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

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

MERCURY COMPUTER SYSTEMS, INC.
(Exact Name of Registrant as Specified in its Charter)

Massachusetts
(State of Incorporation)

04-2741391
(I.R.S. Employer
Identification Number)

201 Riverneck Road
Chelmsford, Massachusetts 01824
(978) 256-1300
(Address of Principal Executive Offices)

Micronetics, Inc. 2006 Equity Incentive Plan
(Full Title of the Plan)

Gerald M. Haines II
Senior Vice President, Corporate Development,
Chief Legal Officer, and Secretary
Mercury Computer Systems, Inc.
201 Riverneck Road
Chelmsford, Massachusetts 01824
(978) 256-1300
(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(2)(3)	Proposed Maximum Offering Price Per Share(4)	Proposed Maximum Aggregate Offering Price(4)	Amount of Registration Fee
Common Stock, \$.01 par value(1)	271,488	\$9.04	\$2,454,252	\$281.26

- (1) Pursuant to an Agreement and Plan of Merger, dated as of June 8, 2012 (the "Merger Agreement"), by and among Mercury Computer Systems, Inc. (the "Registrant"), Wildcat Merger Sub Inc. and Micronetics, Inc. ("Micronetics"), the Registrant assumed each unvested option under the Micronetics, Inc. 2006 Equity Incentive Plan (the "Micronetics Plan") that was outstanding on August 8, 2012. Effective August 8, 2012, the unvested options issued under the Micronetics Plan and assumed by the Registrant pursuant to the Merger Agreement will continue to vest pursuant to the vesting schedule of each option agreement and will be exercisable for a number of shares of the Registrant's common stock as equals the number of shares of Micronetics' common stock subject to such assumed option multiplied by an exchange ratio determined pursuant to the terms of the Merger Agreement. The exercise price per share of each assumed option will be equal to the exercise price per share set forth in the option agreement for the assumed option, divided by the exchange ratio.
- (2) This registration statement also covers preferred stock purchase rights (the "Rights") which are presently attached to and trade with the Registrant's common stock. Any value attributable to the Rights is reflected in the market price of the common stock.
- (3) This registration statement also covers any additional shares of common stock which become issuable under the Micronetics Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of common stock of the Registrant.
- (4) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(h)(1) and 457(c) under the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Common Stock reported on the Nasdaq Global Select Market on August 6, 2012.

INFORMATION REQUIRED IN THE 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

The documents containing the information specified in this Item 1 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the rules and regulations of the Securities and Exchange Commission (the "Commission") and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

The documents containing the information specified in this Item 2 will be sent or given to participants as specified in Rule 428(b) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated herein by reference:

- (a) The Registrant's annual report on Form 10-K for the fiscal year ended June 30, 2011, as filed with the Commission on August 18, 2011;
- (b) The Registrant's quarterly reports on Form 10-Q for the fiscal quarters ended September 30, 2011, as filed with the Commission on November 4, 2011; December 31, 2011, as filed with the Commission on February 8, 2012; and March 31, 2012, as filed with the Commission on May 3, 2012;
- (c) The Registrant's current reports on Form 8-K filed with the Commission on August 2, 2011 (Item 5.02 only); October 21, 2011; December 27, 2011 (Item 1.01 only); December 30, 2011 (Item 2.01 only); January 17, 2012; June 11, 2012 (Item 1.01 only); and August 8, 2012 (Item 2.01 only);
- (d) The description of the Registrant's Common Stock contained in the Registrant's registration statement on Form 8-A dated January 7, 1998, as filed with the Commission pursuant to Section 12 of the Exchange Act, including any amendment thereto or report filed for the purpose of updating such description; and

- (e) The description of the Registrant's preferred stock purchase rights contained in the Registrant's registration statement on Form 8-A dated December 15, 2005, as filed with the Commission pursuant to Section 12 of the Exchange Act, including any amendment thereto or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 2.02(b)(4) of Chapter 156D of the Massachusetts General Laws allows a corporation to eliminate or limit the personal liability of a director of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of an improper distribution or obtained an improper personal benefit. The Registrant has included a similar provision in its articles of organization.

Section 8.51(a) of Chapter 156D of the Massachusetts General Laws provides that a corporation may indemnify its directors against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement reasonably incurred in connection with any litigation or other legal proceeding brought against any director by virtue of his position as a director of the corporation unless he is deemed to have not acted in good faith in the reasonable belief that his action was in the best interest of the corporation. As noted below, the Registrant has provided for director indemnification in its articles of organization and bylaws.

Section 8.52 of Chapter 156D of the Massachusetts General Laws provides that a corporation must indemnify a director who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Section 8.56(a) of Chapter 156D of the Massachusetts General Laws ("Section 8.56") provides that a corporation may indemnify its officers to the same extent as its directors and, for officers that are not directors, to the extent provided by (i) the articles of organization, (ii) the bylaws, (iii) a vote of the board of directors or (iv) a contract. In all instances, the extent to which a corporation provides indemnification to its officers under Section 8.56 is optional. As noted below, the Registrant has provided for officer indemnification in its bylaws.

The Registrant's bylaws, as amended and restated, provide that the Registrant shall indemnify its directors and the officers that have been appointed by the board of directors to the fullest extent permitted by law.

