeited.
- 15.2. Except as may be set forth in the applicable Award Agreement, with respect to Awards made prior to July 22, 2004, if a Participant's Date of Termination occurs by reason of death, Disability or Retirement, all Options and Stock Appreciation Rights outstanding immediately prior to the Participant's Date of Termination shall immediately become exercisable and shall be exercisable until one year from the Participant's Date of Termination and thereafter shall be forfeited if not exercised, and all restrictions on any Awards outstanding immediately prior to the Participant's Date of Termination shall immediately lapse. Except as may be set forth in the applicable Award Agreement, for Awards made after July 22, 2004, if a Participant's Date of Termination occurs by reason of death or Disability, (i) all unvested Awards outstanding immediately prior to the Participant's Date of Termination shall continue to vest as if such Participant had remained in the service of the Company and (ii) all vested Options and Stock Appreciation Rights shall remain exercisable and, in each case, such Awards shall be exercisable until one year from the later of the (i) Participant's Date of Termination or (ii) the vesting date of such Award and thereafter shall be forfeited. Except as may be set forth in the applicable Award Agreement, for Awards made after July 22, 2004, if a Participant's Date of Termination occurs by reason of Retirement, (i) all unvested Awards outstanding immediately prior to the Participant's Date of Termination shall be forfeited and (ii) all vested Options and Stock Appreciation Rights shall remain exercisable and shall be exercisable until one year from the Participant's Date of Termination and thereafter shall be forfeited. Options and Stock Appreciation Rights which are or become exercisable at the time of a Participant's death may be exercised by the Participant's designated beneficiary or, in the absence of such designation, by the person to whom the Participant's rights will pass by will or the laws of descent and distribution.
- 15.3. Except as may be set forth in the applicable Award Agreement, for Awards made prior to July 22, 2004, if a Participant's Date of Termination occurs by reason of Participant's employment being terminated by the Participant's Employer for any reason other than Cause, or by the Participant with the written consent and approval of the Participant's Employer, the Restricted Period shall lapse on a proportion of any Awards outstanding immediately prior to the Participant's Date of Termination (except that, to the extent that an Award of Restricted Stock, Restricted Stock Units, Performance Units, Performance Stock and Phantom Stock is subject to a Performance Period), such proportion of the Award shall remain subject to the same terms and conditions for vesting as were in effect prior to the Date of Termination and shall be determined at the end of the Performance Period. The proportion of an Award upon which the Restricted Period shall lapse shall be a fraction, the denominator of which is the total number of months of any Restricted Period applicable to an Award and the numerator of which is the number of months of such Restricted Period which elapsed prior to the Date of Termination. Except as may be set forth in the applicable Award Agreement, for Awards made after July 22, 2004, if a Participant's Date of Termination occurs by reason of Participant's service being terminated by the Participant's Employer for any reason other than Cause, or by the Participant with the written consent and approval of the Participant's Employer, (i) all unvested Awards outstanding immediately prior to the Participant's Date of Termination shall be forfeited and (ii) all vested Options and Stock Appreciate Rights shall remain exercisable as provided in Section 15.4.
- 15.4. Options and Stock Appreciation Rights which are or become exercisable by reason of the Participant's service being terminated by the Participant's Employer for reasons other than Cause or by the Participant

with the consent and approval of the Participant's Employer, shall be exercisable until 60 days from the Participant's Termination Date and shall thereafter be forfeited if not exercised.

- 15.5. Except to the extent the Company shall otherwise determine, if, as a result of a sale or other transaction (other than a Change in Control), a Participant's Employer ceases to be a Related Company (and the Participant's Employer is or becomes an entity that is separate from the Company), the occurrence of such transaction shall be treated as the Participant's Date of Termination caused by the Participant's service being terminated by the Participant's Employer for a reason other than Cause.
- 15.6. Notwithstanding the foregoing provisions of this Section 15, the Committee may, with respect to any Awards of a Participant (or portion thereof) that are outstanding immediately prior to the Participant's Date of Termination, determine that a Participant's Date of Termination will not result in forfeiture or other termination of the Award, or may extend the period during which any Options or Stock Appreciation Rights may be exercised, but shall not extend such period beyond the expiration date set forth in the Award. In no event may an Option or Stock Appreciation Right be extended to a date which is more than ten years from the date of grant.

**SECTION 16**  
**Adjustments to Shares**

- 16.1. If the Company shall effect a reorganization, merger, or consolidation, or similar event or effect any subdivision or consolidation of shares of Stock or other capital readjustment, payment of stock dividend, stock split, spin-off, combination of shares or recapitalization or other increase or reduction of the number of shares of Stock outstanding without receiving compensation therefor in money, services or property, then the Committee shall appropriately adjust (i) the number of shares of Stock available under the Plan, (ii) the number of shares of Stock available under any individual or other limitations under the Plan, (iii) the number of shares of Stock subject to outstanding Awards and (iv) the per-share price under any outstanding Award to the extent that the Participant is required to pay a purchase price per share with respect to the Award.
- 16.2. If the Committee determines that an adjustment in accordance with the provisions of Subsection 16.1 would not be fully consistent with the purposes of the Plan or the purposes of the outstanding Awards under the Plan, the Committee may make such other adjustments, if any, that the Committee reasonably determines are consistent with the purposes of the Plan and/or the affected Awards.
- 16.3. To the extent that any reorganization, merger, consolidation, or similar event or any subdivision or consolidation of shares of Stock or other capital readjustment, payment of stock dividend, stock split, spin-off, combination of shares or recapitalization or other increase or reduction of the number of shares of Stock hereunder is also accompanied by or related to a Change in Control, the adjustment hereunder shall be made prior to the acceleration contemplated by Section 20.

