

MERCER INTERNATIONAL INC.

Form 10-Q

August 05, 2010

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2010

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

**Commission File No.: 000-51826
MERCER INTERNATIONAL INC.**

(Exact name of Registrant as specified in its charter)

Washington
*(State or other jurisdiction
of incorporation or organization)*

47-0956945
*(I.R.S. Employer
Identification No.)*

Suite 2840, 650 West Georgia Street, Vancouver, British Columbia, Canada, V6B 4N8

(Address of office)

(604) 684-1099

(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the *Securities Exchange Act of 1934* during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer Smaller Reporting Company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES NO

The Registrant had 36,551,325 shares of common stock outstanding as at August 4, 2010.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

**MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2010
(Unaudited)**

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MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands of Euros)

	June 30, 2010	December 31, 2009
ASSETS		
Current assets		
Cash and cash equivalents	62,145	51,291
Receivables	125,105	71,143
Inventories (Note 4)	89,582	72,629
Prepaid expenses and other	7,448	5,871
Total current assets	284,280	200,934
Long-term assets		
Property, plant and equipment	872,843	868,558
Deferred note issuance and other	7,627	8,186
Deferred income tax	3,860	3,426
Note receivable	2,202	2,727
	886,532	882,897
Total assets	1,170,812	1,083,831
LIABILITIES		
Current liabilities		
Accounts payable and accrued expenses	105,050	85,185
Pension and other post-retirement benefit obligations (Note 7)	653	567
Debt (Note 5)	23,189	16,032
Total current liabilities	128,892	101,784
Long-term liabilities		
Debt (Note 5)	845,992	813,142
Unrealized interest rate derivative losses (Notes 6 and 9)	63,880	52,873
Pension and other post-retirement benefit obligations (Note 7)	20,932	17,902
Capital leases and other	10,971	12,157
	941,775	896,074
Total liabilities	1,070,667	997,858
EQUITY		
Shareholders' equity		
Share capital (Note 8)	202,973	202,844

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Paid-in capital	(5,417)	(6,082)
Retained earnings (deficit)	(92,380)	(97,235)
Accumulated other comprehensive income (loss)	26,057	23,695
Total shareholders' equity	131,233	123,222
Noncontrolling interest (deficit) (Note 10)	(31,088)	(37,249)
Total equity	100,145	85,973
Total liabilities and equity	1,170,812	1,083,831

Commitments and contingencies (Note 11)

The accompanying notes are an integral part of these interim consolidated financial statements.

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MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands of Euros, except per share data)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Revenues				
Pulp	228,293	147,522	399,414	276,555
Energy	11,931	11,362	21,062	21,901
	240,224	158,884	420,476	298,456
Costs and expenses				
Operating costs	168,275	149,033	308,684	281,030
Operating depreciation and amortization	14,106	13,539	27,830	26,940
	57,843	(3,688)	83,962	(9,514)
Selling, general and administrative expenses	9,955	6,032	18,050	13,177
Purchase (sale) of emission allowances		16		(542)
Operating income (loss)	47,888	(9,736)	65,912	(22,149)
Other income (expense)				
Interest expense	(16,898)	(16,319)	(33,321)	(32,868)
Investment income (loss)	117	138	211	(3,064)
Foreign exchange gain (loss) on debt	(9,371)	5,170	(14,602)	754
Gain (loss) on extinguishment of convertible notes (Note 5)			(929)	
Gain (loss) on derivative instruments (Note 6)	(4,462)	7,451	(11,008)	(7,562)
Total other income (expense)	(30,614)	(3,560)	(59,649)	(42,740)
Income (loss) before income taxes	17,274	(13,296)	6,263	(64,889)
Income tax benefit (provision) current	(1,319)	(65)	(1,523)	(114)
deferred		1,888		4,919
Net income (loss)	15,955	(11,473)	4,740	(60,084)
Less: net loss (income) attributable to noncontrolling interest	(3,554)	(3)	115	9,258
Net income (loss) attributable to common shareholders	12,401	(11,476)	4,855	(50,826)

Net income (loss) per share attributable to common
shareholders (Note 3)

Basic	0.34	(0.32)	0.13	(1.40)
Diluted	0.23	(0.32)	0.11	(1.40)

The accompanying notes are an integral part of these interim consolidated financial statements.

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MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF RETAINED EARNINGS (DEFICIT)
(Unaudited)
(In thousands of Euros)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Net income (loss) attributable to common shareholders	12,401	(11,476)	4,855	(50,826)
Retained earnings (deficit), beginning of period	(104,781)	(74,396)	(97,235)	(35,046)
Retained earnings (deficit), end of period	(92,380)	(85,872)	(92,380)	(85,872)

INTERIM CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)
(In thousands of Euros)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Net income (loss)	15,955	(11,473)	4,740	(60,084)
Other comprehensive income (loss)				
Foreign currency translation adjustment	(4,688)	14,603	2,944	9,234
Pension income (expense)	(234)	(22)	(600)	(39)
Unrealized gains (losses) on securities arising during the period	12	21	18	335
Other comprehensive income (loss)	(4,910)	14,602	2,362	9,530
Total comprehensive income (loss)	11,045	3,129	7,102	(50,554)
Comprehensive loss (income) attributable to noncontrolling interest	(3,554)	(3)	115	9,258
Comprehensive income (loss) attributable to common shareholders	7,491	3,126	7,217	(41,296)

The accompanying notes are an integral part of these interim consolidated financial statements.

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INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands of Euros)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Cash flows from (used in) operating activities				
Net income (loss) attributable to common shareholders	12,401	(11,476)	4,855	(50,826)
Adjustments to reconcile net income (loss) attributable to common shareholders to cash flows from operating activities				
Loss (gain) on derivative instruments	4,462	(7,451)	11,008	7,562
Foreign exchange (gain) loss on debt	9,371	(5,170)	14,602	(754)
Loss (gain) on extinguishment of convertible notes			929	
Depreciation and amortization	14,176	13,604	27,997	27,071
Accretion (income) expense	514		945	
Noncontrolling interest	3,554	3	(115)	(9,258)
Deferred income taxes		(1,888)		(4,919)
Stock compensation expense	227	26	733	(8)
Pension and other post-retirement expense, net of funding	138	(7)	332	(23)
Inventory provisions				4,587
Other	844	925	1,847	(1,974)
Changes in current assets and liabilities				
Receivables	(28,798)	4,727	(45,942)	24,708
Inventories	(5,724)	21,406	(10,983)	27,525
Accounts payable and accrued expenses	5,377	15,161	13,332	7,940
Other	687	(366)	(594)	634
Net cash from (used in) operating activities	17,229	29,494	18,946	32,265
Cash flows from (used in) investing activities				
Purchase of property, plant and equipment	(14,542)	(7,835)	(20,392)	(15,541)
Proceeds on sale of property, plant and equipment	162	103	549	232
Cash, restricted				9,469
Notes receivable	579	120	495	241
Net cash from (used in) investing activities	(13,801)	(7,612)	(19,348)	(5,599)
Cash flows from (used in) financing activities				
Repayment of notes payable and debt			(8,250)	(13,800)
Repayment of capital lease obligations	(603)	(536)	(1,607)	(1,218)
	6,390		6,390	10,000

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Proceeds from borrowings of notes payable and debt				
Proceeds from government grants	1,144		10,559	
Payment of deferred note issuance costs				(1,969)
Net cash from (used in) financing activities	6,931	(536)	7,092	(6,987)
Effect of exchange rate changes on cash and cash equivalents	3,094	(482)	4,164	(31)
Net increase (decrease) in cash and cash equivalents	13,453	20,864	10,854	19,648
Cash and cash equivalents, beginning of period	48,692	41,236	51,291	42,452
Cash and cash equivalents, end of period	62,145	62,100	62,145	62,100

The accompanying notes are an integral part of these interim consolidated financial statements.

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MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)
(Unaudited)
(In thousands of Euros)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Supplemental disclosure of cash flow information				
Cash paid (received) during the period for				
Interest	14,604	2,952	29,033	31,210
Income taxes	(37)	43	29	72
Supplemental schedule of non-cash investing and financing activities				
Acquisition of production and other equipment under capital lease obligations	318	80	530	116
Decrease in accounts payable relating to investing activities	(12,843)	(1,602)	(13,826)	(1,141)

The accompanying notes are an integral part of these interim consolidated financial statements.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 1. The Company and Summary of Significant Accounting Policies

Basis of Presentation

The interim consolidated financial statements contained herein include the accounts of Mercer International Inc. (Mercer Inc.) and its wholly-owned and majority-owned subsidiaries collectively (the Company). The Company's shares of common stock are quoted and listed for trading on both the NASDAQ Global Market and the Toronto Stock Exchange.

The interim consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (the SEC). The year-end consolidated balance sheet data was derived from audited financial statements. The footnote disclosure included herein has been prepared in accordance with accounting principles generally accepted for interim financial statements in the United States (GAAP). The interim consolidated financial statements should be read together with the audited consolidated financial statements and accompanying notes included in the Company's latest annual report on Form 10-K for the fiscal year ended December 31, 2009. In the opinion of the Company, the unaudited interim consolidated financial statements contained herein contain all adjustments necessary to fairly present the results of the interim periods included. The results for the periods included herein may not be indicative of the results for the entire year.

The Company has three pulp mills that are aggregated into one reportable business segment, market pulp. Accordingly, the results presented are those of the reportable business segment.

Certain prior year amounts in the interim consolidated financial statements have been reclassified to conform to the current year presentation.

In these interim consolidated financial statements, unless otherwise indicated, all amounts are expressed in Euros (€). The term U.S. dollars and the symbol \$ refer to United States dollars. The symbol C\$ refers to Canadian dollars.

Use of Estimates

Preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant management judgment is required in determining the accounting for, among other things, doubtful accounts and reserves, depreciation and amortization, future cash flows associated with impairment testing for long-lived assets, derivative financial instruments, environmental conservation and legal liabilities, asset retirement obligations, pensions and post-retirement benefit obligations, income taxes, contingencies, and inventory obsolescence and provisions. Actual results could differ from these estimates, and changes in these estimates are recorded when known.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Recently Implemented Accounting Standards

This section highlights recently implemented accounting standards that had an impact on the Company's financial statements.

In January 2010, the Company adopted Accounting Standards Update (ASU) 2010-06, which amends Accounting Standards Codification 820 (ASC 820), *Fair Value Measurements and Disclosures*. This new accounting guidance requires expanded fair value measurement disclosures in quarterly and annual financial statements. The new guidance clarifies existing disclosure requirements for the Level 2 and 3 fair value measurement. Additionally, the new guidance also requires details of significant transfers of assets between Level 1 and Level 2 fair value measurement categories, including the reasons for such transfers, as well as gross presentation of activity within the Level 3 fair value measurement category. This guidance is effective for the Company on January 1, 2010, except for the gross presentation of Level 3 activity, which is effective January 1, 2011. The adoption of this new accounting guidance did not impact the results of operations or the financial position of the Company.

Note 2. Stock-Based Compensation

In June 2010, the Company adopted a new stock incentive plan (the 2010 Plan) which provides for options, restricted stock rights, restricted stock, performance shares, performance share units and stock appreciation rights to be awarded to employees, consultants and non-employee directors. The 2010 Plan replaced the Company's 2004 stock incentive plan (the 2004 Plan). However, the terms of the 2004 Plan will govern prior awards until all awards granted under the 2004 Plan have been exercised, forfeited, cancelled, expired, or otherwise terminated in accordance with the terms thereof. The Company may grant up to a maximum of 2,000,000 common shares plus the number of common shares remaining available for grant pursuant to the 2004 Plan.

Performance Stock

Grants of performance stock comprise rights to receive stock at a future date that are contingent on the Company and the grantee achieving certain performance objectives.

During the three and six months ended June 30, 2010, potential stock based performance awards totaled 578,165, which potentially vest on December 31, 2010 (2009 530,623). Expense (income) recognized for the three and six month periods ended June 30, 2010 was 194 and 709, respectively (2009 5 and (55)).

The fair value of performance stock is determined based upon the number of shares awarded and the quoted price of the Company's stock at the reporting date. Performance stock generally cliff vest three years from the award date.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 2. Stock-Based Compensation (continued)

On February 11, 2010, the Company awarded a total of 13,000 performance stock to two employees. As of June 30, 2010, no performance stock had vested (2009 nil). During the three and six month period ended June 30, 2010, no performance stock were cancelled (2009 nil and nil).

Restricted Stock

The fair value of restricted stock is determined based upon the number of shares granted and the quoted price of the Company's stock on the date of grant. Restricted stock generally vests over one year. Expense is recognized on a straight-line basis over the vesting period. Expense recognized for the three and six month periods ended June 30, 2010 was 22 and 24, respectively (2009 21 and 47).

In the second quarter, 56,000 restricted stock awards were granted to directors of the Company (2009 nil). No restricted stock awards were granted in the first quarter of 2010 or 2009 and there were no restricted stock awards cancelled during the three and six month periods ended June 30, 2010 (2009 nil and nil). As at June 30, 2010, 77,000 restricted stock awards remain unvested.

As at June 30, 2010, the total remaining unrecognized compensation cost related to restricted stock amounted to approximately 226 (2009 nil), which will be amortized over their remaining vesting periods.

Stock Options

During the three and six month periods ended June 30, 2010 and 2009, no options were exercised, cancelled or granted and 738,334 options expired during the first quarter of 2010 (2009 nil).

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	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Net income (loss) attributable to common shareholders basic	12,401	(11,476)	4,855	(50,826)
Interest on convertible notes, net of tax	747		1,437	
Net income (loss) attributable to common shareholders diluted	13,148	(11,476)	6,292	(50,826)
Net income (loss) per share attributable to common shareholders				
Basic	0.34	(0.32)	0.13	(1.40)
Diluted	0.23	(0.32)	0.11	(1.40)
Weighted average number of common shares outstanding				
Basic ⁽¹⁾	36,349,340	36,289,181	36,334,846	36,287,115
Effect of dilutive instruments				
Performance rights	425,668		429,865	
Restricted stock	22,067		16,498	
Stock options and awards				
Convertible notes	20,197,563		20,212,058	
Diluted	56,994,638	36,289,181	56,993,267	36,287,115

(1) The basic weighted average number of shares excludes performance and restricted stock which have been issued, but have not vested as at June 30, 2010 and 2009.

The calculation of diluted net income (loss) per share attributable to common shareholders does not assume the exercise of any instruments that would have an anti-dilutive effect on earnings per share.

Stock options and awards excluded from the calculation of diluted income (loss) per share attributable to common shareholders because they are anti-dilutive represented 190,000 shares for the three and six month periods ended June 30, 2010 (2009 928,334).

Shares associated with the convertible notes excluded from the calculation of diluted income (loss) per share attributable to common shareholders because they are anti-dilutive represented 8,678,065 shares for the three and six month periods ended June 30, 2009.

Performance stock excluded from the calculation of diluted income (loss) per share attributable to common shareholders because they are anti-dilutive represented 369,924 shares for the three and six month periods ended June 30, 2009.

Note 4. Inventories

	June 30, 2010	December 31, 2009
Raw materials	39,255	24,888
Finished goods	24,081	24,198
Work in process and other	26,246	23,543
	89,582	72,629

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Debt consists of the following:

	June 30, 2010	December 31, 2009
Note payable to bank, included in a total loan credit facility of 827,950 to finance the construction related to the Stendal mill (a)	506,323	514,574
Senior notes due February 2013, interest at 9.25% accrued and payable semi-annually, unsecured (b)	252,238	216,299
Subordinated convertible notes due October 2010, interest at 8.5% accrued and payable semi-annually (c)	1,851	16,749
Subordinated convertible notes due January 2012, interest at 8.5% accrued and payable semi-annually (d)	50,151	26,160
Credit agreement with a lender with respect to a revolving credit facility of C\$40 million (e)	23,782	16,000
Loan payable to the noncontrolling shareholder of the Stendal mill (f)	30,485	35,881
Credit agreement with a bank with respect to a revolving credit facility of 25,000 (g)		
Investment loan agreement with a lender with respect to the wash press project at the Rosenthal mill of 4,351 (h)	4,351	3,511
Credit agreement with a bank with respect to a revolving credit facility of 3,500 (i)		
	869,181	829,174
Less: current portion	(23,189)	(16,032)
Debt, less current portion	845,992	813,142

The Company made scheduled principal repayments under these facilities of 8,250 during the six months ended June 30, 2010 (2009 13,800). As of June 30, 2010, the principal maturities of debt are as follows:

Matures	Amount
2010	8,062
2011	24,255
2012	75,822
2013 ⁽¹⁾	317,108
2014	40,543
Thereafter	403,391
	869,181

(1)

Includes
revolving credit
facility principal
amounts
totalling 23,782.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 5. Debt (continued)

Certain of the Company's debt agreements were issued under an indenture which, among other things, restricts its ability and the ability of its restricted subsidiaries to make certain payments. These limitations are subject to other important qualifications and exceptions. As at June 30, 2010, the Company was in compliance with the terms of the indenture.