The bylaws do not limit the power of the board of directors to authorize the purchase and maintenance of insurance on behalf of any director or officer against any expense whether or not the Registrant would have the power to indemnify such director or officer against such expense under the bylaws. The Registrant maintains directors' and officers' liability insurance.

The Registrant has entered into indemnification agreements with its directors. The indemnification agreements require, among other matters, that the Registrant indemnify its directors to the fullest extent provided by law and advance to directors certain expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

Exhibit	Description
4.1	Articles of Organization (incorporated herein by reference to Exhibit 3.1.1 of the Registrant's annual report on Form 10-K for the fiscal year ended June 30, 2009)
4.2	Articles of Amendment (incorporated herein by reference to Exhibit 3.1.2 of the Registrant's annual report on Form 10-K for the fiscal year ended June 30, 2010)
4.3	Articles of Amendment (incorporated herein by reference to Exhibit 1 of the Registrant's registration statement on Form 8-A, as filed with the Commission on December 15, 2005)
4.4	By-laws, amended and restated effective May 4, 2011 (incorporated herein by reference to Exhibit 3.2 of the Registrant's quarterly report on Form 10-Q for the quarter ended March 31, 2011 filed with the Commission on May 5, 2011)
4.5	Shareholder Rights Agreement, dated as of December 14, 2005, between the Registrant and Computershare Trust Company, N.A. (formerly known as EquiServe Trust Company, N.A.) (incorporated herein by reference to Exhibit 2 of the Registrant's registration statement on Form 8-A, as filed with the Commission on December 15, 2005)
4.6	Form of Common Stock Certificate (incorporated herein by reference to Exhibit 4.1 of the Registrant's registration statement on Form S-1 (File No. 333-41139)), as amended
5.1*	Opinion of Bingham McCutchen LLP
23.1*	Consent of KPMG LLP
23.2	Consent of Bingham McCutchen LLP (contained in the opinion filed as Exhibit 5.1 to this registration statement)
24.1	Power of Attorney (included in signature page to this registration statement)
99.1*	Micronetics, Inc. 2006 Equity Incentive Plan

* Filed herewith

ITEM 9. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

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

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the town of Chelmsford, the Commonwealth of Massachusetts on this 10th day of August 2012.

MERCURY COMPUTER SYSTEMS, INC.

By: /s/ Gerald M. Haines II

Gerald M. Haines II
Senior Vice President, Corporate Development,
Chief Legal Officer, and Secretary

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Mark Aslett, Kevin M. Bisson, and Gerald M. Haines II his true and lawful attorneys-in-fact and agents, each acting alone, with full powers of substitution and resubstitution, for him or in his name, place and stead, in any and all capacities to sign any and all amendments or post-effective amendments to this registration statement (or any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, each acting alone, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Mark Aslett</u> Mark Aslett	President, Chief Executive Officer, and Director (Principal Executive Officer)	August 10, 2012
<u>/s/ Kevin M. Bisson</u> Kevin M. Bisson	Senior Vice President, Chief Financial Officer, and Treasurer (Principal Financial Officer)	August 10, 2012
<u>/s/ Charles A. Speicher</u> Charles A. Speicher	Vice President, Controller, and Chief Accounting Officer (Principal Accounting Officer)	August 10, 2012
<u>/s/ Vincent Vitto</u> Vincent Vitto	Chairman of the Board of Directors	August 10, 2012
<u>/s/ James K. Bass</u> James K. Bass	Director	August 10, 2012
<u>/s/ George W. Chamillard</u> George W. Chamillard	Director	August 10, 2012

/s/ Michael A. Daniels
Michael A. Daniels

Director

August 10, 2012

/s/ George K. Muellner
George K. Muellner

Director

August 10, 2012

/s/ William K. O'Brien
William K. O'Brien

Director

August 10, 2012

/s/ Lee C. Steele
Lee C. Steele

Director

August 10, 2012

EXHIBIT INDEX

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* Filed herewith

August 10, 2012

Mercury Computer Systems, Inc.
201 Riverneck Road
Chelmsford, Massachusetts 01824

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished in connection with the registration, pursuant to a Registration Statement on Form S-8 under the Securities Act of 1933, as amended (the "Securities Act"), to be filed with the Securities and Exchange Commission on or about August 10, 2012 (the "Registration Statement"), of an aggregate of 271,488 (the "Shares") of common stock, par value \$0.01 per share (the "Common Stock"), of Mercury Computer Systems, Inc., a Massachusetts corporation (the "Company"), which may be issued pursuant to the Micronetics, Inc. 2006 Equity Incentive Plan (the "Micronetics Plan").

We have acted as counsel to the Company in connection with the foregoing registration of the Shares. We have examined and relied upon originals or copies of such records, instruments, certificates, memoranda, and other documents as we have deemed necessary or advisable for purposes of this opinion and have assumed, without independent inquiry, the accuracy of those documents. In that examination, we have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies and the authenticity and completeness of all original documents reviewed by us in original or copy form. We have further assumed that all options granted pursuant to the Micronetics Plan were validly granted in accordance with the terms of the Micronetics Plan, that all Shares to be issued upon exercise of such options will be issued in accordance with the terms of the Micronetics Plan and the respective option agreements.

This opinion is limited solely to the Massachusetts Business Corporations Act. For purposes of the opinion set forth below, we have assumed that a sufficient number of authorized shares of the Company's Common Stock will be available for issuance when the Shares are issued.