**SECTION 17**  
**Transferability and Deferral of Awards**

- 17.1. 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 17, the Committee may, subject to any restrictions under applicable securities laws, permit Awards under the Plan (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.

17.2. The Committee may permit a Participant to elect to defer payment under an Award under such terms and conditions as the Committee, in its sole discretion, may determine; provided that, any such deferral election must be made in accordance with the terms of a separate written nonqualified deferred compensation plan sponsored by the Company and only to the extent made in accordance with the election timing rules under Code Section 409A.

**SECTION 18**  
**Award Agreement**

18.1. Each Participant granted an Award pursuant to the Plan shall sign an Award Agreement which signifies the offer of the Award by the Company and the acceptance of the Award by the Participant in accordance with the terms of the Award and the provisions of the Plan. Each Award Agreement shall reflect the terms and conditions of the Award. Participation in the Plan shall confer no rights to continued service with an Employer nor shall it restrict the right of an Employer to terminate a Participant's service at any time for any reason, notwithstanding the fact that the Participant's rights under this Plan may be negatively affected by such action.

**SECTION 19**  
**Tax Withholding**

19.1 All Awards and other payments under the Plan are subject to withholding of all applicable taxes, which withholding obligations shall be satisfied (without regard to whether the Participant has transferred an Award under the Plan) by a cash remittance, or with the consent of the Committee, through the surrender of shares of Stock which the Participant owns or to which the Participant is otherwise entitled under the Plan pursuant to an irrevocable election submitted by the Participant to the Company at the office designated for such purpose. The number of shares of Stock needed to be submitted in payment of the taxes shall be determined using the Fair Market Value as of the applicable tax date rounding down to the nearest whole share.

**SECTION 20**  
**Change in Control**

20.1. After giving effect to the provisions of Section 16 (relating to the adjustment of shares of Stock), and except as otherwise provided in the Plan or the Agreement reflecting the applicable Award, upon the occurrence of a Change in Control:

- (a) All outstanding Options (regardless of whether in tandem with Stock Appreciation Rights) shall become fully exercisable and may be exercised at any time during the original term of the Option;
- (b) All outstanding Stock Appreciation Rights (regardless of whether in tandem with Options) shall become fully exercisable and may be exercised at any time during the original term of the Option;
- (c) All shares of Stock subject to Awards shall become fully vested and be distributed to the Participant; and
- (d) Performance Units may be paid out in such manner and amounts as may be reasonably determined by the Committee.

The accelerated payment of any Award upon a Change in Control as described in this Section 20.1 shall occur only to the extent such payment would not result in an adverse tax consequence to the Participant under Code Section 409A. In addition, Performance Units shall be paid in accordance with the terms of the Award Agreement.

**SECTION 21**  
**MERGERS / ACQUISITIONS**

- 21.1 In the event of any merger or acquisition involving the Company and/or a Subsidiary of the Company and another entity which results in the Company being the survivor or the surviving direct or indirect parent corporation of the merged or acquired entity, the Committee may grant Awards under the provisions of the Plan in substitution for awards held by employees or former employees of such other entity under any plan of such entity immediately prior to such merger or acquisition upon such terms and conditions as the Committee, in its discretion, shall determine and as otherwise may be required by the Code to ensure such substitution is not treated as the grant of a new Award for tax or accounting purposes.
- 21.2 In the event of a merger or acquisition involving the Company in which the Company is not the surviving corporation, the Acquiring Corporation shall either assume the Company's rights and obligations under outstanding Awards or substitute awards under the Acquiring Corporation's plans, or if none, securities for such outstanding Awards. In the event the Acquiring Corporation elects not to assume or substitute for such outstanding Awards, and without limiting Section 20, the Board shall provide that any unexercisable and/or unvested portion of the outstanding Awards shall be immediately exercisable and vested as of a date prior to such merger or consolidation, as the Board so determines. The exercise and/or vesting of any Award that was permissible solely by reason of this Section 21.2 shall be conditioned upon the consummation of the merger or consolidation. Unless otherwise provided in the Plan or the Award, any Awards which are neither assumed by the Acquiring Corporation nor exercised on or prior to the date of the transaction shall terminate effective as of the effective date of the transaction.

**SECTION 22**  
**Termination and Amendment**

- 22.1 The Board may suspend, terminate, modify or amend the Plan, provided that any amendment that would (a) increase the aggregate number of shares of Stock which may be issued under the Plan, (b) change the method of determining the exercise price of Options, other than to change the method of determining Fair Market Value of Stock as set forth in Section 2.1(r) of the Plan, or (c) materially modify the requirements as to eligibility for participation in the Plan, shall be subject to the approval of the Company's stockholders, except that any such increase or modification that may result from adjustments authorized by Section 16 does not require such approval. No suspension, termination, modification or amendment of the Plan may terminate a Participant's existing Award or materially and adversely affect a Participant's rights under such Award without the Participant's consent. Notwithstanding any provision herein to the contrary, the Board may amend or revise this Plan to comply with applicable laws or governmental regulations.
- 22.2 Notwithstanding any provision herein to the contrary, the repricing of Options or Stock Appreciation Rights is prohibited without prior approval of the Company's stockholders. For this purpose, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (a) changing the terms of an Option or Stock Appreciation Right to lower its Exercise Price; (b) any other action that is treated as a "repricing" under generally accepted accounting principles; and (c) 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 Stock in exchange for another Award, unless the cancellation and exchange occurs in connection with a change in capitalization or similar change under Section 21 above. Such cancellation and exchange as described in clause (c) 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.