- (a) Note payable to bank, included in a total loan facility of 827,950 to finance the construction related to the Stendal mill (Stendal Loan Facility), interest at rates varying from Euribor plus 0.90% to Euribor plus 1.50% (rates on amounts of borrowing at June 30, 2010 range from 1.85% to 2.44%), principal due in required installments beginning September 30, 2006 until September 30, 2017, collateralized by the assets of the Stendal mill, with 48% and 32% guaranteed by the Federal Republic of Germany and the State of Saxony-Anhalt, respectively, of up to 468,823 of outstanding principal, subject to a debt service reserve account required to pay amounts due in the following twelve months under the terms of the Stendal Loan Facility; payment of dividends is only permitted if certain cash flow requirements are met.

On March 13, 2009, the Company finalized an agreement with its lenders to amend its Stendal Loan Facility. The amendment deferred approximately 164,000 of scheduled principal payments until the maturity date, September 30, 2017, including approximately 20,000, 26,000, 21,000 of scheduled principal payments that were originally due in 2009, 2010, and 2011, respectively. The amendment also provided for a 100% cash sweep, referred to as the Cash Sweep , of any cash, in excess of a 15,000 working capital reserve, held by Stendal which will be used first to fund the debt service reserve account to a level sufficient to service the amounts due and payable under the Stendal Loan Facility during the then following 12 months, or Fully Funded , and second to prepay the deferred principal amounts.

- (b) In February 2005, the Company issued \$310 million of senior notes due February 2013, which bear interest at 9.25% accrued and payable semi-annually, and are unsecured. The Company may redeem all or a part of the notes at redemption prices (expressed as a percentage of principal amount) equal to 102.31% for the twelve month period beginning on February 15, 2010, and 100.00% beginning on February 15, 2011 and at any time thereafter, plus accrued and unpaid interest.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 5. Debt (continued)

- (c) As at June 30, 2010, the Subordinated Convertible Notes due October 2010 had approximately \$2.3 million of principal outstanding. The Subordinated Convertible Notes due October 2010, bear interest at 8.5% accrued and payable semi-annually, are convertible at any time by the holder into common shares of the Company at \$7.75 per share and are unsecured. The Company may redeem for cash all or a portion of these notes at any time at 100% of the principal amount of the notes plus accrued and unpaid interest up to the redemption date. See Note 5(d).
- (d) On December 10, 2009, the Company exchanged approximately \$43.3 million of Subordinated Convertible Notes due October 2010 through private exchange agreements with the holders thereof for approximately \$43.8 million of Subordinated Convertible Notes due January 2012. On January 22, 2010, through an exchange offer, the Company exchanged a further \$21.7 million of Subordinated Convertible Notes due October 2010 for approximately \$22.0 million of the Company's Subordinated Convertible Notes due January 2012. The Company recognized both exchange transactions of the Subordinated Convertible Notes as extinguishments of debt in accordance with ASC Topic 470, *Debt*, because the fair value of the embedded conversion option changed by more than 10% in both transactions. As a result, for the year ended December 31, 2009, the Company accounted for the December 10, 2009 exchange as a debt extinguishment and recognized a gain of 4,447 in the Consolidated Statement of Operations. For the six months ended June 30, 2010, the Company recognized a loss of 929 as a result of the January 22, 2010 exchange. The gain and loss, which were determined using fair market values prevailing at the time of the transactions, will both be accreted to income through to January 2012 through interest expense yielding an effective interest rate of approximately 13% on the December 10, 2009 exchange and 3% on the January 22, 2010 exchange.

The Subordinated Convertible Notes due January 2012 bear interest at 8.5%, accrued and payable semi-annually, are convertible at anytime by the holder into common shares of the Company at \$3.30 per share and are unsecured. The Company may redeem for cash all or a portion of the notes on or after July 15, 2011 at 100% of the principal amount of the notes plus accrued interest up to the redemption date. During the six months ended June 30, 2010, \$169,027 of Subordinated Convertible Notes due January 2012 were converted into 51,218 shares.

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MERCER INTERNATIONAL INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(In thousands of Euros, except per share data)

Note 5. Debt (continued)

- (e) Credit agreement with respect to a revolving credit facility of C\$40.0 million for the Celgar mill. The credit agreement matures May 2013. Borrowings under the credit agreement are collateralized by the mill's inventory and receivables and are restricted by a borrowing base calculated on the mill's inventory and receivables. Canadian dollar denominated amounts bear interest at bankers acceptance plus 3.75% or Canadian prime plus 2.00%. U.S. dollar denominated amounts bear interest at LIBOR plus 3.75% or U.S. base plus 2.00%. As at June 30, 2010, this facility was accruing interest at a rate of approximately 4.42% and the undrawn amount was approximately C\$8.0 million.
- (f) Loans payable to the noncontrolling shareholder of the Stendal mill bear interest at 7%, which is accrued semi-annually. The loan payable is unsecured, subordinated to all liabilities of the Stendal mill, and is due in 2017. The balance includes principal and accrued interest. See Note 10 Noncontrolling Interest.
- (g) A 25,000 working capital facility at the Rosenthal mill that matures in December 2012. Borrowings under the facility are collateralized by the mill's inventory and receivables and bear interest at approximately Euribor plus 3.50%. As at June 30, 2010, approximately 2,100 of this facility was supporting bank guarantees leaving approximately 22,900 undrawn.
- (h) On August 19, 2009 the Company finalized an investment loan agreement with a lender relating to the new wash press at the Rosenthal mill. The four-year amortizing investment loan was completed with a total facility of 4,351 bearing interest at the rate of Euribor plus 2.75%. Borrowings under this agreement are secured by the new wash press equipment. As at June 30, 2010, this facility was drawn by 4,351 and was accruing interest at a rate of 3.20%.
- (i) On February 8, 2010 the Rosenthal mill finalized a credit agreement with a lender for a 3,500 facility maturing in December 2012. Borrowings under the facility will bear interest at the rate of the 3-month Euribor plus 3.5% and are secured by certain land at our Rosenthal mill. As at June 30, 2010, this facility was undrawn.

Note 6. Derivative Transactions

The Company is exposed to certain market risks relating to its ongoing business. The Company seeks to manage these risks through internal risk management policies as well as, from time to time, the use of derivatives. Currently, the primary risk managed using derivative instruments is interest rate risk.

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(Unaudited)

(In thousands of Euros, except per share data)

Note 6. Derivative Transactions (continued)

During 2004, the Company entered into certain variable-to-fixed interest rate swaps in connection with the Stendal Loan Facility with respect to an aggregate maximum principal amount of approximately 612,600 of the total indebtedness under the Stendal Loan Facility. Under the interest rate swaps, the Company pays a fixed rate and receives a floating rate with the interest payments being calculated on a notional amount. Currently, the contracts have an aggregate notional amount of 467,926 at a fixed interest rate of 5.28% and they mature October 2017 (generally matching the maturity of the Stendal Loan Facility). The Company substantially converted the Stendal Loan Facility from a variable interest rate loan into a fixed interest rate loan, thereby reducing interest rate uncertainty.

The Company recognized an unrealized loss of 4,462 and 11,008, respectively, with respect to these interest rate swaps for the three and six months ended June 30, 2010 (2009 gain of 7,451 and loss of 7,562), in the Gain (loss) on derivative instruments line in the Interim Consolidated Statement of Operations and Interim Consolidated Statement of Cash Flows. Derivative instruments are required to be measured at their fair value. Accordingly, the fair value of the interest rate swap is presented in Unrealized interest rate derivative losses within the long-term liabilities section in the Interim Consolidated Balance Sheets, which currently amounts to a cumulative unrealized loss of 63,880 (2009 52,873).

The interest rate derivative contracts are with the same banks that hold the Stendal Loan Facility and the Company does not anticipate non-performance by the banks.

Note 7. Pension and Other Post-Retirement Benefit Obligations

Included in pension and other post-retirement benefit obligations are amounts related to the Company's Celgar and German mills. The largest component of this obligation is with respect to the Celgar mill which maintains defined benefit pension and post-retirement benefit plans for certain employees (Celgar Plans).

Pension benefits are based on employees' earnings and years of service. The Celgar Plans are funded by contributions from the Company based on actuarial estimates and statutory requirements. Pension contributions for the three and six month periods ended June 30, 2010 totaled 247 and 399, respectively (2009 235 and 583).

The Company anticipates based on actuarial estimates that it will make contributions to the defined benefit pension plan of approximately 319 in 2010.

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Effective December 31, 2008, the defined benefit plan was closed to new members. In addition, the defined benefit service accrual ceased on December 31, 2008, and members began to receive pension benefits, at a fixed contractual rate, under a new defined contribution plan effective January 1, 2009.

	Three Months Ended June 30,		2009	
	2010	Post-Retirement Benefits	Pension Benefits	Post-Retirement Benefits
Service cost	21	102	14	84
Interest cost	437	202	377	203
Expected return on plan assets	(409)		(317)	
Recognized net loss (gain)	115	(81)	35	(59)
Net periodic benefit cost	164	223	109	228

	Six Months Ended June 30,		2009	
	2010	Post-Retirement Benefits	Pension Benefits	Post-Retirement Benefits
Service cost	40	195	28	167
Interest cost	832	384	747	401
Expected return on plan assets	(778)		(628)	
Recognized net loss (gain)	218	(154)	69	(116)
Net periodic benefit cost	312	425	216	452

Note 8. Share Capital*Common shares*

The Company has authorized 200,000,000 common shares (2009 200,000,000) with a par value of \$1 per share. During the six months ended June 30, 2010, 51,218 shares were issued as a result of certain holders of the Company's Subordinated Convertible Notes due January 2012 exercising their conversion option. See Note 5(d) Debt. As at June 30, 2010 and December 31, 2009, the Company had 36,551,325 and 36,443,487 common shares issued and outstanding, respectively.

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The Company has authorized 50,000,000 preferred shares (2009 50,000,000) with \$1 par value issuable in series, of which 2,000,000 shares have been designated as Series A. The preferred shares may be issued in one or more series and with such designations and preferences for each series as shall be stated in the resolutions providing for the designation and issue of each such series adopted by the Board of Directors of the Company. The Board of Directors is authorized by the Company's articles of incorporation to determine the voting, dividend, redemption and liquidation preferences pertaining to each such series. As at June 30, 2010, no preferred shares had been issued by the Company.

Note 9. Financial Instruments

The fair value of financial instruments at June 30, 2010 and December 31, 2009 is summarized as follows:

	June 30, 2010		December 31, 2009	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Cash and cash equivalents	62,145	62,145	51,291	51,291
Investments	155	155	135	135
Receivables	125,105	125,105	71,143	71,143
Notes receivable	3,897	3,897	3,819	3,819
Accounts payable and accrued expenses	105,050	105,050	85,185	85,185
Debt	869,181	865,684	829,174	769,207
Interest rate derivative contracts liability	63,880	63,880	52,873	52,873

The carrying value of cash and cash equivalents and accounts payable and accrued expenses approximates the fair value due to the immediate or short-term maturity of these financial instruments. The carrying value of receivables approximates the fair value due to their short-term nature and historical collectability. The fair value of notes receivable was estimated using discounted cash flows at prevailing market rates. The fair value of debt reflects recent market transactions and discounted cash flow estimates. The fair value of the interest rate derivatives is based on observable inputs including applicable yield curves.

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(In thousands of Euros, except per share data)

Note 9. Financial Instruments (continued)

The fair value methodologies and, as a result, the fair value of the Company's investments and derivative instruments are determined based on the fair value hierarchy provided in ASC 820. The fair value hierarchy per ASC 820 is as follows:

Level 1 Valuations based on quoted prices in active markets for *identical* assets and liabilities.

Level 2 Valuations based on observable inputs in active markets for *similar* assets and liabilities, other than Level 1 prices, such as quoted interest or currency exchange rates.

Level 3 Valuations based on significant unobservable inputs that are supported by little or no market activity, such as discounted cash flow methodologies based on internal cash flow forecasts.

The Company classified its investments within Level 1 of the valuation hierarchy where quoted prices are available in an active market. Level 1 investments include exchange-traded equities.

The Company's derivatives are classified within Level 2 of the valuation hierarchy, as they are traded on the over-the-counter market and are valued using internal models that use as their basis readily observable market inputs, such as forward interest rates.

The valuation techniques used by the Company are based upon observable inputs. Observable inputs reflect market data obtained from independent sources. In addition, the Company considered the risk of non-performance of the obligor, which in some cases reflects the Company's own credit risk, in determining the fair value of the derivative instruments. The counterparty to our interest rate swap derivative is a multi-national financial institution.

The following table presents a summary of the Company's outstanding financial instruments and their estimated fair values under the hierarchy defined in ASC 820:

Fair value measurements at June 30, 2010 using:

Description	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Total
Assets				
Investments (a)	155			155
Liabilities				
Derivatives (b) Interest rate swaps		63,880		63,880

(a) Based on observable market data.

(b) Based on observable

inputs for the
liability (yield
curves
observable at
specific
intervals).

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**MERCER INTERNATIONAL INC.
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Note 10. Noncontrolling Interest

During the first quarter of 2010, the noncontrolling interest holder agreed to convert certain interest claims totaling 6,275 borne from shareholder loans into a capital contribution. As a result of this conversion, the Company reduced the amount owing to the noncontrolling shareholder and decreased the noncontrolling shareholder's share of losses.

Note 11. Commitments and Contingencies

As part of the Company's Green Energy project (the Green Energy Project) for the Celgar mill, during 2009 and 2010 the Company entered into a number of contracts for the purchase of a new 48 megawatt condensing turbine-generator set, as well as other related equipment commitments. As at June 30, 2010, the value of the project remaining to be completed is approximately 9,700 (C\$12.6 million), a majority of which is due to be paid within the next year and is being funded by the Canadian Federal Government's Pulp and Paper Green Transformation Program (the Program). Pursuant to a contribution agreement finalized in November 2009, the Program will provide approximately C\$40.0 million to complete the Green Energy Project. The Company is also eligible for an additional C\$17.7 million under the Program for future qualifying projects.

The Company is involved in a property transfer tax dispute with respect to the Celgar mill and certain other legal actions and claims arising in the ordinary course of business. While the outcome of these legal actions and claims cannot be predicted with certainty, it is the opinion of management that the outcome of any such claim which is pending or threatened, either individually or on a combined basis, will not have a material adverse effect on the consolidated financial condition, results of operations or liquidity of the Company.

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Note 12. Restricted Group Supplemental Disclosure

The terms of the indenture governing our 9.25% senior unsecured notes require that we provide the results of operations and financial condition of Mercer International Inc. and our restricted subsidiaries under the indenture, collectively referred to as the Restricted Group. As at and during the three and six months ended June 30, 2010 and 2009, the Restricted Group was comprised of Mercer International Inc., certain holding subsidiaries and our Rosenthal and Celgar mills. The Restricted Group excludes the Stendal mill.

Combined Condensed Balance Sheet

	June 30, 2010			
	Restricted Group	Unrestricted Subsidiaries	Eliminations	Consolidated Group
ASSETS				
Current assets				
Cash and cash equivalents	39,485	22,660		62,145
Receivables	69,176	55,929		125,105
Inventories	58,250	31,332		89,582
Prepaid expenses and other	4,752	2,696		7,448
Total current assets	171,663	112,617		284,280
Property, plant and equipment	378,462	494,381		872,843
Deferred note issuance and other	3,139	4,488		7,627
Deferred income tax	3,860			3,860
Due from unrestricted group	76,008		(76,008)	
Note receivable	2,202			2,202
Total assets	635,334	611,486	(76,008)	1,170,812
LIABILITIES				
Current liabilities				
Accounts payable and accrued expenses	65,421	39,629		105,050
Pension and other post-retirement benefit obligations	653			653
Debt	2,939	20,250		23,189
Total current liabilities	69,013	59,879		128,892
Debt	329,434	516,558		845,992
Due to restricted group		76,008	(76,008)	
Unrealized interest rate derivative losses		63,880		63,880
Pension and other post-retirement benefit obligations	20,932			20,932
Capital leases and other	6,806	4,165		10,971

Total liabilities	426,185	720,490	(76,008)	1,070,667
EQUITY				
Total shareholders' equity (deficit)	209,149	(77,916)		131,233
Noncontrolling interest (deficit)		(31,088)		(31,088)
Total liabilities and equity	635,334	611,486	(76,008)	1,170,812

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Note 12. Restricted Group Supplemental Disclosure (continued)
Combined Condensed Balance Sheet

	December 31, 2009			
	Restricted	Unrestricted	Eliminations	Consolidated
	Group	Subsidiaries		Group
ASSETS				
Current assets				
Cash and cash equivalents				
	20,635	30,656		51,291
	34,588	36,555		71,143
	52,897	19,732		72,629
Prepaid expenses and other				
	3,452	2,419		5,871
Total current assets				
	111,572	89,362		200,934
Property, plant and equipment				
	362,311	506,247		868,558
Deferred note issuance and other				
	3,388	4,798		8,186
Deferred income tax				
	3,426			3,426
Due from unrestricted group				
	72,553		(72,553)	
	2,727			2,727
Total assets				
	555,977	600,407	(72,553)	1,083,831
LIABILITIES				
Current liabilities				
Accounts payable and accrued expenses				
	51,875	33,310		85,185
Pension and other post-retirement benefit				
	567			567

obligations									
Debt	2,115	13,917			16,032				
Total current liabilities	54,557	47,227			101,784				
Debt	276,604	536,538			813,142				
Due to restricted group		72,553	(72,553)						
Unrealized interest rate derivative losses		52,873			52,873				
Pension and other post-retirement benefit obligations	17,902				17,902				
Capital leases and other	6,667	5,490			12,157				
Total liabilities	355,730	714,681	(72,553)		997,858				
			13,750		1,797,270				
Senior Vice President and Chief Financial Officer	2017	434,002	143,962	-	1,001,288	130,836	13,500	1,723,588	
	2016	423,417	-	-	282,798	-	13,250	719,465	
Yarlagadda S. Babu, Ph.D.	2018	420,000	-	-	1,141,160	180,600	13,750	1,755,510	
Senior Vice President of Drug Discovery	2017	382,480	126,872	-	1,001,288	115,304	13,500	1,639,444	
	2016	373,152	-	-	282,798	-	13,250	669,200	
William P. Sheridan	2018	485,574	-	-	1,626,760	208,797	26,088 (6)	2,349,219	
Senior Vice President and Chief Medical Officer	2017	469,143	155,618	-	1,001,288	141,429	41,072 (6)	1,808,550	
	2016	457,700	-	-	324,040	-	36,409 (6)	818,149	
Lynne M. Powell (7)	2018	382,454	-	-	922,640	164,455	59,075 (7)	1,528,624	
Senior Vice President and Chief Commercial Officer	2017	369,513	122,570	-	838,543	111,395	45,066 (7)	1,487,087	
	2016	360,500	-	-	282,798	-	29,641 (7)	672,939	

(1)

Represents incentive cash awards paid in March 2017 as described under the caption “Elements of Executive Compensation” in the Company’s 2018 Proxy Statement filed on May 10, 2018.