Based upon and subject to the foregoing, we are of the opinion that upon the issuance and the delivery of the Shares in accordance with the terms and conditions set forth in the Micronetics Plan and the option agreements granted under the Micronetics Plan, the Shares will be validly issued, fully paid, and nonassessable.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ BINGHAM MCCUTCHEN LLP

BINGHAM MCCUTCHEN LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Mercury Computer Systems, Inc.:

We consent to the use of our report dated August 18, 2011, with respect to the consolidated balance sheets of Mercury Computer Systems, Inc. and subsidiaries as of June 30, 2011 and 2010, and the related consolidated statements of operations, shareholders' equity and cash flows for each of the years in the three-year period ended June 30, 2011, the related financial statement schedule, and the effectiveness of internal control over financial reporting as of June 30, 2011, incorporated herein by reference.

Our report dated August 18, 2011, on the effectiveness of internal control over financial reporting as of June 30, 2011, contains an explanatory paragraph that states management excluded from its assessment of the effectiveness of Mercury Computer Systems, Inc.'s internal control over financial reporting as of June 30, 2011 LNX Corporation's internal control over financial reporting associated with total assets of 12 percent and total revenues of 2 percent included in the consolidated financial statements of Mercury Computer Systems, Inc. and subsidiaries as of and for the year ended June 30, 2011. Our audit of internal control over financial reporting of Mercury Computer Systems, Inc. and subsidiaries also excluded an evaluation of the internal control over financial reporting of LNX Corporation.

Our report refers to the Company's change in its method of accounting for revenue arrangements with multiple-deliverables entered into or substantially modified after July 1, 2009 to adopt FASB ASU No. 2009-13, *Multiple-Deliverable Revenue Arrangements*.

/s/ KPMG LLP

Boston, Massachusetts
August 10, 2012

Micronetics, Inc.
2006 Equity Incentive Plan

1. Purpose and Duration

1.1 *Purpose.* The purpose of the Micronetics, Inc. 2006 Equity Incentive Plan is to encourage employees and other persons or entities who, in the opinion of the Board, are in a position to contribute significantly to the success of the Company and its Affiliates (including, without limitation, Non-Employee Directors, consultants, advisers, independent contractors and other service providers) to enter into and to maintain continuing and long-term relationships with the Company. It is *not* a purpose of the Plan to reward Participants for the completion of specific projects or discrete periods of Service which may fall between consecutive vesting periods of any Award granted under the Plan.

1.2 *Effective Date.* The Plan is effective as of the date of its adoption by the Board.

1.3 *Expiration Date.* The Plan shall expire ten years from the date of the adoption of the Plan by the Board. In no event shall any Awards be made under the Plan after such expiration date, but Awards previously granted may extend beyond such date.

2. Definitions

As used in the Plan, the following capitalized words shall have the meanings indicated:

“Affiliate” means a “parent corporation” or “subsidiary corporation” of the Company within the meaning of Section 424(e) or Section 424(f), as the case may be, of the Code, and any other business venture (including without limitation any joint venture or limited liability company) in which the Company has a significant interest, as determined by the Board.

“Award” means, individually or collectively, a grant under the Plan of Options or Restricted Stock, or any other equity-based Award made pursuant to Section 8, below.

“Award Agreement” means the written agreement setting forth the terms and provisions applicable to an Award granted under the Plan.

“Board” means the Board of Directors of the Company.

“Cause” has the meaning assigned to it in Section 9.6.2, below.

“Code” means the Internal Revenue Code of 1986, as amended.

“Committee” means, if established by the Board to administer the Plan, a Compensation Committee of the Board. If and when the Common Stock is registered under the Exchange Act, the Board shall appoint a Compensation Committee of not fewer than two members, each of whom shall be a Non-Employee Director and an “outside director” within the meaning of Section 162(m) of the Code, or any successor provision.

“Common Stock” means the Company’s common stock, \$.01 par value per share.

“Company” means Micronetics, Inc., a Delaware corporation, or any successor thereto.

“Director” means any individual who is a member of the Board.

“Disability” means “disability,” such term is defined in Section 22(e)(3) of the Code.

“Disqualifying Disposition” means any disposition (within the meaning of Section 424(c) of the Code) of Shares acquired upon the exercise of an ISO before the later of (a) two years after the Participant was granted the ISO or (b) one year after the Participant acquired the Shares by exercising the ISO.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Fair Market Value” means, with respect to a Share as of any date of determination, in the discretion of the Board, (i) the closing price per Share on such date, as reported in the *Wall Street Journal*, on the principal exchange for the Shares or the Nasdaq National Market (or successor trading system), (ii) the average closing price per Share, as reported in the *Wall Street Journal*, during the 20-day period that ends on such date on the principal exchange for the Shares or the Nasdaq National Market (or such successor trading system) or (iii) if Shares are not publicly traded, the fair market value of such Share as determined by the Board in accordance with a valuation method approved by the Board in good faith.

“Grant Date” means the effective date of an Award as specified by the Board and set forth in the applicable Award Agreement.

“Incentive Stock Option” or “ISO” means an option to purchase Shares awarded to a Participant under Section 6 of the Plan that is intended to meet the requirements of Section 422 of the Code.

“Non-Employee Director” means a “non-employee director” as that term is defined in Rule 16b-3 promulgated under the Exchange Act, or any successor provision.

“Nonqualified Stock Option” or “NQO” means an option to purchase Shares awarded to a Participant under Section 6 of the Plan that is not intended to be an ISO.

“Option” means an ISO or an NQO.

“Participant” means an individual or entity selected by the Board to receive an Award under the Plan.

“Plan” means the Micronetics, Inc. 2006 Equity Incentive Plan set forth in this document and as hereafter amended from time to time in accordance with Section 10.2.

“Restricted Period” means the period of time selected by the Board during which Shares of Restricted Stock are subject to forfeiture and/or restrictions on transferability.

“Restricted Stock” means Shares awarded to a Participant under Section 7 of the Plan pursuant to an Award that entitles the Participant to acquire Shares for a purchase price (which may be zero if permissible under applicable law), subject to such conditions as the Board may determine to be appropriate, including a Company right during a specified period or periods to repurchase the Shares at their original purchase price (or to require forfeiture of the Shares if the purchase price was zero and if permissible under applicable law) upon conditions specified in connection with the Award.

“Securities Act” means the Securities Act of 1933, as amended.

“Service” means the service of a Participant to the Company or an Affiliate as a common law employee, a Director, consultant, adviser, independent contractor or other service provider, and includes the continuing relationship of the Participant to the Company or an Affiliate as a Director, consultant, adviser, independent contractor or other service provider following termination of the Participant’s employment.

“Shares” means shares of the Company’s Common Stock.

“Voting Securities” means with respect to any corporation or other entity, securities having the right to vote in an election of the board of directors, or the equivalent of a board of directors, of such corporation or other entity.

3. Administration of the Plan

3.1 *Administration by the Board.* The Plan shall be administered by the Board, which shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the operation of

the Plan as it shall consider advisable from time to time, to interpret the provisions of the Plan and any Award and to decide all disputes arising in connection with the Plan. The Board's decisions and interpretations shall be final and binding on all parties. Neither the Company nor any member of the Board shall be liable for any action or determination relating to the Plan. In the event that the Board establishes a Committee, the Plan shall be administered by the Committee, in which case references in the Plan to the Board shall be references to the Committee to the extent the context may so require.

3.2 *Appointment of a Committee.* To the extent permitted by applicable law, the Board may delegate any or all of its powers under the Plan to a Committee. In the event that the Board establishes a Committee, references in the Plan to the "Board" shall be references to the Committee to the extent of such delegation.

4. Eligibility of Participants

The persons eligible to receive Awards under the Plan shall be the directors, executive officers, employees, consultants, advisers, independent contractors and other service providers of the Company and its Affiliates who, in the opinion of the Board, are in a position to make a significant contribution to the success of the Company (or an Affiliate). Participants need not be individuals or employees of the Company (or an Affiliate).

5. Stock Available for Awards

5.1 *Aggregate Number of Shares Available for Awards.* Subject to Section 9.13, Awards may be granted under the Plan in respect of up to 1,000,000 Shares. Shares issued under the Plan may consist in whole or in part of authorized but unissued Shares or treasury Shares.

5.2 *Lapsed, Forfeited or Expired Awards.* If any Award expires or is terminated before exercise or is forfeited for any reason, the Shares subject to such Award, to the extent of such expiration, termination or forfeiture, shall again be available for award under the Plan.

5.3 *Maximum Number of Shares Subject to any Award.* Subject to Section 9.13, the number of Shares in respect of which a Participant may receive Awards under the Plan in any year shall not exceed 500,000.

6. Stock Options

6.1 *Grant of Options.* Subject to the terms and provisions of the Plan, the Board may award Options and determine the number of Shares subject to each Option, the exercise price therefor, the term of the Option, and any other conditions and limitations applicable to the exercise of the Option and the holding of any Shares acquired upon exercise of the Option. The Board may grant ISOs, NQOs or a combination thereof; *provided, however*, that Participants who are not employees of the Company may not be granted ISOs. The Company shall have no liability to any Participant, or to any other party, if an Option (or any portion thereof) that is intended to be an ISO is determined not to be an ISO (including, without limitation, due to a determination that the exercise price per Share of the Option was less than the Fair Market Value per Share of the Shares subject to the Option as of the Grant Date).

6.2 *Exercise Price.* Subject to the provisions of this Section 6, the exercise price for each Option, and the manner of payment thereof, shall be determined by the Board in its sole discretion.

6.3 *Restrictions on Option Transferability and Exercisability.* Except as set forth in the applicable Award Agreement, no Option shall be transferable by the Participant other than by will or the laws of descent and distribution, and all Options shall be exercisable, during the Participant's lifetime, only by the Participant. In no event shall ISOs be transferable by the Participant other than by will or the laws of descent and distribution.

6.4 Certain Additional Provisions for Incentive Stock Options

6.4.1 *Exercise Price.* In the case of an ISO, the exercise price shall be not less than 100% of the Fair Market Value on the Grant Date of the Shares subject to the Option; *provided, however*, that if on the Grant Date

the Participant (together with persons whose stock ownership is attributed to the Participant pursuant to Section 424(d) of the Code) owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate, the exercise price shall be not less than 110% of the Fair Market Value on the Grant Date of the Shares subject to the Option.

6.4.2 *Exercisability.* Subject to Sections 9.3 and 9.4, the aggregate Fair Market Value (determined on the Grant Date(s)) of the Shares with respect to which ISOs are exercisable for the first time by any Participant during any calendar year (under all plans of the Company and its Affiliates) shall not exceed \$100,000.