(2) These amounts reflect the aggregate grant date fair value for the fiscal years ended December 31, 2018, December 31, 2017 and December 31, 2016 computed in accordance with FASB ASC Topic 718 of awards pursuant to the Stock Incentive Plan. Assumptions used in the calculation of these amounts are included in Note 7 to the Company’s audited financial statements for the year ended December 31, 2018, December 31, 2017 and December 31, 2016, which are included in the Company’s Annual Reports on Form 10-K filed with the SEC on March 14, 2019, March 12, 2018 and February 27, 2017, respectively.

(3) Represents payments earned under the AIP for 2018 and 2017 performance. Values shown reflect the full calculated payout of the incentive awards under the AIP.

(4) Except as otherwise noted, the amounts shown reflect the Company contribution for the executive to the 401(k) plan.

(5) Consists of Company contributions to the 401(k) plan and life insurance premiums described above under the caption “Other Elements of Compensation-Life and Disability Insurance.” For 2018, such amounts were \$13,750 and \$905, respectively.

(6) Consists of Company contributions to the 401(k) plan, commuting expense reimbursements and tax “gross up” payments related to such commuting expenses, each as described above under the caption “Other Elements of Compensation - Other.” For 2018, such amounts were \$13,750, \$9,380 and \$4,958, respectively.

(7) Consists of Company contributions to the 401(k) plan, commuting expense reimbursements and tax “gross-up” payments related to such commuting expenses, each as described above under the caption “Other Elements of Compensation - Other.” For 2018, such amounts were \$13,750, \$31,750 and \$13,575, respectively.

GRANTS OF PLAN-BASED AWARDS IN 2018

The following table provides information about plan-based awards granted during 2018 to our Named Executive Officers.

Name	Grant Date	Compensation Committee Action	Estimated Future Payments Under Non-Equity Incentive Plan Awards			Estimated Future Payments Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units	Other Option Awards: Number of Securities Underlying Options	Exercise or Base Price of Option Awards	Fair Value of Stock and Option Awards
			Threshold	Target	Maximum	Threshold	Target	Maximum				
			(\$)(1)	(\$)(1)	(\$)(1)	(#)(2)	(#)(2)	(#)(2)	(#)(3)	(\$/Sh)(4)	(\$)(5)	
Jon P. Stonehouse	12/20/18	12/19/18	-	-	-	-	-	-	675,000	7.06	3,277,800	
	-	-	-	302,500	453,750	-	-	-	-	-	-	
Thomas R. Staab II	12/20/18	12/19/18	-	-	-	-	-	-	235,000	7.06	1,141,160	
	-	-	-	179,681	215,617	-	-	-	-	-	-	
Yarlagadda S. Babu, Ph.D.	12/20/18	12/19/18	-	-	-	-	-	-	235,000	7.06	1,141,160	
	-	-	-	168,000	201,600	-	-	-	-	-	-	
William P. Sheridan	12/20/18	12/19/18	-	-	-	-	-	-	335,000	7.06	1,626,760	
	-	-	-	194,230	233,076	-	-	-	-	-	-	
Lynne M. Powell	12/20/18	12/19/18	-	-	-	-	-	-	190,000	7.06	922,640	
	-	-	-	152,982	183,578	-	-	-	-	-	-	

(1) Represents possible payouts under our 2018 AIP. The amount shown in the “target” column represents the incentive payment that will be earned if performance is assessed at target. The amount shown in the “maximum” column represents the maximum amount payable under the AIP. There is no specific “threshold” amount payable for minimal performance under the AIP. Payout could be zero if corporate objectives are not met.

(2) Unless otherwise indicated, restricted stock units vest 25% each year until fully vested after four years.

(3) Options vest 25% each year until fully vested after four years and have a term of ten years.

(4) The exercise price is the closing market price of our common stock on the grant date.

(5) See the Summary Compensation Table above for more information about the assumptions used to determine these amounts.

OUTSTANDING EQUITY AWARDS AT DECEMBER 31, 2018

The following table summarizes the equity awards we have made to our Named Executive Officers which are outstanding as of December 31, 2018.

Name	Option Awards					Stock Awards		
	Number of Securities underlying Unexercised Options (#) Exercisable	Number of Securities underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of Shares of Stock that have not Vested (#)	Market Value of Shares of Stock that have not Vested (\$)(1)
Jon P. Stonehouse	116,809	-	-	-	6.68	3/1/2020	-	-
	134,279	-	-	-	4.15	3/1/2021	-	-
	184,000	-	-	-	4.73	3/1/2022	-	-
	297,573	-	-	-	1.42	1/1/2023	-	-
	-	-	75,000 (4)	25,000 (4)	5.45	8/8/2023	-	-
	84,000	-	-	-	10.80	1/20/2024	-	-
	-	-	40,710 (5)	94,990 (5)	12.16	1/1/2025	-	-
	122,212	40,738 (2)	-	-	10.82	12/29/2025	-	-
	168,525	168,525 (2)	-	-	3.22	5/23/2026	-	-
	125,000	375,000 (2)	-	-	5.51	2/27/2027	-	-
	75,000	225,000 (2)	-	-	5.04	12/20/2027	-	-
	-	675,000 (2)	-	-	7.06	12/20/2028	-	-
-	-	-	-	-	-	7,100(3)	57,297	
Thomas R. Staab II	28,305	-	-	-	3.78	7/1/2021	-	-
	4,000	-	-	-	4.73	3/1/2022	-	-
	25,000	-	-	-	1.42	1/1/2023	-	-
	50,000	-	-	-	1.42	1/1/2023	-	-
	-	-	36,000 (4)	17,000 (4)	5.45	8/8/2023	-	-
	35,000	-	-	-	10.80	1/20/2024	-	-

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	-	-	27,000 (5)	63,000 (5)	11.13	12/22/2024	-	-
	31,800	10,600 (2)	-	-	12.16	1/1/2025	-	-
	46,929	15,644 (2)	-	-	10.82	12/29/2025	-	-
	32,357	64,714 (2)	-	-	3.22	5/23/2026	-	-
	43,750	131,250(2)	-	-	5.51	2/27/2027	-	-
	25,000	75,000 (2)	-	-	5.04	12/20/2027	-	-
	-	235,000(2)	-	-	7.06	12/20/2028	-	-
	-	-	-	-	-	-	2,225(3)	17,956
Yarlagadda S. Babu, Ph.D.	31,874	-	-	-	1.20	3/2/2019	-	-
	55,000	-	-	-	6.68	3/1/2020	-	-
	50,000	-	-	-	4.15	3/1/2021	-	-
	62,000	-	-	-	4.73	3/1/2022	-	-
	50,000	-	-	-	1.42	1/1/2023	-	-
	50,000	-	-	-	1.42	1/1/2023	-	-
	-	-	51,000 (4)	17,000 (4)	5.45	8/8/2023	-	-
	35,000	-	-	-	10.80	1/20/2024	-	-
	-	-	27,000 (5)	63,000 (5)	11.13	12/22/2024	-	-
	31,800	10,600 (2)	-	-	12.16	1/1/2025	-	-
	46,929	15,644 (2)	-	-	10.82	12/29/2025	-	-
	64,713	64,714 (2)	-	-	3.22	5/23/2026	-	-
	43,750	131,250(2)	-	-	5.51	2/27/2027	-	-
	25,000	75,000 (2)	-	-	5.04	12/20/2027	-	-
	-	235,000(2)	-	-	7.06	12/20/2028	-	-
	-	-	-	-	-	-	2,225(3)	17,956

William P. Sheridan	59,949	-	-	-	6.68	3/1/2020	-	-
	41,250	-	-	-	4.15	3/1/2021	-	-
	46,573	-	-	-	4.73	3/1/2022	-	-
	100,000	-	-	-	5.59	3/9/2022	-	-
	-	-	17,000(4)	17,000(4)	5.45	8/8/2023	-	-
	35,000	-	-	-	10.80	1/20/2024	-	-
	-	-	33,900(5)	79,100(5)	11.13	12/22/2014	-	-
	39,000	13,000 (2)	-	-	12.16	1/1/2025	-	-
	53,733	17,925 (2)	-	-	10.82	12/29/2025	-	-
	74,151	74,151 (2)	-	-	3.22	5/23/2026	-	-
	43,750	131,250(2)	-	-	5.51	2/27/2027	-	-
	25,000	75,000 (2)	-	-	5.04	12/20/2027	-	-
	-	335,000(2)	-	-	7.06	12/20/2028	-	-
	-	-	-	-	-	-	2,725(3)	21,991
Lynne M. Powell	142,500	47,500 (2)	-	-	11.33	1/26/2025	-	-
	-	-	30,000(5)	70,000(5)	11.33	1/26/2025	-	-
	46,929	15,644 (2)	-	-	10.82	12/29/2025	-	-
	32,713	64,714 (2)	-	-	3.22	5/23/2026	-	-
	37,500	112,500(2)	-	-	5.51	2/27/2027	-	-
	20,000	60,000 (2)	-	-	5.04	12/20/2027	-	-
	-	190,000(2)	-	-	7.06	12/20/2028	-	-

(1) Market value is calculated by multiplying the closing market price of our common stock as of December 31, 2018 (\$8.07) by the number of shares that have not vested.

(2) Options vest at a rate of 25% per year until fully vested after four years. The term of each option is ten years.

(3) Restricted stock units vest 25% each year until fully vested after four years.

Special performance stock options that vest upon successful completion of specific performance objectives (4) described under the caption “Special Performance Awards” in the Company’s 2014 Proxy Statement filed on March 21, 2014.

Special performance stock options that vest upon successful completion of specific performance objectives (5) described under the caption “2014 Special Performance Award” in the Company’s 2015 Proxy Statement filed on April 10, 2015.

2018 OPTION EXERCISES AND STOCK VESTED

The following table provides information on stock option exercises during 2018 by our Named Executive Officers and restricted stock units held by our Named Executive Officers that vested during 2018.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)(2)
Jon P. Stonehouse	207,376	1,046,472	39,100(3)	213,471
Thomas R. Staab II	64,856	302,098	15,725(4)	86,390
Yarlagadda S. Babu, Ph.D.	30,000	57,600	15,725(5)	86,390
William P. Sheridan	104,612	507,350	16,225(6)	88,845
Lynne M. Powell	32,000	175,483	-	-

(1) Value is calculated by multiplying (a) the number of shares acquired upon exercise by (b) the difference between the market price of our common stock at the time of exercise and the exercise price.

(2) Value is calculated by multiplying (a) the closing market price of our common stock on the vesting date by (b) the number of shares of stock that vested.

(3) The Company withheld 12,300 of these shares for payment of Mr. Stonehouse's tax obligations.

(4) The Company withheld 4,831 of these shares for payment of Mr. Staab's tax obligations.

(5) The Company withheld 4,710 of these shares for payment of Dr. Babu's tax obligations.

(6) The Company withheld 5,797 of these shares for payment of Dr. Sheridan's tax obligations.

POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

The following table sets forth potential payments payable to our Named Executive Officers upon termination of employment. The amounts include compensation payable upon voluntary or involuntary termination or retirement, termination following a change in control, and in the event of disability or death. None of the Named Executive Officers are entitled to any payments upon termination with cause. The Company's Annual Incentive Plan provides that if the employment of a participating employee is terminated as a result of death, retirement or permanent disability, the employee is eligible to receive a pro rata award based on his or her base salary on the date of separation during the plan year in which the employee was considered an active employee and the number of whole months actually worked. In all other circumstances, absent provisions to the contrary in an employment agreement, all awards are forfeited if an employee voluntarily or involuntarily terminates employment with the Company before the annual incentive awards are paid. The Company's Compensation Committee may in its discretion revise, amend or add to the benefits if it deems it advisable. The amounts shown assume the options are valued at their last intrinsic value in fiscal 2018 and that termination is effective December 31, 2018, and thus include amounts earned through such time and are estimates of the amounts which would be paid out to the executives upon their termination. The actual amounts to be paid out can only be determined at the time of such executive's separation from the Company. The amounts shown in the table do not include: accrued vacation, vested amounts payable under the Company's 401(k) plan, any accrued but unpaid bonus or base salary, or potential compensation recognized upon exercise of vested options as disclosed in the Outstanding Equity Awards table above.

A description of the relevant provisions of the employment agreements of Messrs. Stonehouse and Staab, Drs. Sheridan and Babu, and Ms. Powell is set forth below the table. A description of the benefits executive officers are entitled to upon death, retirement or disability under the AIP or under the terms of the Company's equity grants is included in "Compensation Discussion and Analysis."

Name	Benefit	Termination Constructive				Death	Retirement with no Change in Employment Status (\$)	Change in Control and Termination (\$)
		Without Cause(\$)	Termination (\$)	Disability (\$)	(\$)			
Jon P. Stonehouse	Base salary	1,100,000	1,100,000	1,100,000	-	-	-	1,100,000
	Target bonus(3)	605,000	605,000	605,000	302,500	302,500	-	605,000
	Health care							

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	premiums(4)	29,518	29,518	29,518	-	-	-	29,518
	Equity vesting acceleration(5)	-	-	-	3,263,643	3,263,643	3,263,643	3,263,643
	Total	1,734,518	1,734,518	1,734,518	3,566,148	3,566,148	3,263,643	4,998,161
Thomas R. Staab II	Base salary	449,203	449,203	-	-	-	-	449,203
	Target bonus(3)	179,681	179,681	179,681	179,681	179,681	-	179,681
	Health care premiums(4)	42,572	42,572	-	-	-	-	42,572
	Equity vesting acceleration(5)	-	-	-	1,176,959	1,176,959	1,176,959	1,176,959
	Total	671,456	671,456	179,681	1,356,640	1,356,640	1,176,959	1,848,415
Yarlagadda S. Babu, Ph.D.	Base Salary	420,000	420,000	-	-	-	-	420,000
	Target bonus(3)	-	-	168,000	168,000	168,000	-	-
	Health care premiums(4)	42,572	42,572	-	-	-	-	42,572
	Equity vesting acceleration(5)	-	-	-	1,176,959	1,176,959	1,176,959	1,176,959
	Total	462,572	462,572	168,000	1,344,959	1,344,959	1,176,959	1,639,531
William P. Sheridan	Base salary	485,574	485,574	-	-	-	-	485,574
	Target bonus(3)	-	-	194,230	194,230	194,230	-	-
	Health care premiums(4)	29,392	29,392	-	-	-	-	29,392
	Equity vesting acceleration(5)	-	-	-	1,327,763	1,327,763	1,327,763	1,327,763
	Total	514,966	514,966	194,230	1,521,993	1,521,993	1,327,763	1,842,729
Lynne M. Powell	Base salary	382,454	382,454	-	-	-	-	382,454
	Target bonus(3)	152,982	152,982	152,982	152,982	152,982	-	152,982
	Health care premiums(4)	42,572	42,572	-	-	-	-	42,572
	Equity vesting acceleration(5)	-	-	-	-	-	975,563	975,563
	Total	578,008	578,008	152,982	152,982	152,982	975,563	1,553,571

-
- (1) Pursuant to the terms of the Company's Stock Incentive Plan, acceleration of unvested options occurs only in the event of death after five years of service.

- Benefits for Mr. Stonehouse are triggered if his employment is terminated without Cause or as a result of Disability or Constructive Termination following a Change of Control. Benefits for Mr. Staab, Drs. Sheridan and Babu, and Ms. Powell are triggered if their employment is terminated without Cause or if they are Constructively Terminated within six months following a Change of Control. The employment agreement for Mr. Stonehouse provides that if any benefit would be subject to excise tax imposed by section 4999 of the Internal Revenue Code or any interest or penalties with respect to such excise tax, the employee shall be entitled to the greater of the employee's net after tax benefit of the entire payment assuming the payment is subject to section 4999 (which payment would be subject to the excise tax) and the employee's net after tax benefit of the payments after the payments are reduced just to the point that there is no section 4999 excise tax. The Company will not pay the excise tax if the payments are subject to section 4999.

- Represents Annual Incentive Plan award at the target percentage for each individual (except with respect to Mr. Stonehouse, who, as described below, receives twice the Annual Incentive Plan award at the target percentage in the event of termination without Cause, Constructive Termination, or Disability).

- (4) Represents twelve months of premiums under COBRA.

- (5) Based on the closing price of the Company's stock as of December 31, 2018.

Mr. Stonehouse

Pursuant to the terms of his employment letter agreement, in the event of termination by the Company without Cause, upon non-renewal of the term of the agreement by the Company, as a result of a Constructive Termination, or by the Company as a result of a Disability, Mr. Stonehouse is entitled to severance equal to the product of (x) two, and (y) the sum of (i) his annual base salary in effect immediately prior to the effective date of the termination, and (ii) his target bonus in effect for the fiscal year of termination, to be paid in equal installments over the regularly scheduled payroll periods of the Company for the two years following the effective date of termination. The Company will also pay the monthly premium for health insurance coverage under COBRA until the earlier of 12 months following the effective date of termination or the date upon which COBRA continuation coverage ceases. If there is a Change of Control, all equity awards granted to Mr. Stonehouse vest in full, and if his employment is terminated without Cause or as a result of Disability or Constructive Termination following the Change of Control, he shall receive the benefits described above. The receipt of such benefits is subject to his signing and not revoking a release of any and all claims against the Company, its officers, directors and employees, resigning from the Board, and returning to the Company

all of its property and confidential information. To the extent required, the payments described in this paragraph may be delayed for the minimum period and the in the minimum manner necessary to avoid the imposition of the tax required by Section 409A of the Internal Revenue Code.

For purposes of Mr. Stonehouse's letter agreement:

"Cause" is defined as: determination by the Board his employment be terminated for any of the following reasons: (i) a violation of a federal or state law or regulation that materially and adversely impacts the business of the Company, (ii) conviction or plea of no contest to a felony under the laws of the United States or any state, (iii) a breach of the terms of any confidentiality, invention assignment or proprietary information agreement with the Company or with a former employer that materially and adversely impacts the Company, (iv) fraud or misappropriation of property belonging to the Company or its affiliates, or (v) willful misconduct or gross negligence in connection with the performance of his duties; provided, however, that no act or failure to act shall be considered "willful" unless it is done, or omitted to be done in bad faith or without reasonable belief that his action or omission was in the best interests of the Company.

- "Constructive Termination" is defined as resignation of employment within 30 days of the occurrence of any of: (i) a reduction in his responsibilities or any change in his status or title with regard to his employment;
- (ii) a reduction in his base salary, unless such reduction occurs prior to a Change of Control (as defined below) and is made in connection with a fiscal downturn of the Company pursuant to which the base salaries of all executive officers of the Company are reduced by a comparable percentage; or (iii) a relocation of his principal office to a location more than 50 miles from the location of his then-current principal office.

“*Change of Control*” is defined as (i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State of the Company’s incorporation, (ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company in liquidation or dissolution of the Company, (iii) any reverse merger in which the Company is the surviving entity but in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company’s outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such merger, or (iv) any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company’s outstanding securities pursuant to a tender or exchange offer made directly to the Company’s stockholders.

“*Disability*” means the inability to perform his duties under the agreement by reason of physical or mental incapacity for 90 days, whether consecutive or not, during any consecutive 12-month period.

Mr. Staab

Pursuant to the terms of his employment letter agreement, in the event of termination by the Company without Cause, or if he resigns as a result of a material and adverse change in the Company’s business within six months after the four year term of the agreement expires, Mr. Staab is entitled to (i) continuation of his base salary for one year beyond the effective termination date, payable in accordance with the regular payroll practices of the Company and (ii) payment of his target bonus in effect for the fiscal year of termination, payable in equal installments over the regularly scheduled payroll periods of the Company for the one year following the effective date of termination. The Company will also pay the monthly premium for health insurance coverage under COBRA until the earlier of 12 months following the effective termination date, or the date upon which Mr. Staab commences employment with an entity other than the Company, if he elects to continue health insurance coverage under COBRA. If there is a Change of Control, all equity awards granted to Mr. Staab vest in full, and if his employment is terminated without Cause or as a result of Constructive Termination following the Change of Control, he shall receive the benefits described above. The receipt of such benefits is subject to his (a) signing and not revoking a release of any and all claims, in a form prescribed by the Company, and (b) returning to the Company all of its property and confidential information that is in his possession. To the extent required, the payments described in this paragraph may be delayed for the minimum period and the in the minimum manner necessary to avoid the imposition of the tax required by Section 409A of the Internal Revenue Code.

Dr. Babu

Pursuant to the terms of his employment letter agreement, in the event of termination by the Company without Cause, or if he resigns as a result of a material adverse change in the Company’s business within six months after the term of his agreement expires, Dr. Babu is entitled to (i) continuation of base salary for one year beyond the effective

termination date, payable in accordance with the Company's regular payroll practices, (ii) if he elects to continue health insurance coverage under COBRA, the monthly premium for such coverage until the earlier of 12 months following the effective date of termination or the date upon which he commences employment with another entity. In the event of a Change of Control, all equity awards shall vest in full, and if his employment is terminated without Cause or he is Constructively Terminated within six months of the Change of Control, he is entitled to the benefits described above. The receipt of such benefits is conditioned on his signing and not revoking a release of any and all claims, in a form prescribed by the Company and returning to the Company all of its property and confidential information. To the extent required, the payments described in this paragraph may be delayed for the minimum period and the in the minimum manner necessary to avoid the imposition of the tax required by Section 409A of the Internal Revenue Code.

Dr. Sheridan

Pursuant to the terms of his employment letter agreement, in the event of termination by the Company without Cause, or if he resigns as a result of a material adverse change in the Company's business within six months after the term of his agreement expires, Dr. Sheridan is entitled to (i) continuation of base salary for one year beyond the effective termination date, payable in accordance with the Company's regular payroll practices, (ii) relocation assistance to move Dr. Sheridan's personal belongings back to his California residence and (iii) if he elects to continue health insurance coverage under COBRA, the monthly premium for such coverage until the earlier of 12 months following the effective date of termination or the date upon which he commences employment with another entity. In the event of a Change of Control, all equity awards shall vest in full, and if his employment is terminated without Cause or he is Constructively Terminated within six months of the Change of Control, he is entitled to the benefits described above. The receipt of such benefits is conditioned on his signing and not revoking a release of any and all claims, in a form prescribed by the Company and returning to the Company all of its property and confidential information. To the extent required, the payments described in this paragraph may be delayed for the minimum period and the in the minimum manner necessary to avoid the imposition of the tax required by Section 409A of the Internal Revenue Code.

Ms. Powell

Ms. Powell joined the Company in January 2015. Pursuant to the terms of her employment letter agreement, in the event of termination by the Company without Cause, or if she resigns as a result of a material adverse change in the Company's business within six months after the term of her agreement expires, Ms. Powell is entitled to (i) continuation of base salary for one year beyond the effective termination date, payable in accordance with the Company's regular payroll practices, (ii) payment of her target bonus in effect for the fiscal year of termination, payable in equal installments over the regularly scheduled payroll periods of the Company for the one year following the effective date of termination, and (iii) if she elects to continue health insurance coverage under COBRA, the monthly premium for such coverage until the earlier of 12 months following the effective date of termination or the date upon which she commences employment with another entity. In the event of a Change of Control, all equity awards shall vest in full, and if her employment is terminated without Cause or she is Constructively Terminated within six months of the Change of Control, she is entitled to the benefits described above. The receipt of such benefits is conditioned on her signing and not revoking a release of any and all claims, in a form prescribed by the Company and returning to the Company all of its property and confidential information. To the extent required, the payments described in this paragraph may be delayed for the minimum period and in the minimum manner necessary to avoid the imposition of the tax required by Section 409A of the Internal Revenue Code.

For purposes of the agreements of Mr. Staab, Ms. Powell and Drs. Babu and Sheridan:

- “*Cause*” means a determination by the Board that his employment be terminated for any of the following reasons: (i) failure or refusal to comply in any material respect with lawful policies, standards or regulations of Company; (ii) a violation of a federal or state law or regulation applicable to the business of the Company; (iii) conviction or plea of no contest to a felony under the laws of the United States or any State; (iv) fraud or misappropriation of property belonging to the Company or its affiliates; (v) a breach in any material respect of the terms of any confidentiality, invention assignment or proprietary information agreement with the Company or with a former employer, (vi) failure to satisfactorily perform his duties after having received written notice of such failure and at least thirty (30) days to cure such failure, or (vii) misconduct or gross negligence in connection with the performance of his duties.

- “*Constructive Termination*” means a resignation of employment within 30 days of the occurrence of any of the following events which occurs within 6 months following a Change of Control: (i) a material reduction in his responsibilities; (ii) a material reduction in his base salary, unless such reduction is comparable in percentage to, and is part of, a reduction in the base salary of all executive officers of the Company; or (iii) a relocation of his principal office to a location more than 50 miles from the location of his principal office immediately preceding a Change of Control.

- “*Change of Control*” means (i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State of the Company’s incorporation; (ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company in liquidation or dissolution of the Company; (iii) any reverse merger in which the Company is the surviving entity but in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company’s outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such merger; (iv) any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company’s outstanding securities pursuant to a tender or exchange offer made directly to the Company’s stockholders; or (v) a change in the composition of the Board over a period of twenty-four (24) consecutive months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least two-thirds of the Board members described in clause (A) who were still in office at the time such election or nomination was approved by the Board.

2018 DIRECTOR COMPENSATION

The following table provides information related to the compensation of our non-employee directors during fiscal 2018.

Name	Fees Earned (\$)	Option Award (\$)	(1) (2)	Non-Equity Incentive Plan Compensation	All Other Compensation	Total (\$)
George B. Abercrombie	55,000	125,907		-	-	180,907
Fred E. Cohen, M.D., D.Phil (3)	70,000	62,949		-	-	132,949
Stanley C. Erck (3)	59,764	52,457		-	-	112,221
Theresa M. Heggie	1,544	191,727		-	-	193,271
Nancy J. Hutson, Ph.D.	65,000 (4)	125,907		-	-	190,907
Robert A. Ingram	87,500 (4)	125,907		-	-	213,407
Kenneth B. Lee, Jr.	75,000	125,907		-	-	200,907

Each non-employee director receives an automatic annual grant of an option to purchase 30,000 shares after the annual meeting. Options are granted to new directors automatically in accordance with our Stock Incentive Plan at the time they become a director. New directors receive an option to purchase 60,000 shares issued on a prorated (1) basis from the date of appointment until the next scheduled annual meeting. The options vest on a monthly basis until the next annual meeting and are then fully vested. As of December 31, 2018, each director had options outstanding to purchase the following number of shares: Mr. Abercrombie: 162,667; Dr. Cohen: 140,833; Mr. Erck 177,499; Mrs. Heggie: 30,000; Dr. Hutson 158,333; Mr. Ingram: 108,750; and Mr. Lee: 150,000.

The amounts in this column reflect the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 of awards pursuant to the Stock Incentive Plan granted in 2017. Assumptions used in the calculation of (2) these amounts are included in Note 6 to the Company's audited consolidated financial statements for the year ended December 31, 2018, which are included in the Company's Annual Report on Form 10-K filed with the SEC on March 14, 2019.

(3) Dr. Cohen and Mr. Erck retired from the board of directors effective January 4, 2019 and December 3, 2018, respectively.

(4) As of our 2017 annual meeting of stockholders, Dr. Hutson and Mr. Ingram each elected to receive their respective retainers in the form of shares of our common stock (in lieu of cash) equivalent in value to the fees earned. Dr. Hutson and Mr. Ingram did not make such an election as of the 2018 annual meeting of stockholders. Accordingly,

in 2018, the Company issued the following number of shares: to Dr. Hutson, 3,567 shares of common stock in lieu of \$20,000 of cash; and to Mr. Ingram, 6,688 shares of common stock in lieu of \$37,500 of cash.

Narrative to Director Compensation Table

Directors who are employees of the Company do not receive any additional compensation for their services as a director. In addition to the equity awards described above, non-employee directors receive an annual retainer fee consisting of four equal installments paid in arrears on a quarterly basis. Annual retainers are also paid to members of Board committees. Directors are also reimbursed for expenses incurred in attending board or committee meetings and while representing the Company in conducting certain business. The annual retainer fee is \$40,000 (\$75,000 for the Chairman), consisting of four quarterly payments of \$10,000 each (\$18,750 each for the Chairman). Fees are not paid for attending committee meetings. Members of the Audit Committee other than the Chair are paid an annual retainer of \$10,000, members of the Compensation Committee, Finance Committee and Science Committee are paid an annual retainer of \$7,500, and members of the Corporate Governance and Nominating Committee are paid an annual retainer of \$5,000. The Chair of the Audit Committee is paid an annual retainer of \$20,000, the Chairs of the Compensation Committee, Finance Committee and Science Committee are each paid an annual retainer of \$15,000, and the Chair of the Corporate Governance and Nominating Committee is paid an annual retainer of \$10,000. The annual retainers for committee members and committee Chairs are paid in arrears in four equal installments on a quarterly basis.

Beginning on May 6, 2014, Directors were given the opportunity to elect to receive, in lieu of cash retainers, a number of shares of our common stock equivalent in value to the Board retainer earned by such Director. Directors that make such an election receive 100% of their compensation in the form of common stock. These shares are distributed four times a year, in line with previous paid quarterly retainers. The number of shares to be distributed is determined using the closing price of our common stock on the last business day of the applicable three-month period. No directors elected to receive shares of our common stock in lieu of cash retainer at the 2018 annual meeting. Elections to receive Company shares in lieu of cash for future years shall be made as of the date of each annual meeting, effective until the subsequent annual meeting.

Compensation Committee Interlocks and Insider Participation

During 2018, the following directors served on the Compensation Committee: Dr. Cohen, Mr. Erck (until his retirement on December 3, 2018), Dr. Hutson and Mr. Ingram. No member of the Committee was at any time during 2018 an officer or employee of the Company. No executive officer of the Company served on the board of directors or compensation committee of any entity which has one or more executive officers serving as members of the Company's Board of Directors or Compensation Committee.

Compensation Committee Report

The Compensation Committee reviewed the Compensation Discussion and Analysis and discussed its contents with Company management. Based on such review and discussions, the Committee has recommended that the Compensation Discussion and Analysis be included in this Proxy Statement.

Nancy Hutson, Ph.D., Chair of the Committee

Stephen J. Aselage

Robert A. Ingram

AUDIT COMMITTEE REPORT

The Audit Committee of the Board of Directors has furnished the following report, in accordance with rules established by the Securities and Exchange Commission (“SEC”), for inclusion in this Proxy Statement.

In fulfilling its oversight responsibilities, the Audit Committee reviewed with management the audited consolidated financial statements in the Annual Report on Form 10-K for the year ended December 31, 2018, including a discussion of the quality, not just the acceptability, of the accounting principles, the reasonableness of significant judgments, and the clarity of disclosures in the financial statements. In addition, the Audit Committee reviewed and discussed the internal audit plan for the year ended December 31, 2018. Furthermore, the Audit Committee reviewed and discussed with the Company’s management and Ernst and Young LLP the evaluation of the Company’s design and functioning of its internal controls over financial reporting, including the required Section 404 testing undertaken by Company management and Ernst and Young with respect to the Company’s internal controls over financial reporting. The Audit Committee reviewed with Ernst & Young LLP, who are responsible for expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles, their judgments as to the quality, not just the acceptability, of the Company’s accounting principles and such other matters as are required to be discussed with the Committee under generally accepted auditing standards. In addition, the Committee has discussed with Ernst & Young LLP the matters required to be discussed by applicable requirements of the Public Company Accounting Oversight Board. The Audit Committee has received the written disclosures and the letter from Ernst & Young LLP required by applicable requirements of the Public Company Accounting Oversight Board regarding Ernst & Young LLP’s communications with the Audit Committee concerning independence, and has discussed with Ernst & Young LLP their independence. The Audit Committee also considered the compatibility of non-audit services with Ernst & Young LLP’s independence.

The Audit Committee discussed with Ernst & Young LLP the overall scope and plans for their audit. The Audit Committee regularly meets with Ernst & Young LLP, with and without management present, to discuss the results of their examination, their evaluation of the Company’s internal controls, and the overall quality of the Company’s financial reporting.