6.4.3 *Eligibility.* ISOs may be granted only to persons who are employees of the Company or an Affiliate on the Grant Date.

6.4.4 *Expiration.* No ISO may be exercised after the expiration of ten years from the Grant Date; *provided, however,* that if the Option is granted to a Participant who, together with persons whose stock ownership is attributed to the Participant pursuant to Section 424(d) of the Code, owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate, the ISO may not be exercised after the expiration of five years from the Grant Date.

6.4.5 *Compliance with Section 422 of the Code.* The terms and conditions of ISOs shall be subject to and comply with Section 422 of the Code or any successor provision.

6.4.6 *Notice to Company of Disqualifying Disposition.* Each Participant who receives an ISO agrees to notify the Company in writing within ten days after the Participant makes a Disqualifying Disposition of any Shares received pursuant to the exercise of the ISO.

6.4.7 *Substitute Options.* Notwithstanding the provisions of Section 6.4.1, in the event that the Company or any Affiliate consummates a transaction described in Section 424(a) of the Code (relating to the acquisition of property or stock from an unrelated corporation), individuals who become employees or consultants of the Company or any Affiliate on account of such transaction may be granted ISOs in substitution for options granted by their former employer. The Board, in its sole discretion and consistent with Section 424(a) of the Code, shall determine the exercise price of such substitute Options.

6.5 *NQO Presumption.* An Option granted pursuant to the Plan shall be presumed to be a NQO unless expressly designated an ISO in the applicable Award Agreement.

7. Restricted Stock

7.1 *Grant of Restricted Stock.* The Board may award Shares of Restricted Stock and determine the purchase price, if any, therefor, the duration of the Restricted Period, if any, the conditions, if any, under which the Shares may be forfeited to or repurchased by the Company and any other terms and conditions of the Awards. The Board may modify or waive any restrictions, terms and conditions with respect to any Restricted Stock. Shares of Restricted Stock may be issued for such consideration, if any, as is determined by the Board, subject to applicable law.

7.2 *Transferability.* Except as set forth in the applicable Award Agreement, Shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered.

7.3 *Evidence of Award.* Shares of Restricted Stock shall be evidenced in such manner as the Board may determine. Any certificates issued in respect of Shares of Restricted Stock shall be registered in the name of the Participant and, unless otherwise determined by the Board, deposited by the Participant, together with a stock power endorsed in blank, with the Company (or its designee). At the expiration of the Restricted Period(s), the Company (or such designee) shall deliver the certificates no longer subject to such restrictions to the Participant.

7.4 *Shareholder Rights.* A Participant shall have all the rights of a shareholder with respect to Restricted Stock awarded, including voting and dividend rights, unless otherwise provided in the Award Agreement.

8. Other Stock-Based Awards

The Board shall have the right to grant other Awards based upon the Common Stock having such terms and conditions as the Board may determine, including, without limitation, the grant of Shares based upon certain conditions, the grant of securities convertible into Common Stock and the grant of warrants to purchase Common Stock, stock appreciation rights, phantom stock awards or stock units.

9. General Provisions Applicable to Awards

9.1 *Legal and Regulatory Matters.* The delivery of Shares shall be subject to compliance with (i) applicable federal and state laws and regulations, (ii) if the outstanding Shares are listed at the time on any stock exchange, the listing requirements of such exchange and (iii) the Company's counsel's approval of all other legal matters in connection with the issuance and delivery of the Shares. If the sale of the Shares has not been registered under the Securities Act, the Company may require, as a condition to delivery of the Shares, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of such Act and may require that the certificates evidencing the Shares bear an appropriate legend restricting transfer.

9.2 *Written Award Agreement.* The terms and provisions of an Award shall be set forth in an Award Agreement approved by the Board and delivered or made available to the Participant as soon as practicable following the Grant Date. If the Award is an Option Award, the Award Agreement shall specify whether the Option is intended to be an ISO or a NQO.

9.3 *Determination of Restrictions on the Award.* The vesting, exercisability, payment and other restrictions applicable to an Award (which may include, without limitation, restrictions on transferability or provision for mandatory resale to the Company) shall be determined by the Board and set forth in the applicable Award Agreement. Notwithstanding the foregoing, the Board may accelerate (i) the vesting or payment of any Award (including an ISO), (ii) the lapse of restrictions on any Award (including an Award of Restricted Stock) and (iii) the date on which any Option first becomes exercisable.

9.4 *Change in Control.* Notwithstanding any other provision of the Plan, but subject to the provisions of any particular Award Agreement, in the event of any Change in Control (as defined below) of the Company, and in anticipation thereof if required by the circumstances, the Board, in its sole discretion (and in addition to or in lieu of any actions permitted to be taken by the Company under the terms of any particular Award Agreement), may, on either an overall or a Participant by Participant basis, (i) accelerate the exercisability, prior to the effective date of such Change in Control, of any outstanding Options (and terminate the restrictions applicable to any Shares of Restricted Stock), (ii) upon written notice, provide that any outstanding Options must be exercised, to the extent then exercisable, within a specified number of days after the date of such notice, at the end of which period such Options shall terminate, (iii) if there is a surviving or acquiring entity, and subject to the consummation of such Change in Control, cause that entity or an affiliate of that entity to grant replacement awards having such terms and conditions as the Board determines to be appropriate in its sole discretion, upon which replacement the replaced Options or Restricted Stock shall be terminated or cancelled, as the case may be, (iv) terminate any outstanding Options and make such payments, if any, therefor (or cause the surviving or acquiring entity to make such payments, if any, therefor) as the Board determines to be appropriate in its sole discretion (including, without limitation, with respect to only the then exercisable portion of such Options based on the Fair Market Value of the underlying Shares as determined by the Board in good faith), upon which termination such Options shall immediately cease to have any further force or effect, (v) repurchase (or cause the surviving or acquiring entity to purchase) any Shares of Restricted Stock for such amounts, if any, as the Board determines to be appropriate in its sole discretion (including, without limitation, an amount with respect to only the vested portion of such Shares (i.e., the portion that is not then subject to forfeiture or repurchase at a price less than their value), based on the Fair Market Value of such vested portion as determined by the Board in good faith), upon which purchase the holder of such Shares shall surrender such Shares to the purchaser, or (vi) take

any combination (or none) of the foregoing actions. For purposes of this Plan, a “Change in Control” shall mean and include any of the following:

9.4.1 a merger or consolidation of the Company with or into any other corporation or other entity in which holders of the Company’s Voting Securities immediately prior to such merger or consolidation will not continue to hold at least a majority of the outstanding Voting Securities of the Company;

9.4.2 a sale, lease, exchange or other transfer (in one transaction or a related series of transactions, but excluding any merger or consolidation not having an effect described in Section 9.4.1) of all or substantially all of the Company’s assets;

9.4.3 the acquisition by any person or any group of persons, acting together in any transaction or related series of transactions, of such quantity of the Company’s Voting Securities as causes such person, or group of persons, to own beneficially, directly or indirectly, as of the time immediately after such transaction or series of transactions, 50% or more of the combined voting power of the Voting Securities of the Company other than as a result of (i) an acquisition of securities directly from the Company or (ii) an acquisition of securities by the Company which by reducing the Voting Securities outstanding increases the proportionate voting power represented by the Voting Securities owned by any such person or group of persons to 50% or more of the combined voting power of such Voting Securities; or

9.4.4 the liquidation or dissolution of the Company.

9.5 *Assumption of Options Upon Certain Events.* In connection with a merger or consolidation of an entity with the Company or the acquisition by the Company of property or stock of an entity, the Board may grant Awards under the Plan in substitution for stock and stock-based awards issued by such entity or an affiliate thereof. The substitute Awards shall be granted on such terms and conditions as the Board considers appropriate in the circumstances. The Awards so granted shall not reduce the number of Shares that would otherwise be available for Awards under the Plan.

9.6 *Termination of Service.*

9.6.1 *Termination of Service in General.* Except as set forth in the applicable Award Agreement or as otherwise determined by the Board, upon the termination of the Service of a Participant, the Participant’s Options shall expire on the earliest of the following occasions:

- (i) in the case of an ISO, the expiration date determined pursuant to Section 6.4.4;
- (ii) subject to Section 9.6.2, below, the date that is three months after the voluntary termination of the Participant’s Service or the termination of the Participant’s Service by the Company (or by an Affiliate) other than for Cause;
- (iii) the date of the termination of the Participant’s Service by the Company (or by an Affiliate) for Cause;
- (iv) the date one year after the termination of the Participant’s Service by reason of Disability; or
- (v) the date one year after the termination of the Participant’s Service by reason of the Participant’s death.

The Participant may exercise all or any part of the Participant’s Options at any time before the expiration of such Options under this Section 9.6.1, but only to the extent that such Options had become exercisable before the Participant’s Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Participant’s Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Participant’s Service terminates. In the event that the Participant dies during the Participant’s Service, or after the termination of the Participant’s Service but before the expiration of the Participant’s Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Participant’s estate or by any person who has acquired such Options directly from the Participant by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Participant’s Service terminated (or became exercisable as a result of the

termination) and the underlying Shares had vested before the Participant's Service terminated (or vested as a result of the termination).

9.6.2 *Definition of Cause.* "Cause" means and includes dishonesty, theft, insubordination, substantial malfeasance or non-feasance of duty, unauthorized disclosure of confidential information, and conduct substantially prejudicial to the Company or any Affiliate, as determined by the Board, whose determination shall be final and binding on the Company and the Participant. Notwithstanding anything to the contrary in the Plan, if the Board determines after the termination of the Participant's Service that the Participant has engaged in conduct constituting Cause (whether before or after the termination of the Participant's Service), the Participant's Options shall terminate immediately to the extent not exercised in accordance with the terms of the applicable Award Agreement.

9.6.3 *Date of Termination of Service.* The date of the termination of a Participant's Service for any reason shall be determined by the Board in its sole discretion. For purposes of the Plan, however, the following events shall not be deemed a termination of Service of a Participant: (i) a transfer of Service from the Company to an Affiliate, from an Affiliate to the Company, or from one Affiliate to another Affiliate; or (ii) a leave of absence for military service or sickness, or for any other purpose approved by the Company, if the Participant's right to employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Board otherwise so provides in writing; *provided, however*, that if the Participant fails to resume his or her active Service to the Company upon the completion of such leave of absence, then the Board may, to the extent permitted by applicable law, deem such Participant's Service to have terminated as of the commencement of such leave of absence. For purposes of the Plan, employees of an Affiliate shall be deemed to have terminated their Service on the date on which such Affiliate ceases to be an Affiliate.