In reliance on the reviews and discussions referred to above, the Audit Committee recommended to the Board that the audited consolidated financial statements be included in the Annual Report on Form 10-K for the year ended December 31, 2018 for filing with the SEC. The Audit Committee and the Board approved the selection of Ernst & Young LLP as the Company’s independent registered public accounting firm for 2018 and has approved the retention of Ernst & Young LLP as the principal accounting firm to be used by the Company throughout the fiscal year ending December 31, 2019.

The Audit Committee currently consists of Mr. Lee, as Chairman, Mr. Abercrombie and Ms. Heggie.

Kenneth B. Lee, Jr., Chair of the Committee

George B. Abercrombie

Theresa M. Heggie

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL
OWNERS AND MANAGEMENT**

The following table sets forth information regarding beneficial ownership of the Company's Common Stock as of April 1, 2019 by (i) each director, (ii) each of the Named Executive Officers, (iii) all directors and executive officers of the Company as a group and (iv) each person known to the Company to be the beneficial owner of more than five percent of our Common Stock. Unless otherwise noted below, the address for each person listed in the table is the principal executive offices of the Company.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership⁽¹⁾	Percent of Class⁽²⁾
5% Stockholders		
Baker Bros. Advisors LP and related persons 860 Washington Street, 3rd Floor New York, NY 10014	15,171,540 ⁽³⁾	13.8 %
Janus Henderson Group plc and related persons 201 Bishopsgate EC2M 3AE, United Kingdom RA Capital Management, LLC 20 Park Plaza, Suite 1200 Boston, MA 02116	12,302,555 ⁽⁴⁾	11.2 %
BlackRock Inc. and related persons 55 East 52nd Street New York, NY 10055	10,660,349 ⁽⁵⁾	9.7 %
Great Point Partners, LLC and related persons 165 Mason Street, 3rd Floor Greenwich, CT 06830	8,849,427 ⁽⁶⁾	8.0 %
Deerfield Mgmt, L.P. and related persons 780 Third Avenue, 37th Floor New York, NY 10017	7,622,256 ⁽⁷⁾	6.9 %
VHCP Management II, LLC and related persons 7 Bryant Park, 23rd Floor New York, NY 10018	6,910,789 ⁽⁸⁾	6.3 %
The Vanguard Group, Inc. 100 Vanguard Blvd. Malvern, PA 19355	6,310,255 ⁽⁹⁾	5.7 %
Named Executive Officers and Directors		
George B. Abercrombie	5,872,229 ⁽¹⁰⁾	5.3 %
Stephen Aselege	170,166] ⁽¹¹⁾	*
Theresa Heggie	2,000	*
Nancy J. Hutson, Ph.D.	—	*
Robert A. Ingram	195,534 ⁽¹²⁾	*
Kenneth B. Lee, Jr.	128,067 ⁽¹³⁾	*
	157,751 ⁽¹⁴⁾	*

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Jon P. Stonehouse	2,359,476	(15)	2.1	%
Thomas R. Staab II	599,524	(16)	*	
Yarlagadda S. Babu, Ph.D.	809,486	(17)	*	
William P. Sheridan, M.D.	667,409	(18)	*	
Lynne M. Powell	409,818	(19)	*	
All executive officers and directors as a group (12 persons)	6,015,022	(20)	5.2	%

(*)Less than one percent.

(1) Gives effect to the shares of Common Stock issuable within 60 days after April 1, 2019 upon the exercise of all options and other rights beneficially held by the indicated stockholder on that date.

(2) Ownership percentage is reported based on 110,270,255 shares of common stock issued and outstanding on April 1, 2019, plus, as to the holder thereof only and no other person, the number of shares (if any) that the person has the right to acquire as of April 1, 2019 or within 60 days from that date through the exercise of all options and other rights.

From Schedule 13G/A filed with the SEC on February 13, 2019. Includes the aggregate number of shares of common stock beneficially owned along with shares of common stock that may be immediately acquired as follows: 1,946,184 shares held by 667, L.P., and 13,136,064 shares held by Baker Brothers Life Sciences, L.P., 23,459 shares directly held by each of Julian C. Baker and Felix J. Baker, 20,833 shares held by Dr. Stephen R. Biggar, an employee of Baker Bros Advisors L.P. and former director of the Company, and 45,000 shares underlying stock options held by Dr. Biggar. By virtue of their power to control the investment decisions of the limited partnerships listed above, each of Baker Bros. Advisors LP, Baker Bros. Advisors (GP) LLC, Julian C. Baker and Felix J. Baker may be deemed to be beneficial owners of shares owned by such entities and may be deemed to have sole power to vote or direct the vote of and sole power to dispose or direct the disposition of such securities. Dr. Biggar previously served on the BioCryst board as a representative of 667, L.P. and Baker Brothers Life Sciences, L.P. (the "Funds"). The policy of the Funds and Baker Bros Advisors L.P. does not permit employees to receive compensation for serving as a director of the issuer. Therefore, Dr. Biggar has no pecuniary interest in any stock options or shares of common stock directly held by him. The Funds are instead entitled to the pecuniary interest in any stock options and shares of common stock received as director compensation.

From Schedule 13G/A filed with the SEC on February 11, 2019 indicating that 12,302,555 Janus Henderson Group plc ("Janus Henderson") has the shared voting and dispositive power over 12,302,555 shares held of record by the below-listed managed portfolios, for which subsidiaries of Janus Henderson act as asset managers. Janus Henderson has an indirect 97.11% ownership stake in Intech Investment Management LLC ("Intech") and a 100% ownership stake in Janus Capital Management LLC ("Janus Capital"), Janus Capital International Limited ("JCIL"), Perkins Investment Management LLC ("Perkins"), Geneva Capital Management LLC ("Geneva"), Henderson Global Investors Limited ("HGIL") and Janus Henderson Global Investors Australia Institutional Funds Management Limited ("JHGIAIFML"), (each an "Asset Manager" and collectively as the "Asset Managers"). Each Asset Manager is an investment adviser registered or authorized in its relevant jurisdiction and each furnishing investment advice to various fund, individual and/or institutional clients (collectively referred to herein as "Managed Portfolios"). As a result of its role as investment adviser or sub-adviser to the Portfolios, Janus Capital may be deemed to be the beneficial owner of 9,730,931 shares held by such Managed Portfolios. However, Janus Capital does not have the right to receive any dividends from, or the proceeds from the sale of, the securities held in the Managed Portfolios and disclaims any ownership associated with such rights. As a result of its role as investment adviser or sub-adviser to the Managed Portfolios, JCIL may be deemed to be the beneficial owner of 571,624 shares held by such Managed Portfolios. However, JCIL does not have the right to receive any dividends from, or the proceeds from the sale of, securities held in the Managed Portfolios and disclaims any ownership associated with such rights.

From Schedule 13G/A filed with the SEC on February 14, 2019 indicating that RA Capital Healthcare Fund, L.P. (the "Fund"), owns 8,249,402 shares, and serves as investment adviser for a separately managed account (the "Account"), which owns 2,410,947 shares. RA Capital Management, LLC ("Capital") is the general partner of the Fund. Dr. Kolchinsky is the manager of Capital. As the investment adviser to the Fund and the Account, Capital may be deemed a beneficial owner of, and to have shared voting and dispositive power over, the shares owned by the Fund or the Account. As the manager of Capital, Dr. Kolchinsky may be deemed a beneficial owner, and to have shared voting and dispositive power over, the shares beneficially owned by Capital. Capital and Dr. Kolchinsky disclaim beneficial ownership of such shares.

From Schedule 13G/A filed with the SEC on February 4, 2019 indicating that 8,849,427 shares are held by BlackRock, Inc. and certain subsidiaries. No such subsidiary has the right to receive, or the power to direct the receipt of, dividends from, or the proceeds from the sale of, more than five percent of our common stock. BlackRock, Inc. may be deemed to have sole power to vote or to direct the vote of 8,650,934 shares of common

stock and sole power to dispose or to direct the disposition of 8,849,427 shares of common stock.

(7) From Schedule 13G filed with the SEC on January 11, 2019 indicating that Biomedical Value Fund, L.P. (“BVF”) is the record owner of 2,268,470 shares, Biomedical Offshore Value Fund, Ltd. (“BOVF”) is the record owner of 2,932,592 shares, GEF-SMA, LP (“GEF-SMA”) is the record owner of 2,261,008 shares, and Class D Series of GEF-PS, L.P. (“GEF-PS”) is the record owner of 160,186 shares. Great Point Partners, LLC (“Great Point”) is the investment manager of each of BVF, BOVF, GEF-SMA, and GEF-PS, and by virtue of such status may be deemed to be the beneficial owner of, and to have shared voting and dispositive power over, such shares. Each of Dr. Jeffrey R. Jay, M.D., as senior managing member of Great Point, and Mr. David Kroin, as special managing member of Great Point, may be deemed to be the beneficial owner of, and to have shared voting and dispositive power over, such shares. Each of Great Point, Dr. Jay and Mr. Kroin disclaim beneficial ownership of the shares described above, except to the extent of their respective pecuniary interests.

From Schedule 13G/A filed with the SEC on February 12, 2019 indicating that 5,860,410 shares are held of record by Deerfield Partners, L.P. and 1,050,379 shares are held of record by Deerfield Special Situations Fund, (8) L.P. Deerfield Mgmt, L.P., as the general partner of each of the record owners, Deerfield Management Company, L.P., as the investment advisor for each of the record owners, and James E. Flynn may be deemed to beneficially own, and to have shared voting and dispositive power over, such shares.

From Schedule 13G filed with the SEC on February 14, 2019 indicating that 2,311,934 shares are owned by Venrock Healthcare Capital Partners II, L.P. (“Venrock II”), 937,230 shares are owned by VHCP Co-Investment Holdings II, LLC (“VHCP Co-Invest II”), 2,782,904 shares are owned by Venrock Healthcare Capital Partners III, L.P. (“Venrock III”) and 278,187 shares are owned by VHCP Co-Investment Holdings III, LLC (“VHCP Co-Invest III”). VHCP Management II, LLC (“VHCP Mgmt II”) is the general partner of Venrock II and the manager of VHCP (9) Co-Invest II. VHCP Management III, LLC (“VHCP Mgmt III”) is the general partner of Venrock III and the manager of VHCP Co-Invest III. Nimish Shah and Bong Koh are the managing members of VHCP Mgmt II and VHCP Mgmt III. Accordingly, VHCP Mgmt II, VHCP Mgmt III, Mr. Shah and Mr. Koh may be deemed to beneficially own, and have shared voting and dispositive power over, all such shares.

From Schedule 13G filed with the SEC on February 11, 2019 indicating that 5,673,354 shares are owned by The Vanguard Group, Inc., 196,102 shares are owned by the Vanguard Fiduciary Trust Company and 11,624 shares (10) are owned by Vanguard Investments Australia, Ltd. The Vanguard Group, Inc. may be deemed to beneficially own all such shares. The Vanguard Group, Inc. may be deemed to have sole power to vote or direct to vote over 204,953 shares, shared power to vote or direct to vote over 2,773 shares, sole power to dispose of or to direct the disposition over 5,673,354 shares, and shared power to dispose or to direct the disposition over 198,875 shares.

(11) Includes 160,166 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(12) Includes 155,832 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(13) Includes 106,249 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(14) Includes 147,499 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(15) Includes 1,632,370 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(16) Includes 466,848 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(17) Includes 678,999 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

(18) Includes 663,171 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

- (19) Includes 408,999 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.
- (20) Includes 4,856,666 shares issuable upon exercise of stock options that are exercisable as of April 1, 2019 or within 60 days from that date.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Act”) requires our officers, directors and persons who beneficially own more than 10% of a registered class of our equity securities (collectively, “Reporting Persons”), to file reports of ownership with the Securities and Exchange Commission. Reporting Persons are required by the Act regulations to furnish us with copies of all Section 16(a) forms they file.

Based solely on its review of the copies of such forms received by us during 2018, or written representations from certain Reporting Persons that no Forms 5 were required for those persons, the Company believes that its Reporting Persons were in compliance with all applicable filing requirements.

STOCKHOLDER PROPOSALS

Proposals of stockholders intended to be presented at our 2020 Annual Meeting of Stockholders must be received by the Company by December 19, 2019 to be considered for inclusion in our Proxy Statement relating to such meeting.

Proposals for inclusion in the Proxy Statement must comply with the Securities Exchange Act of 1934, including Rule 14a-8.

A stockholder must notify the Company no earlier than January 30, 2020 and no later than February 29, 2020 of a proposal for the 2020 Annual Meeting which the stockholder intends to present other than by inclusion in our proxy material (including director nominations) and must include with the notification the information required by the Company’s bylaws, in order to be eligible for consideration at the 2020 Annual Meeting. In accordance with the Company’s bylaws, any stockholder entitled to vote for directors at an annual meeting of the Company may nominate persons for election as directors. Any such notice shall also include the information regarding the stockholder making the nomination and the nominee required by the Company’s bylaws.

NO INCORPORATION BY REFERENCE

In the Company's filings with the SEC, information is sometimes "incorporated by reference." This means that the Company is referring you to information that has previously been filed with the SEC, and that the information should be considered part of a particular filing. As provided in regulations promulgated by the SEC, the "Audit Committee Report" and the "Compensation Committee Report" contained in this Proxy Statement specifically are not incorporated by reference into any other filings with the SEC. In addition, this Proxy Statement includes the Company's website address. This website address is intended to provide inactive, textual references only. The information on the Company's website is not part of this Proxy Statement.

OTHER MATTERS

Management does not intend to present to the Meeting any matters other than those previously mentioned herein and does not presently know of any matters that will be presented by other parties. If other matters should properly come before the Meeting, it is intended that the holders of the proxies will act in respect thereto and in accordance with their best judgment.

GENERAL INFORMATION

Some banks, brokers and other nominee record holders may be participating in the practice of "householding" Proxy Statements and annual reports. This means that only one copy of the one-page notice regarding the Internet availability of proxy materials may have been sent to multiple stockholders in your household. You may have a separate copy of this document sent to you by contacting the Corporate Secretary, BioCryst Pharmaceuticals, Inc., 4505 Emperor Blvd., Suite 200, Durham, North Carolina 27703, (919) 859-1302. If you prefer to receive separate copies of the one-page notice regarding the Internet availability of proxy materials in the future, or if you are receiving multiple copies and would like to receive only one copy for your household, you should contact your bank, broker or other nominee holder, or you may contact us at the above address.

Stockholders may obtain a copy of the Notice of Annual Meeting, Proxy Statement, Form of Proxy, Annual Report, and our Annual Report on Form 10-K by writing to the Corporate Secretary at the address stated above or by visiting www.proxyvote.com.

BY ORDER OF THE BOARD OF DIRECTORS

Alane P. Barnes, Corporate Secretary

Durham, North Carolina

April 17, 2019

Annex A

BIOCRIST PHARMACEUTICALS, INC.

STOCK INCENTIVE PLAN

(AS AMENDED AND RESTATED AS OF APRIL 12, 2019)

Article One

GENERAL PROVISIONS

I. PURPOSES OF THE PLAN

A. This Stock Incentive Plan (the “Plan”), formerly the “BioCryst Pharmaceuticals, Inc. 1991 Stock Option Plan,” is intended to promote the interests of BioCryst Pharmaceuticals, Inc., a Delaware corporation (the “Company”), by providing a method whereby (i) employees (including officers and directors) of the Company (or its parent or subsidiary corporations), (ii) non-employee members of the board of directors of the Company (the “Board”) (or of any parent or subsidiary corporations) and (iii) consultants and other independent contractors who provide valuable services to the Company (or any parent or subsidiary corporations) may be offered the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Company as an incentive for them to remain in the service of the Company (or any parent or subsidiary corporations).

B. For purposes of the Plan, the following provisions shall be applicable in determining the parent and subsidiary corporations of the Company:

(i) Any corporation (other than the Company) in an unbroken chain of corporations ending with the Company shall be considered to be a **parent** corporation of the Company, provided each such corporation in the unbroken chain (other than the Company) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(ii) Each corporation (other than the Company) in an unbroken chain of corporations beginning with the Company shall be considered to be a **subsidiary** of the Company, provided each such corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or

more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

C. The Plan, as amended and restated, was approved and adopted by the Board effective on April 12, 2019 in order to increase by 4,000,000 the number of shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), subject to approval by the Company's stockholders at the Company's Annual Meeting of Stockholders on May 29, 2019.

II. STRUCTURE OF THE PLAN

A. The Plan shall be divided into three separate equity programs:

- (i) the Discretionary Option Grant Program specified in Article Two, pursuant to which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock,
- (ii) the Stock Issuance Program specified in Article Three, pursuant to which eligible persons may, at the discretion of the Plan Administrator, be issued shares of Common Stock directly or through the issuance of restricted stock units ("RSUs") that provide for the issuance of shares of Common Stock if the applicable vesting criteria are satisfied, and
- (iii) the Automatic Option Grant Program specified in Article Four, pursuant to which non-employee members of the Board will automatically receive option grants to purchase shares of Common Stock.

B. Unless the context clearly indicates otherwise, the provisions of Articles One and Five of the Plan shall apply to all equity programs under the Plan and shall accordingly govern the interests of all individuals under the Plan.

III. ADMINISTRATION OF THE PLAN

A. The Plan shall be administered by the Committee who shall be the Compensation Committee of the Board or, in the absence of a Compensation Committee, a properly constituted committee or the Board itself (the administrator is referred to herein as the “Committee” or the “Plan Administrator”). Any power of the Committee may also be exercised by the Board, except to the extent that the grant or exercise of such authority would cause any Award or transaction to become subject to (or lose an exemption under) the short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934 or cause an Award designated as a Performance Award not to qualify for treatment as performance-based compensation under Section 162(m) of the Code. To the extent that any permitted action taken by the Board conflicts with action taken by the Committee, the Board action shall control. The Compensation Committee may by resolution authorize one or more officers of the Company to perform any or all things that the Committee is authorized and empowered to do or perform under the Plan, and for all purposes under this Plan, such officer or officers shall be treated as the Committee; provided, however, that the resolution so authorizing such officer or officers shall specify the total number of Awards (if any) such officer or officers may award pursuant to such delegated authority, and any such Award shall be subject to the form of award agreement theretofore approved by the Compensation Committee. No such officer shall designate himself or herself as a recipient of any Awards granted under authority delegated to such officer. In addition, the Compensation Committee may delegate any or all aspects of the day-to-day administration of the Plan to one or more officers or employees of the Company or any subsidiary or affiliate, and/or to one or more agents.

B. Subject to the express provisions of this Plan, the Committee shall be authorized and empowered to do all things that it determines to be necessary or appropriate in connection with the administration of this Plan, including, without limitation: (i) to prescribe, amend and rescind rules and regulations relating to this Plan and to define terms not otherwise defined herein; (ii) to determine which persons are grantees, to which of such grantees, if any, awards shall be granted hereunder and the timing of any such awards; (iii) to grant awards to grantees and determine the terms and conditions thereof, including the number of shares of Common Stock subject to awards and the exercise or purchase price of such shares and the circumstances under which awards become exercisable or vested or are forfeited or expire, which terms may but need not be conditioned upon the passage of time, continued employment, the satisfaction of performance criteria, the occurrence of certain events (including events which constitute a Change in Control to the extent permitted hereunder), or other factors; (iv) to establish and verify the extent of satisfaction of any performance goals or other conditions applicable to the grant, issuance, exercisability, vesting and/or ability to retain any award; (v) to prescribe and amend the terms of the agreements or other documents evidencing awards made under this Plan (which need not be identical) and the terms of or form of any document or notice required to be delivered to the Company by grantees under this Plan; (vi) to determine the extent to which adjustments are required pursuant to Article One; (vii) to interpret and construe this Plan, any rules and regulations under this Plan and the terms and conditions of any award granted hereunder, and to make exceptions to any such provisions for the benefit of the Company; (viii) to approve corrections in the documentation or administration of any award; and (ix) to make all other determinations deemed necessary or advisable for the administration of this Plan.

C. All decisions, determinations and interpretations by the Committee regarding the Plan, any rules and regulations under the Plan and the terms and conditions of or operation of any Award granted hereunder, shall be final

and binding on all grantees, beneficiaries, heirs, assigns or other persons holding or claiming rights under the Plan or any Award. The Committee shall consider such factors as it deems relevant, in its sole and absolute discretion, to making such decisions, determinations and interpretations including, without limitation, the recommendations or advice of any officer or other employee of the Company and such attorneys, consultants and accountants as it may select.

D. The Compensation Committee may delegate all or a portion of their duties hereunder to one or more individuals or committees. Any reference to the Compensation Committee or the Plan Administrator shall refer to such individual(s) or committee(s) to the extent of such delegation.

E. Administration of the Automatic Option Grant Program shall be self-executing in accordance with the express terms and conditions of Article Four, and no Plan Administrator shall exercise any discretionary functions under that program.

IV. ELIGIBILITY

A. The persons eligible to participate in the Discretionary Option Grant and Stock Issuance Programs shall be limited to the following:

- (i) officers and other employees of the Company (or its parent or subsidiary corporations);

(ii) individuals who are consultants or independent advisors and who provide valuable services to the Company (or its parent or subsidiary corporations); and

(iii) non-employee members of the Board (or of the board of directors of parent or subsidiary corporations).

B. Only Board members who are not employees of the Company (or any parent or subsidiary) shall be eligible to receive automatic option grants pursuant to the Automatic Option Grant Program specified in Article Four.

C. The Plan Administrator shall, within the scope of its administrative jurisdiction under the Plan, have full power and authority to determine (i) whether to grant options in accordance with the Discretionary Option Grant Program or to effect stock issuances in accordance with the Stock Issuance Program, (ii) which eligible persons are to receive option grants under the Discretionary Option Grant Program, the time or times when such option grants are to be made, the number of shares to be covered by each such grant, the status of the granted option as either an incentive stock option (“Incentive Option”) which satisfies the requirements of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”) or a non-statutory option not intended to meet such requirements, the time or times when each such option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which such option is to remain outstanding, and (iii) which eligible persons are to receive stock issuances under the Stock Issuance Program, the time or times when such issuances are to be made, the number of shares to be issued to each grantee, the vesting schedule (if any) applicable to the shares and the consideration for such shares.

V. STOCK SUBJECT TO THE PLAN

A. Shares of the Company’s Common Stock shall be available for issuance under the Plan and shall be drawn from either the Company’s authorized but unissued shares of Common Stock or from reacquired shares of Common Stock, including shares repurchased by the Company on the open market. The maximum number of shares of Common Stock which may be issued over the term of the Plan, as amended and restated, shall not exceed 32,590,000 shares, subject to adjustment from time to time in accordance with the provisions of this Section V. The total number of shares available under the Plan, as amended and restated, as of April 1, 2019 is 22,145,262. This amount consists of 17,690,038 shares reserved for awards already issued, 455,224 shares of Common Stock available for future issuance under the Plan, and the increase of 4,000,000 shares of Common Stock authorized by the Board (subject to approval by the Company’s stockholders at the Annual Meeting of Stockholders on May 29, 2019).

B. In no event shall the number of shares of Common Stock for which any one individual participating in the Plan may receive options, separately exercisable stock appreciation rights and direct stock issuances and RSUs exceed 1,500,000 shares of Common Stock in the aggregate in any calendar year. For purposes of such limitation,

however, no stock options granted prior to the date the Common Stock was first registered under Section 12 of the 1934 Act (the “Section 12(g) Registration Date”) shall be taken into account.

C. Should an outstanding option under this Plan expire or terminate for any reason prior to exercise in full, the shares subject to the portion of the option not so exercised shall be available for subsequent option grant or direct stock issuances or RSUs under the Plan. Unvested shares issued under the Plan and subsequently repurchased by the Company, at the original issue price paid per share, pursuant to the Company’s repurchase rights under the Plan, or shares underlying terminated RSUs, shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent option grants or direct stock issuances or RSUs under the Plan. However, shares subject to an award under the Plan may not again be made available for issuance under the Plan if such shares are: (i) shares that were subject to a stock-settled stock appreciation right and were not issued upon the net settlement or net exercise of such stock appreciation right, (ii) shares used to pay the exercise price of an option, (iii) shares delivered to or withheld by the Company to pay the withholding taxes related an award, or (iv) shares repurchased on the open market with the proceeds of an option exercise. Shares of Common Stock subject to any option surrendered for an appreciation distribution under Section IV of Article Two or Section IV of Article Four shall not be available for subsequent issuance under the Plan.

D. In the event any change is made to the Common Stock issuable under the Plan by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without receipt of consideration, then appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the maximum number and/or class of securities for which any one individual participating in the Plan may be granted stock options, separately exercisable stock appreciation rights, and direct stock issuances and RSUs under the Plan from and after the Section 12(g) Registration Date, (iii) the number and/or class of securities and price per share in effect under each outstanding option and stock appreciation right under the Plan, (iv) the number and/or class of securities in effect under each outstanding direct stock issuance and RSU under the Plan, and (v) the number and/or class of securities for which automatic option grants are subsequently to be made per non-employee Board member under the Automatic Option Grant Program. The purpose of such adjustments shall be to preclude the enlargement or dilution of rights and benefits under the Plan.

E. The fair market value per share of Common Stock on any relevant date under the Plan shall be determined in accordance with the following provisions:

(i) If the Common Stock is not at the time listed or admitted to trading on any national securities exchange but is traded in the over-the-counter market, the fair market value shall be the mean between the highest bid and lowest asked prices (or, if such information is available, the closing selling price) per share of Common Stock on the date in question in the over-the-counter market, as such prices are reported by the National Association of Securities Dealers through the Nasdaq National Market, the Nasdaq Global Select Market or any successor system. If there are no reported bid and asked prices (or closing selling price) for the Common Stock on the date in question, then the mean between the highest bid price and lowest asked price (or the closing selling price) on the last preceding date for which such quotations exist shall be determinative of fair market value.

(ii) If the Common Stock is at the time listed or admitted to trading on any national securities exchange, then the fair market value shall be the closing selling price per share of Common Stock on the date in question on the securities exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no reported sale of Common Stock on the exchange on the date in question, then the fair market value shall be the closing selling price on the exchange on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed nor admitted to trading on any securities exchange nor traded in the over-the-counter market, then the fair market value shall be determined by the Plan Administrator after taking into account such factors as the Plan Administrator shall deem appropriate.

VI. MINIMUM VESTING

Notwithstanding any other provision of this Plan to the contrary, in no event shall any award granted pursuant to this Plan vest prior to the twelve (12)-month anniversary of the date of grant, other than in connection with the grantee's death or permanent disability or, to the extent permitted hereunder, in connection with a Change in Control (provided that this limitation shall not apply with respect to up to five percent (5%) of the shares of Common Stock available for issuance under this Plan following approval of the Plan at the Company's Annual Meeting of Stockholders on May 29, 2019). The minimum vesting period set forth in this Section VI may not be waived or superseded by any provision in an award or other agreement.

VII. MINIMUM HOLDING PERIOD

All shares of Common Stock issued under this Plan shall be subject to a minimum holding period of twelve (12) months (or, if later, when the requirements under the Company's share ownership guidelines are satisfied), provided that nothing in this Section shall prohibit the disposition of Common Stock in connection with a Change in Control.

Article Two
DISCRETIONARY OPTION GRANT PROGRAM

I. TERMS AND CONDITIONS OF OPTIONS

Options granted pursuant to this Article Two shall be authorized by action of the Plan Administrator and may, at the Plan Administrator's discretion, be either Incentive Options or non-statutory options. Individuals who are not Employees may only be granted non-statutory options under this Article Two. Each option granted shall be evidenced by one or more instruments in the form approved by the Plan Administrator. Each such instrument shall, however, comply with the terms and conditions specified below, and each instrument evidencing an Incentive Option shall, in addition, be subject to the applicable provisions of Section II of this Article Two.

A. **Option Price.**

1. The option price per share shall be fixed by the Plan Administrator. In no event, however, shall the option price per share be less than one hundred percent (100%) of the fair market value per share of Common Stock on the date of the option grant.

2. The option price shall become immediately due upon exercise of the option and shall, subject to the provisions of Section IV of this Article Two and the instrument evidencing the grant, be payable through one of the following methods (or a combination thereof):

(i) full payment in cash or check drawn to the Company's order;

(ii) full payment in shares of Common Stock held by the optionee for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes and valued at fair market value on the Exercise Date (as such term is defined below);

(iii) full payment through a combination of shares of Common Stock held by the optionee for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes and valued at fair market value on the Exercise Date and cash or cash equivalent;

(iv) full payment through a broker-dealer sale and remittance procedure pursuant to which the optionee (I) shall provide irrevocable written instructions to a designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate option price payable for the purchased shares plus all applicable Federal and State income and employment taxes required to be withheld by the Company in connection with such purchase and (II) shall provide written directives to the Company to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction; or

(v) such other method as permitted by the Plan Administrator.

For purposes of this subparagraph 2, the Exercise Date shall be the date on which written notice of the option exercise is delivered to the Company. Except to the extent the sale and remittance procedure is utilized in connection with the exercise of the option, payment of the option price for the purchased shares must accompany such notice.

B. **Term and Exercise of Options.**

Each option granted under this Article Two shall be exercisable at such time or times, during such period, and for such number of shares as shall be determined by the Plan Administrator and set forth in the instrument evidencing the option grant. No such option, however, shall have a maximum term in excess of ten (10) years from the grant date. During the lifetime of the optionee, the option, together with any stock appreciation rights pertaining to such option, shall be exercisable only by the optionee and shall not be assignable or transferable by the optionee except for a transfer of the option by will or by the laws of descent and distribution following the optionee's death and, for the avoidance of doubt, may not be transferred to a third party for cash or other value. However, the Plan Administrator shall have the discretion to provide that a non-statutory option may, in connection with the optionee's estate plan, be assigned in whole or in part during the optionee's lifetime either as (i) as a gift to one or more members of optionee's immediate family, to a trust in which optionee and/or one or more such family members hold more than fifty percent (50%) of the beneficial interest or an entity in which more than fifty percent (50%) of the voting interests are owned by optionee and/or one or more such family members, or (ii) pursuant to a domestic relations order. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

C. **Termination of Service.**

1. Except to the extent otherwise provided pursuant to Section V of this Article Two or pursuant to an applicable award agreement, the following provisions shall govern the exercise period applicable to any options held by the optionee at the time of cessation of Service or death.

- (i) Should the optionee cease to remain in Service for any reason other than death or permanent disability, then the period for which each outstanding option held by such optionee is to remain exercisable shall be limited to the three (3)-month period following the date of such cessation of Service. However, should optionee die during the three (3)-month period following his or her cessation of Service, the personal representative of the optionee's estate or the person or persons to whom the option is transferred pursuant to the optionee's will or in accordance with the laws of descent and distribution shall have a twelve (12)-month period following the date of the optionee's death during which to exercise such option.

(ii) In the event such Service terminates by reason of permanent disability (as defined in Section 22(e)(3) of the Internal Revenue Code), then the period for which each outstanding option held by the optionee is to remain exercisable shall be limited to the twelve (12)-month period following the date of such cessation of Service.

(iii) Should the optionee, after completing five (5) full years of Service, die while in Service, then the exercisability of each of his or her outstanding options shall automatically accelerate so that each such option shall become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for all or any portion of such shares. The personal representative of the optionee's estate or the person or persons to whom the option is transferred pursuant to the optionee's will or in accordance with the laws of descent and distribution shall have a twelve (12)-month period following the date of the optionee's death during which to exercise such option.

(iv) In the event such Service terminates by reason of death prior to the optionee obtaining five (5) full years of Service, then the period for which each outstanding vested option held by the optionee at the time of death shall be exercisable by the optionee's estate or the person or persons to whom the option is transferred pursuant to the optionee's will shall be limited to the twelve (12)-month period following the date of the optionee's death.

(v) Under no circumstances, however, shall any such option be exercisable after the specified expiration date of the option term.

(vi) Each such option shall, during such limited exercise period, be exercisable for any or all of the shares for which the option is exercisable on the date of the optionee's cessation of Service. Upon the expiration of such limited exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be exercisable. However, each outstanding option shall immediately terminate and cease to remain outstanding, at the time of the optionee's cessation of Service, with respect to any shares for which the option is not otherwise at that time exercisable or in which the optionee is not otherwise vested.

(vii) Should (i) the optionee's Service be terminated for misconduct (including, but not limited to, any act of dishonesty, willful misconduct, fraud or embezzlement) or (ii) the optionee make any unauthorized use or disclosure of confidential information or trade secrets of the Company or its parent or subsidiary corporations, then in any such event all outstanding options held by the optionee under this Article Two shall terminate immediately and cease to be exercisable.

2. The Plan Administrator shall have complete discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to permit one or more options held by the optionee under this

Article Two to be exercised, during the limited period of exercisability provided under subparagraph 1 above, not only with respect to the number of shares for which each such option is exercisable at the time of the optionee's cessation of Service but also with respect to one or more subsequent installments of purchasable shares for which the option would otherwise have become exercisable had such cessation of Service not occurred.

3. For purposes of the foregoing provisions of this Section I.C (and for all other purposes under the Plan):

- (i) The optionee shall be deemed to remain in the **Service** of the Company for so long as such individual renders services on a periodic basis to the Company (or any parent or subsidiary corporation) in the capacity of an Employee, a non-employee member of the board of directors or an independent consultant or advisor, unless the agreement evidencing the applicable option grant specifically states otherwise.
- (ii) The optionee shall be considered to be an **Employee** for so long as such individual remains in the employ of the Company or one or more of its parent or subsidiary corporations, subject to the control and direction of the employer entity not only as to the work to be performed but also as to the manner and method of performance.

D. **Stockholder Rights.**

An optionee shall have no stockholder rights with respect to any shares covered by the option until such individual shall have exercised the option and paid the option price for the purchased shares. Without limitation, an optionee shall not have any right to receive dividends with respect to an unexercised option.