9.7 *Effect of Termination of Service.* The Board shall have full authority to determine and specify in the applicable Award Agreement the effect, if any, that a Participant's termination of Service for any reason will have on the vesting, exercisability, payment or lapse of restrictions applicable to an outstanding Award.

9.8 *Grant of Awards.* Each Award may be made alone, in addition to or in relation to any other Award. The terms of each Award need not be identical, and the Board need not treat Participants uniformly.

9.9 *Settlement of Awards.*

9.9.1 *General.* No Shares shall be delivered in connection with any Award unless and until (i) the requirements of Section 9.1 of this Plan and of the relevant Award Agreement have been satisfied and (ii) payment in full of the price therefor, if any, is received by the Company. Such payment may be made in whole or in part in cash or by check or, to the extent permitted by the Board at or after the Grant Date, by delivery of (i) a promissory note that (x) bears interest at a rate determined by the Board to be a fair market rate for the individual Participant at the time the Shares are issued, (y) is full recourse (including with respect to the payment of interest) to the Participant, and (z) contains such other terms as may be determined by the Board (and, if required by applicable law, delivery by the Participant of cash or check in an amount equal to the aggregate par value of the Shares purchased), (ii) Shares, including Restricted Stock, valued at their Fair Market Value on the date of exercise, or (iii) such other lawful consideration as the Board shall determine.

9.9.2 *Certain Indebtedness to the Company.* No Option or other Award may be exercised at any time after the Board has determined, in good faith, that the Participant is indebted to the Company or any Affiliate for advances of salary, advances of expenses, recoverable draws or other amounts unless and until either (a) such indebtedness is satisfied in full or (b) such condition is waived by the Board. The period during which any Option or other Award may by its terms be exercised shall not be extended during any period in which the Participant is prohibited from such exercise by the preceding sentence, and the Company shall have no liability to any Participant, or to any other party, if any Option or other Award expires unexercised in whole or in part during such period or if any Option that is intended to be an ISO is deemed to be a NQO because such Option is not exercised within three months after the termination of the Participant's employment with the Company or an Affiliate.

9.10 *Withholding Requirements and Arrangements.*

9.10.1 *NQOs.* In the case of any NQO, the Board may require the Participant to remit to the Company an amount sufficient to satisfy the minimum statutory federal, state and local withholding tax obligations of the Company with respect to the exercise of such NQO (or make other arrangements satisfactory to the Board with regard to such taxes, including withholding from regular cash compensation, providing other security to the Company, or remitting or foregoing the receipt of Shares having a Fair Market Value on the date of delivery sufficient to satisfy such minimum statutory obligations) prior to the delivery of any Shares in respect of such NQO.

9.10.2 *ISOs.* In the case of an ISO, if at the time the ISO is exercised the Board determines that under applicable law and regulations the Company could be liable for the withholding of any federal, state or local tax with respect to a disposition of the Shares received upon exercise, the Board may require the Participant to agree to give such security as the Board deems adequate to meet the potential liability of the Company for the withholding of tax, and to augment such security from time to time in any amount reasonably deemed necessary by the Board to preserve the adequacy of such security.

9.10.3 *Restricted Stock.* In the case of any Shares of Restricted Stock that are “substantially vested” (within the meaning of Treasury Regulations Section 1.83-3(b)) upon issuance, the Board may require the Participant to remit to the Company an amount sufficient to satisfy the minimum statutory federal, state or local withholding tax requirements (or make other arrangements satisfactory to the Company with regard to such taxes, including withholding from regular cash compensation, providing other security to the Company, or remitting or foregoing the receipt of Shares having a Fair Market Value on the date of delivery sufficient to satisfy such obligations) prior to the issuance of any such Shares. In the case of any Shares of Restricted Stock that are not “substantially vested” upon issuance, if the Board determines that under applicable law and regulations the Company could be liable for the withholding of any federal or state tax with respect to such Shares, the Board may require the Participant to remit to the Company an amount sufficient to satisfy any such potential liability (or make other arrangements satisfactory to the Company with respect to such taxes, including withholding from regular cash compensation, providing other security to the Company, or remitting or foregoing the receipt of Shares having a Fair Market Value on the date of delivery sufficient to satisfy such obligations) at the time such Shares of Restricted Stock are delivered to the Participant, at the time the Participant makes an election under 83(b) of the Code with respect to such Shares and/or at the time such Shares become “substantially vested,” and to agree to augment such security from time to time in any amount reasonably deemed necessary by the Board to preserve the adequacy of such security.

9.10.4 *Retention of Shares.* With respect to any Participant subject to Section 16(a) of the Exchange Act, any retention of Shares by the Company to satisfy a tax obligation with respect to such Participant shall be made in compliance with any applicable requirements of Rule 16b-3(e) or any successor rule under the Exchange Act.

9.10.5 *Offset Against Payments.* The Company may, to the extent permitted by law, deduct any tax obligations of a Participant from any payment of any kind otherwise due to the Participant.

9.11 *No Effect on Employment.* The Plan shall not give rise to any right on the part of any Participant to continue in the employ of the Company or any Affiliate. The loss of existing or potential profit in Awards granted under the Plan shall not constitute an element of damages in the event of termination of the relationship of a Participant even if the termination is in violation of an obligation of the Company to the Participant by contract or otherwise.