E. **No Repricing.**

No option or stock appreciation right may be repriced, regranted through cancellation, including cancellation in exchange for cash or other awards, or otherwise amended to reduce its option price or exercise price (other than with respect to adjustments made in connection with a transaction or other change in the Company's capitalization as permitted under this Plan) without the approval of the stockholders of the Company.

F. **Repurchase Rights.**

The shares of Common Stock acquired upon the exercise of options granted under this Article Two may be subject to repurchase by the Company in accordance with the following provisions:

1. The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock under this Article Two. Should the optionee cease Service while holding such unvested shares, the Company shall have the right to repurchase any or all those unvested shares at the option price paid per share. The terms and conditions upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the instrument evidencing such repurchase right.
2. All of the Company's outstanding repurchase rights shall automatically terminate, and all shares subject to such terminated rights shall immediately vest in full, upon the occurrence of any Corporate Transaction under Section III of this Article Two, except to the extent: (i) any such repurchase right is expressly assigned to the successor corporation (or parent thereof) in connection with the Corporate Transaction or (ii) such termination is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.

3. The Plan Administrator shall have the discretionary authority, exercisable either before or after the optionee's cessation of Service, to cancel the Company's outstanding repurchase rights with respect to one or more shares purchased or purchasable by the optionee under this Discretionary Option Grant Program and thereby accelerate the vesting of such shares in whole or in part at any time.

II. INCENTIVE OPTIONS

The terms and conditions specified below shall be applicable to all Incentive Options granted under this Article Two.

Incentive Options may only be granted to individuals who are Employees of the Company. Options which are specifically designated as "non-statutory" options when issued under the Plan shall not be subject to such terms and conditions.

A. **Dollar Limitation.** The aggregate fair market value (determined as of the respective date or dates of grant) of the Common Stock for which one or more options granted to any Employee under this Plan (or any other option plan of the Company or its parent or subsidiary corporations) may for the first time become exercisable as incentive stock options under the Federal tax laws during any one calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the Employee holds two or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as incentive stock options under the Federal tax laws shall be applied on the basis of the order in which such options are granted. Should the number of shares of Common Stock for which any Incentive Option first becomes exercisable in any calendar year exceed the applicable One Hundred Thousand Dollar (\$100,000) limitation, then that option may nevertheless be exercised in such calendar year for the excess number of shares as a non-statutory option under the Federal tax laws.

B. **10% Stockholder.** If any individual to whom an Incentive Option is granted is the owner of stock (as determined under Section 424(d) of the Internal Revenue Code) possessing 10% or more of the total combined voting power of all classes of stock of the Company or any one of its parent or subsidiary corporations, then the option price per share shall not be less than one hundred and ten percent (110%) of the fair market value per share of Common Stock on the grant date, and the option term shall not exceed five (5) years, measured from the grant date.

- C. **Termination of Employment**. Any portion of an Incentive Option that remains outstanding (by reason of the optionee remaining in the Service of the Company, pursuant to the Plan Administrator's exercise of discretion under Section V of this Article Two, or otherwise) more than 3 months following the date an optionee ceases to be an Employee of the Company shall thereafter be exercisable as a non-statutory option under federal tax laws.

Except as modified by the preceding provisions of this Section II, the provisions of Articles One, Two and Five of the Plan shall apply to all Incentive Options granted hereunder.

III. CORPORATE TRANSACTIONS/CHANGES IN CONTROL

- A. For purposes of this Section III (and for all other purposes under the Plan), a Corporate Transaction shall be deemed to occur in the event of:
- (1) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State of the Company's incorporation,
 - (2) the sale, transfer or other disposition of all or substantially all of the assets of the Company in liquidation or dissolution of the Company, or
 - (3) any reverse merger in which the Company is the surviving entity but in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such merger.

The exercisability of each option outstanding under this Article Two that was granted before April 3, 2017 shall automatically accelerate so that each such option shall, immediately prior to the specified effective date for the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for all or any portion of such shares.

- B. Immediately after the consummation of the Corporate Transaction, all outstanding options under this Article Two shall fully vest, terminate and cease to be outstanding, except to the extent continued or assumed (as applicable) by the Company or the successor corporation or its parent company. The Plan Administrator shall have complete

discretion to provide, on such terms and conditions as it sees fit, for a cash payment to be made to any optionee on account of any option terminated in accordance with this paragraph, in an amount equal to the excess (if any) of (A) the fair market value of the shares subject to the option as of the date of the Corporate Transaction, over (B) the aggregate exercise price of the option.

C. Each outstanding option under this Article Two which is assumed in connection with the Corporate Transaction or is otherwise to continue in effect shall be appropriately adjusted, immediately after such Corporate Transaction, to apply and pertain to the number and class of securities which would have been issued to the option holder, in consummation of such Corporate Transaction, had such person exercised the option immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the option price payable per share, provided the aggregate option price payable for such securities shall remain the same. In addition, the class and number of securities available for issuance under the Plan following the consummation of the Corporate Transaction shall be appropriately adjusted. Any such options that are so continued or assumed in connection with a Corporate Transaction shall be treated as follows: if the grantee's employment is terminated by the Company without Cause or the grantee resigns due to a Constructive Termination, in either case within the ninety (90) day period preceding or the two (2) year period following the Corporate Transaction, the exercisability of such option shall automatically accelerate, and the Company's outstanding repurchase rights under this Article Two shall immediately terminate; provided, however, that if the Company, the acquiror or successor refuses to continue (or, as applicable, assume) the option in connection with the Corporate Transaction, the exercisability of such option under this Article Two shall automatically accelerate, and the Company's outstanding repurchase rights under this Article Two shall immediately terminate upon the occurrence of such Corporate Transaction.

D. The grant of options under this Article Two shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

E. In the event of a Change in Control: (1) options granted under this Article Two prior to May 23, 2016 shall be subject to the provisions of the Plan as in effect prior to such date, and (2) options granted on or after May 23, 2016 shall be treated as follows: if the grantee's employment is terminated by the Company without Cause or the grantee resigns due to a Constructive Termination, in either case within the ninety (90) day period preceding or the two (2) year period following the Change in Control, the exercisability of such option shall automatically accelerate, and the Company's outstanding repurchase rights under this Article Two shall immediately terminate; provided, however, that if the acquiror or successor refuses to assume the option in connection with the Change in Control, the exercisability of such option under this Article Two shall automatically accelerate, and the Company's outstanding repurchase rights under this Article Two shall immediately terminate upon the occurrence of such Change in Control. In the event that the acquiror or successor refuses to assume the option in connection with the Change in Control, the Plan Administrator shall have complete discretion to provide, on such terms and conditions as it sees fit, for a cash payment to be made to any optionee on account of any option terminated in accordance with this paragraph, in an amount equal to the excess (if any) of (A) the fair market value of the shares subject to the option as of the date of the Change in Control, over (B) the aggregate exercise price of the option.

F. For purposes of this Section III (and for all other purposes under the Plan), a Change in Control shall be deemed to occur in the event:

(1) any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders; or

(2) there is a change in the composition of the Board over a period of twenty-four (24) consecutive months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least two-thirds of the Board members described in clause (A) who were still in office at the time such election or nomination was approved by the Board.

G. All options accelerated in connection with the Corporate Transaction or Change in Control (either at the time of the Corporate Transaction or Change in Control or as otherwise provided in this Section III) shall remain fully exercisable until the expiration or sooner termination of the option term.

H. The portion of any Incentive Option accelerated under this Section III in connection with a Corporate Transaction or Change in Control shall remain exercisable as an incentive stock option under the Federal tax laws

only to the extent the dollar limitation of Section II of this Article Two is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a non-statutory option under the Federal tax laws.

I. For purposes of this Article Two and for purposes of Article Three:

1. “Cause” means, unless otherwise provided in the applicable award agreement, the Company’s termination of the grantee’s employment for any of the following reasons: (i) failure or refusal to comply in any material respect with lawful policies, standards or regulations of Company; (ii) a violation of a federal or state law or regulation applicable to the business of the Company; (iii) conviction or plea of no contest to a felony under the laws of the United States or any State; (iv) fraud or misappropriation of property belonging to the Company or its affiliates; (v) a breach in any material respect of the terms of any confidentiality, invention assignment or proprietary information agreement with the Company or with a former employer, (vi) failure to satisfactorily perform the grantee’s duties after having received written notice of such failure and at least thirty (30) days to cure such failure, or (vii) misconduct or gross negligence in connection with the performance of the grantee’s duties.

2. “Constructive Termination” means, unless otherwise provided in the applicable award agreement, the grantee’s resignation of employment with the Company within ninety (90) days of the occurrence of any of the following: (i) a material reduction in the grantee’s responsibilities; (ii) a material reduction in the grantee’s base salary; or (iii) a relocation of the grantee’s principal office to a location more than 50 miles from the location of the grantee’s existing principal office.

IV. STOCK APPRECIATION RIGHTS

- A. Provided and only if the Plan Administrator determines in its discretion to implement the stock appreciation right provisions of this Section IV, one or more optionees may be granted the right, exercisable upon such terms and conditions as the Plan Administrator may establish, to surrender all or part of an unexercised option granted under this Article Two in exchange for a distribution from the Company in an amount equal to the excess of (i) the fair market value (on the option surrender date) of the number of shares in which the optionee is at the time vested under the surrendered option (or surrendered portion thereof) over (ii) the aggregate option price payable for such vested shares. The distribution may be made in shares of Common Stock valued at fair market value on the option surrender date, in cash, or partly in shares and partly in cash, as the Plan Administrator shall determine in its sole discretion.
- B. The shares of Common Stock subject to any option surrendered for an appreciation distribution pursuant to this Section IV shall not be available for subsequent option grant under the Plan.
- C. **Stockholder Rights.** A stock appreciation right holder shall have no stockholder rights with respect to any shares covered by the stock appreciation right until such individual shall have exercised the stock appreciation right and received the acquired shares. Without limitation, a stock appreciation right holder shall not have any right to receive dividends with respect to a stock appreciation right.

V. EXTENSION OF EXERCISE PERIOD

The Plan Administrator shall have full power and authority, exercisable either at the time the option is granted or at any time while the option remains outstanding, to extend the period of time for which any option granted under this Article Two is to remain exercisable following the optionee's cessation of Service or death from the limited period in effect under Section I.C.1 of Article Two to such greater period of time as the Plan Administrator shall deem appropriate; provided, however, that in no event shall such option be exercisable after the specified expiration date of the option term.

Article Three **STOCK ISSUANCE PROGRAM**

I. STOCK ISSUANCE TERMS

Shares of Common Stock may be issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below. Shares of Common Stock may also be issued under the Stock Issuance Program pursuant to restricted stock units (“RSUs”), which are awards granted to eligible individuals that entitle them to shares of Common Stock (or cash in lieu thereof) in the future following the satisfaction of vesting conditions imposed by the Plan Administrator.

A. **Vesting Provisions.**

1. The Plan Administrator may issue shares of Common Stock under the Stock Issuance which are to vest in one or more installments over the grantee's period of Service or upon attainment of specified performance objectives. Alternatively, the Plan Administrator may issue RSUs under the Stock Issuance Program which shall entitle the recipient to receive a specified number of shares of Common Stock upon the attainment of one or more Service and/or performance goals established by the Plan Administrator. Upon the attainment of such Service and/or performance goals, fully-vested shares of Common Stock shall be issued in satisfaction of those RSUs.
2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) issued by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Company's receipt of consideration, shall be issued or set aside with respect to the shares of unvested Common Stock granted to a grantee or subject to a grantee's RSUs, subject to (i) the same vesting requirements applicable to the grantee's unvested shares of Common Stock or RSUs, and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.
3. The grantee shall have full stockholder rights with respect to any shares of Common Stock issued to the grantee under the Stock Issuance Program, whether or not the grantee's interest in those shares is vested, except that the grantee shall not have dividend rights with respect to such shares prior to the vesting of such shares. However, the Plan Administrator may provide for a grantee to receive one or more dividend equivalents with respect to such shares, entitling the grantee to all regular cash dividends payable on such shares of Common Stock, which amounts shall be (i) subject to the same vesting requirements applicable to the shares of Common Stock granted hereunder, and (ii) payable upon vesting of the shares to which such dividend equivalents relate.

4. The grantee shall not have any stockholder rights with respect to any shares of Common Stock subject to an RSU. However, the Plan Administrator may provide for a grantee to receive one or more dividend equivalents with respect to such shares, entitling the grantee to all regular cash dividends payable on the shares of Common Stock underlying the RSU, which amounts shall be (i) subject to the same vesting requirements applicable to the shares of Common Stock underlying the RSU, and (ii) payable upon issuance of the shares to which such dividend equivalents relate.

5. Should the grantee cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Company for cancellation, and the grantee shall have no further stockholder rights with respect to those shares. To the extent the surrendered shares were previously issued to the grantee for consideration paid in cash, the Company shall repay to the grantee the cash consideration paid for the surrendered shares.

6. Except as prohibited by the last sentence of paragraph 1 above, the Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock which would otherwise occur upon the cessation of the grantee's Service or the non-attainment of the performance objectives applicable to those shares. Such waiver shall result in the immediate vesting of the grantee's interest in the shares of Common Stock as to which the waiver applies. Such waiver may be effected at any time, whether before or after the grantee's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

7. Outstanding RSUs under the Stock Issuance Program shall automatically terminate, and no shares of Common Stock shall actually be issued in satisfaction of those awards, if the Service and/or performance goals established for such awards are not attained. The Plan Administrator, however, shall, except as prohibited by the last sentence paragraph 1 above, have the discretionary authority to issue shares of Common Stock in satisfaction of one or more outstanding RSUs as to which the designated Service and/or performance goals are not attained. Such authority may be exercised at any time, whether before or after the grantee's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. All of the Company's outstanding repurchase rights under the Stock Issuance Program shall terminate automatically, and all the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with the such Corporate Transaction, or (ii) such accelerated vesting is precluded by other limitations imposed in the Stock Issuance Agreement, unless the Plan Administrator determines to waive such limitations.

B. Each award which is assigned in connection with (or is otherwise to continue in effect after) a Corporate Transaction shall be appropriately adjusted such that it shall apply and pertain to the number and class of securities issued to the grantee in consummation of the Corporate Transaction with respect to the shares granted to grantee under this Article Three.

C. In the event of a Change in Control: (1) shares of restricted stock and RSUs granted under this Article Three prior to May 23, 2016 shall be subject to the provisions of the Plan as in effect prior to such date, and (2) shares of restricted stock and RSUs granted on or after May 23, 2016 shall be treated as follows: if the grantee's employment is terminated by the Company without Cause or the grantee resigns due to a Constructive Termination, in either case within the ninety (90) day period preceding or the two (2) year period following the Change in Control, the vesting of such restricted stock and RSUs shall automatically accelerate (and all of the shares of Common Stock subject to such RSUs shall be issued to grantees), and the Company's outstanding repurchase rights under this Article Three shall immediately terminate; provided, however, that if the acquiror or successor refuses to assume the shares of restricted stock or RSUs or substitute an award of equivalent value (as determined by the Committee in its discretion) in connection with the Change in Control, the vesting of such restricted stock or RSUs under this Article Three shall automatically accelerate (and all of the shares of Common Stock subject to such RSUs shall be issued to grantees). To the extent any shares of restricted stock or RSUs vest in whole or in part based on the achievement of performance criteria, the amount that shall vest in accordance with the proviso to clause (2) of the immediately-preceding sentence shall vest based on the higher of actual performance goal attainment through the date of the Change in Control or a prorated amount using target performance and based on the time elapsed in the performance period as of the date of the Change in Control.

III. STOCKHOLDER RIGHTS

A. Individuals who are granted shares of Common Stock pursuant to this Article Three shall be the owners of such shares for all purposes while holding such Common Stock, and may exercise full voting rights with respect to those shares at all times while held by the individuals. Individuals who have been granted RSUs shall have no voting rights with respect to Common Stock underlying RSUs unless and until such Common Stock is reflected as issued and outstanding shares on the Company's stock ledger.

B. Individuals who are granted shares of Common Stock pursuant to this Article Three shall not have dividend rights with respect to such shares prior to the vesting of such shares. However, the Plan Administrator may provide for a grantee to receive one or more dividend equivalents with respect to such shares, entitling the grantee to all regular cash dividends payable on such shares of Common Stock, which amounts shall be (i) subject to the same vesting requirements applicable to the shares of Common Stock granted hereunder, and (ii) payable upon vesting of the shares to which such dividend equivalents relate.

IV. SHARE ESCROW / LEGENDS

Unvested shares may, in the Plan Administrator's discretion, be held in escrow by the Company until the grantee's interest in such shares vests or may be issued directly to the grantee with restrictive legends on the certificates evidencing those unvested shares.

Article Four **AUTOMATIC OPTION GRANT PROGRAM**

I. ELIGIBILITY

The individuals eligible to receive automatic option grants pursuant to the provisions of this Article Four shall be (i) those individuals who, after the effective date of this amendment and restatement, first become non-employee Board members, whether through appointment by the Board, election by the Company's stockholders, or by continuing to serve as a Board member after ceasing to be employed by the Company, and (ii) those individuals already serving as non-employee Board members on the effective date of this amendment and restatement. As used herein, a "non-employee" Board member is any Board member who is not employed by the Company on the date in question.

II. TERMS AND CONDITIONS OF AUTOMATIC OPTION GRANTS

A. **Grants.** Option grants shall be made under this Article Four as follows:

1. Each individual who first becomes a non-employee Board member on or after the effective date of this amendment and restatement shall automatically be granted at such time a non-statutory stock option under the terms and conditions of this Article Four, to purchase a number shares of Common Stock equal to the product of (i) 60,000, and (ii) a fraction, the numerator of which is the number of months (rounded to the nearest whole number) remaining between the date such Board member first became a non-employee Board member and the Company's next scheduled Annual Stockholders Meeting, and the denominator of which is 12.

2. Immediately following each Annual Stockholders Meeting of the Company, each individual who is then serving as a non-employee Board member (except for those individuals first elected to serve as non-employee Board members at such meeting), shall automatically be granted a non-statutory stock option under this Article Four to acquire 30,000 shares of Common Stock.

B. **Exercise Price.** The exercise price per share of each automatic option grant made under this Article Four shall be equal to one hundred percent (100%) of the fair market value per share of Common Stock on the automatic grant date.

C. **Payment.** The exercise price shall be through one of the following methods (or a combination thereof):

(1) payment in cash or check made payable to the Company's order; or

(2) full payment in shares of Common Stock held for the requisite period necessary to avoid a charge to the Company's reported earnings and valued at fair market value on the Exercise Date (as such term is defined below); or

- (3) full payment in a combination of shares of Common Stock held for the requisite period necessary to avoid a charge to the Company's reported earnings and valued at fair market value on the Exercise Date and cash or check payable to the Company's order; or
- (4) full payment through a sale and remittance procedure pursuant to which the non-employee Board member (I) shall provide irrevocable written instructions to a designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares and shall (II) concurrently provide written directives to the Company to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction; or
- (5) such other method as permitted by the Plan Administrator.

For purposes of this subparagraph C, the Exercise Date shall be the date on which written notice of the option exercise is delivered to the Company. Except to the extent the sale and remittance procedure specified above is utilized for the exercise of the option, payment of the option price for the purchased shares must accompany the exercise notice.

D. **Option Term.** Each automatic grant under this Article Four shall have a term of ten (10) years measured from the automatic grant date.

E. **Exercisability.**

1. Subject to the proviso in Section VI of Article One, each initial automatic grant made pursuant to Section II.A.1 of this Article Four shall vest and become exercisable on the scheduled date of the next Annual Stockholders Meeting following the grant (or, if later, the twelve (12)-month anniversary of the date of grant).

2. Subject to the proviso in Section VI of Article One, each 30,000 share automatic grant made pursuant to Section II.A.2 of this Article Four shall vest and become exercisable for the option shares on the twelve (12)-month anniversary of the automatic grant date.

F. **Non-Transferability.** During the lifetime of the optionee, each automatic option grant, together with the limited stock appreciation right pertaining to such option, shall be exercisable only by the optionee, except to the extent such option or the limited stock appreciation right is assigned or transferred (i) by will or by the laws of descent and distribution following the optionee's death, or (ii) during optionee's lifetime either (A) as a gift in connection with the optionee's estate plan to one or more members of optionee's immediate family, to a trust in which optionee and/or one or more such family members hold more than fifty percent (50%) of the beneficial interest or to an entity in which more than fifty percent (50%) of the voting interests are owned by optionee and/or one or more such family members, or (B) pursuant to a domestic relations order. The portion of any option assigned or transferred during optionee's lifetime shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

G. **Cessation of Board Service.**

1. Should the optionee cease to serve as a Board member for any reason while holding one or more automatic option grants under this Article Four, then such optionee shall have the remainder of the ten (10) year term of each such option in which to exercise each such option for any or all of the shares of Common Stock for which the option is exercisable at the time of such cessation of Board service. Each such option shall immediately terminate and cease to be outstanding, at the time of such cessation of Board service, with respect to any shares for which the option is not otherwise at that time exercisable. Upon the expiration of the ten (10)-year option term, the automatic grant shall terminate and cease to be outstanding in its entirety. Upon the death of the optionee, whether before or after cessation of Board service, any option held by optionee at the time of optionee's death may be exercised, for any or all of the shares of Common Stock for which the option was exercisable at the time of cessation of Board service by the optionee and which have not been theretofore exercised by the optionee, by the personal representative of the optionee's estate or by the person or persons to whom the option is transferred pursuant to the optionee's will or in accordance with the laws of descent and distribution. Any such exercise must occur during the remainder of the ten (10) year term of such option.

H. **Stockholder Rights.** The holder of an automatic option grant under this Article Four shall have none of the rights of a stockholder with respect to any shares subject to such option until such individual shall have exercised the option and paid the exercise price for the purchased shares. Without limitation, an optionee shall not have any right to receive dividends with respect to an unexercised option.

III. CORPORATE TRANSACTIONS/CHANGES IN CONTROL

A. In the event of a Corporate Transaction, (1) the exercisability of each option outstanding under this Article Four granted prior to April 3, 2017 shall automatically accelerate so that each such option shall, immediately prior to the specified effective date for the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for all or any portion of such shares, and (2) each option granted under this Article Four thereafter shall be subject to the same rules specified in Article Two, Section III.

B. Immediately after the consummation of the Corporate Transaction, all outstanding options under this Article Four shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation or its parent company. If so provided by the terms of the Corporate Transaction, the optionee shall receive a cash payment on account of any option terminated in accordance with this paragraph, in an amount equal to the excess (if any) of (A) the fair market value of the shares subject to the option as valued pursuant to the Corporate Transaction over (B) the aggregate exercise price of the option.

C. Each outstanding option under this Article Four which is assumed in connection with the Corporate Transaction or is otherwise to continue in effect shall be appropriately adjusted, immediately after such Corporate Transaction, to apply and pertain to the number and class of securities which would have been issued to the option holder, in consummation of such Corporate Transaction, had such person exercised the option immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the option price payable per share, provided the aggregate option price payable for such securities shall remain the same. Such option shall be subject to the same rules specified in Article Two, Section III.

D. In connection with any Change in Control, (1) the exercisability of each option grant made prior to April 3, 2017 and outstanding at the time under this Article Four shall automatically accelerate so that each such option shall, immediately prior to the specified effective date for the Change in Control, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for all or any portion of such shares, and (2) each option granted under this Article Four thereafter shall be subject to the same rules specified in Article Two, Section III.

E. The automatic grant of options under this Article Four shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. STOCK APPRECIATION RIGHTS

A. With respect to options granted under the Automatic Option Grant Program prior to March 7, 2006:

1. Upon the occurrence of a Hostile Take-Over, the optionee shall have a thirty (30)-day period in which to surrender to the Company each option held by him or her under this Article Four. The optionee shall in return be entitled to a cash distribution from the Company in an amount equal to the excess of (i) the Take-Over Price of the shares of Common Stock at the time subject to each surrendered option (whether or not the option is then exercisable for those shares) over (ii) the aggregate exercise price payable for such shares. The cash distribution shall be made within five (5) days following the date the option is surrendered to the Company, and neither the approval of the Plan Administrator nor the consent of the Board shall be required in connection with the option surrender and cash distribution. Any unsurrendered portion of the option shall continue to remain outstanding and become exercisable in accordance with the terms of the instrument evidencing such grant. This limited stock appreciation right shall in all events terminate upon the expiration or sooner termination of the option term and may not be assigned or transferred by the optionee.

2. For purposes of Article Four, the following definitions shall be in effect:

(i) A **Hostile Take-Over** shall be deemed to occur in the event any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act, as amended) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders which the Board does not recommend such stockholders to accept.

(ii) The **Take-Over Price** per share shall be deemed to be equal to the fair market value per share on the option surrender date.

B. With respect to each option granted under the Automatic Option Grant Program on and after March 7, 2006, each optionee shall have the right to surrender all or part of the option (to the extent not then exercised) in exchange for a distribution from the Company in an amount equal to the excess of (i) the fair market value (on the option surrender date) of the number of shares in which the optionee is at the time vested under the surrendered option (or surrendered portion thereof) over (ii) the aggregate option price payable for such vested shares. The distribution shall be made in shares of Common Stock valued at fair market value on the option surrender date.

C. The shares of Common Stock subject to any option surrendered for an appreciation distribution pursuant to this Section IV shall **not** be available for subsequent option grant under the Plan.

Article Five
SECTION 162(M) PERFORMANCE GOALS

I. GENERAL

The Plan Administrator may establish performance criteria and level of achievement versus such criteria that shall determine the number of shares of Common Stock or RSUs to be granted, retained, vested, issued or issuable under or in settlement of or the amount payable pursuant to an award hereunder, which criteria may be based on Qualifying Performance Criteria (as defined below) or other standards of financial performance and/or personal performance evaluations. In addition, the Plan Administrator may specify that an award or a portion of an award is intended to satisfy the requirements for "performance-based compensation" under Section 162(m) of the Code, provided that the

performance criteria for such award or portion of an award that is intended by the Plan Administrator to satisfy the requirements for “performance-based compensation” under Section 162(m) of the Code shall be a measure based on one or more Qualifying Performance Criteria selected by the Committee and specified at the time the award is granted.

The Committee shall certify the extent to which any Qualifying Performance Criteria have been satisfied, and the amount payable as a result thereof, prior to payment, settlement or vesting of any award that is intended to satisfy the requirements for “performance-based compensation” under Section 162(m) of the Code. Notwithstanding satisfaction of any performance goals, the number of shares of Common Stock issued under or the amount paid under an award may, to the extent specified in the applicable award agreement, be reduced by the Committee on the basis of such further considerations as the Committee in its sole discretion shall determine. The Committee may not delegate its duties under this Article Five to any other person with respect to any award that is intended to satisfy the requirements for “performance-based compensation” under Section 162(m) of the Code.

III. QUALIFYING PERFORMANCE CRITERIA

For purposes of this Plan, the term “Qualifying Performance Criteria” shall mean any one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or subsidiary, either individually, alternatively or in any combination, and measured either quarterly, annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years’ results or to a designated comparison group, in each case as specified by the Committee: (i) revenue growth; (ii) earnings before interest, taxes, depreciation and amortization; (iii) earnings before interest, taxes and amortization; (iv) operating income; (v) pre- or after-tax income; (vi) cash flow; (vii) cash flow per share; (viii) net income; (ix) earnings per share; (x) return on equity; (xi) return on invested capital; (xii) return on assets; (xiii) economic value added (or an equivalent metric); (xiv) share price performance; (xv) total shareholder return; (xvi) improvement in or attainment of expense levels; (xvii) improvement in or attainment of working capital levels; (xviii) debt reduction; (xix) progress for advancing drug discovery and/or drug development programs; or (xx) implementation, completion or attainment of measurable objectives with respect to research, development, manufacturing, commercialization, products or projects, or production volume levels. To the extent consistent with Section 162(m) of the Code, the Committee (A) shall appropriately adjust any evaluation of performance under a Qualifying Performance Criteria to eliminate the effects of charges for restructurings, discontinued operations, extraordinary items and all items of gain, loss or expense determined to be extraordinary or unusual in nature or related to the acquisition or disposal of a segment of a business or related to a change in accounting principle all as determined in accordance with standards established by opinion No. 30 of the Accounting Principles Board (APB Opinion No. 30) or other applicable or successor accounting provisions, as well as the cumulative effect of accounting changes, in each case as determined in accordance with generally accepted accounting principles or identified in the Company’s financial statements or notes to the financial statements, and (B) may appropriately adjust any evaluation of performance under a Qualifying Performance Criteria to exclude any of the following events that occurs during a performance period: (i) asset write-downs, (ii) litigation, claims, judgments or settlements, (iii) the effect of changes in tax law or other such laws or provisions affecting reported results, (iv) the adverse effect of work stoppages or slowdowns, (v) accruals for reorganization and restructuring programs and (vi) accruals of any amounts for payment under this Plan or any other compensation arrangement maintained by the Company.

Article Six
MISCELLANEOUS

I. AMENDMENT OF THE PLAN

The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects whatsoever. However, no such amendment or modification shall, without the consent of the holders, adversely affect rights and obligations with respect to options at the time outstanding under the Plan. In addition, certain amendments may require stockholder approval pursuant to applicable laws or regulations.

II. TAX WITHHOLDING

A. The Company's obligation to deliver shares or cash upon the exercise of stock options or stock appreciation rights or upon the grant or vesting of direct stock issuances or RSUs under the Plan shall be subject to the satisfaction of all applicable Federal, State and local income and employment tax withholding requirements.

B. The Plan Administrator may, in its discretion and upon such terms and conditions as it may deem appropriate, provide any or all holders of outstanding options or stock issuances under the Plan (other than the automatic option grants under Article Four) with the election to have the Company withhold, from the shares of Common Stock otherwise issuable upon the exercise or vesting of such awards, a whole number of such shares with an aggregate fair market value equal to the minimum amount necessary (or, if determined by the Plan Administrator in its discretion and to the extent adverse accounting treatment does not result, at the maximum applicable individual statutory tax rates) to satisfy the Federal, State and local income and employment tax withholdings (the "Taxes") incurred in connection with the acquisition or vesting of such shares. In lieu of such direct withholding, one or more grantees may also be granted the right to deliver whole shares of Common Stock to the Company in satisfaction of such Taxes. Any withheld or delivered shares shall be valued at their fair market value on the applicable determination date for such Taxes.

III. EFFECTIVE DATE AND TERM OF PLAN

A. The Plan, as amended and restated, shall be effective on the date specified in the Board of Directors resolution adopting the Plan. Except as provided below, each option issued and outstanding under the Plan immediately prior to such effective date shall continue to be governed solely by the terms and conditions of the agreement evidencing such

grant, and nothing in this restatement of the Plan shall be deemed to affect or otherwise modify the rights or obligations of the holders of such options with respect to their acquisition of shares of Common Stock thereunder. The Plan Administrator shall, however, have full power and authority, under such circumstances as the Plan Administrator may deem appropriate (but in accordance with Section I of this Article Five), to extend one or more features of this amendment and restatement to any options outstanding on the effective date.

B. Unless sooner terminated in accordance with the other provisions of this Plan, the Plan shall terminate upon the earlier of (i) ten years following the date this amendment and restatement of the Plan is approved by the Board or (ii) the date on which all shares available for issuance under the Plan shall have been issued or cancelled pursuant to the exercise, surrender or cash-out of the options granted hereunder. If the date of termination is determined under clause (i) above, then any options or stock issuances outstanding on such date shall continue to have force and effect in accordance with the provisions of the agreements evidencing those awards.

C. Options may be granted with respect to a number of shares of Common Stock in excess of the number of shares at the time available for issuance under the Plan, provided each granted option is not to become exercisable, in whole or in part, at any time prior to stockholder approval of an amendment authorizing a sufficient increase in the number of shares issuable under the Plan.

IV. USE OF PROCEEDS

Any cash proceeds received by the Company from the sale of shares pursuant to options or stock issuances granted under the Plan shall be used for general corporate purposes.

V. REGULATORY APPROVALS

A. The implementation of the Plan, the granting of any option hereunder, and the issuance of stock (i) upon the exercise or surrender of any option or (ii) under the Stock Issuance Program shall be subject to the procurement by the Company of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the options granted under it and the stock issued pursuant to it.

B. No shares of Common Stock or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Federal and state securities laws, including (to the extent required) the filing and effectiveness of the Form S-8 registration statement for the shares of Common Stock issuable under the Plan, and all applicable listing requirements of any stock exchange (or the Nasdaq National Market, the Nasdaq Global Select Market or any successor system, if applicable) on which Common Stock is then trading.

VI. NO EMPLOYMENT/SERVICE RIGHTS

Neither the action of the Company in establishing or restating the Plan, nor any action taken by the Plan Administrator hereunder, nor any provision of the Plan shall be construed so as to grant any individual the right to remain in the employ or service of the Company (or any parent or subsidiary corporation) for any period of specific duration, and the Company (or any parent or subsidiary corporation retaining the services of such individual) may terminate such individual's employment or service at any time and for any reason, with or without cause.

VII. MISCELLANEOUS PROVISIONS

A. Except to the extent otherwise expressly provided in the Plan, the right to acquire Common Stock or other awards under the Plan may not be assigned, encumbered or otherwise transferred by any grantee.

- B. Awards issued under the Plan shall be subject to any clawback policy of the Company as in effect from time-to-time.

- C. The provisions of the Plan relating to the exercise of options and the issuance and/or vesting of shares shall be governed by the laws of the State of Delaware without resort to that state's conflict-of-laws provisions, as such laws are applied to contracts entered into and performed in such State.

- D. The Plan is intended to be an unfunded plan. Grantees are and shall at all times be general creditors of the Company with respect to their awards. If the Committee or the Company chooses to set aside funds in a trust or otherwise for the payment of awards under the Plan, such funds shall at all times be subject to the claims of the creditors of the Company in the event of its bankruptcy or insolvency.