9.12 *No Rights as Shareholder.* Subject to the provisions of the Plan and the applicable Award Agreement, no Participant shall have any rights as a shareholder with respect to any Shares to be distributed under the Plan until he or she becomes the holder thereof.

9.13 *Adjustments.* Upon the happening of any of the following described events, a Participant’s rights with respect to Awards granted hereunder shall be adjusted as hereinafter provided, unless otherwise specifically provided in the Award Agreement.

9.13.1 *Stock Splits and Recapitalizations.* In the event the Company issues any of its Shares as a stock dividend upon or with respect to the Shares, or in the event Shares shall be subdivided or combined into a greater or smaller number of Shares, or if, upon a merger or consolidation (except those described in Section 9.4), reorganization, split-up, liquidation, combination, recapitalization or the like of the Company, Shares shall be exchanged for other securities of the Company, securities of another entity, cash or other property, each Participant upon exercising an Option (for the purchase price to be paid under the Option) shall be entitled to purchase such number of Shares, other securities of the Company, securities of such other entity, cash or other property as the Participant would have received if the Participant had been the holder of the Shares with respect to which the Award is exercised at all times between the Grant Date of the Award and the date of its exercise, and appropriate adjustments shall be made in the purchase price per Share. In determining whether any Award granted hereunder has vested, appropriate adjustments will be made for distributions and transactions described in this Section 9.13.1.

9.13.2 *Restricted Stock.* If any person owning Restricted Stock receives new or additional or different shares or securities (“New Securities”) in connection with a corporate transaction or stock dividend described in Section 9.13.1 as a result of owning such Restricted Stock, the New Securities shall be subject to all of the conditions and restrictions applicable to the Restricted Stock with respect to which such New Securities were issued.

9.13.3 *Fractional Shares.* No fractional Shares shall be issued under the Plan. Any fractional Shares which, but for this Section, would have been issued shall be deemed to have been issued and immediately sold to the Company for their Fair Market Value, and the Participant shall receive from the Company cash in lieu of such fractional Shares.

9.13.4 *Recapitalization.* The Board may adjust the number of Shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration material changes in accounting practices or principles, extraordinary dividends, acquisitions or dispositions of stock or property, or any other event if it is determined by the Board that such adjustment is appropriate to avoid distortion in the operation of the Plan.

9.13.5 *Further Adjustment.* Upon the happening of any of the events described in Sections 9.13.1 or 9.13.4, the class and aggregate number of Shares set forth in Section 5.1 hereof that are subject to Awards which previously have been or subsequently may be granted under the Plan, and the number of Shares set forth in Section 5.3 hereof that may be granted to a Participant in any year shall be appropriately adjusted to reflect the events described in such Sections. The Board shall determine the specific adjustments to be made under this Section 9.13.5.

9.14 *Other Transfer Restrictions.* Notwithstanding any other provision of the Plan, in order to qualify for the exemption provided by Rule 16b-3 under the Exchange Act, and any successor provision, (i) any Restricted Stock offered under the Plan to a Participant subject to Section 16 of the Exchange Act (a “Section 16 Participant”) may not be sold for six months after acquisition; (ii) any Shares or other equity security acquired by a Section 16 Participant upon exercise of an Option may not be sold for six months after the date of grant of the Option; and (iii) any Option or other similar right related to an equity security issued under the Plan shall not be transferable except in accordance with the rules under Section 16 of the Exchange Act, subject to any other applicable transfer restrictions under the Plan or the Award Agreement. The Board shall have no authority to take any action if the authority to take such action, or the taking of such action, would disqualify a transaction under the Plan from the exemption provided by Rule 16b-3 under the Act, or any successor provision.

10. Amendment and Termination

10.1 *Amendment, Suspension, Termination of the Plan.* The Board may amend, suspend or terminate the Plan in whole or in part at any time and for any reason; *provided, however,* that any amendment of the Plan which is necessary to comply with any applicable tax or regulatory requirement, including any requirements for exemptive relief under Section 16(b) of the Exchange Act or any successor provision, shall be subject to the approval of the Company’s stockholders. Stockholder approval shall not be required for any other amendment of

the Plan. No amendment, suspension or termination of the Plan shall materially adversely affect the rights of a Participant, without such Participant's consent, with respect to any Award previously made.

10.2 *Amendment, Suspension, Termination of an Award.* The Board may modify, amend or terminate any outstanding Award, including, without limitation, substituting therefor another Award of the same or a different type, changing the date of exercise or realization and converting an ISO to a NQO; *provided, however,* that the Participant's consent to such action shall be required unless the Board determines that the action, taking into account any related action, would not materially adversely affect the Participant.

11. Authorization of Sub-Plans

The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board shall establish such sub-plans by adopting supplements to this Plan containing (i) such limitations on the Board's discretion under the Plan as the Board deems necessary or desirable or (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board shall deem necessary or desirable. All supplements adopted by the Board shall be deemed to be part of the Plan, but each supplement shall apply only to Participants within the affected jurisdiction and the Company shall not be required to provide copies of any supplement to Participants in any jurisdiction which is not the subject of such supplement.

12. Legal Construction

12.1 *Captions.* The captions provided herein are included solely for convenience of reference and shall not affect the meaning of any of the provisions of the Plan or serve as a basis for interpretation or construction of the Plan.

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

12.3 *Governing Law.* The Plan and all rights under the Plan shall be construed in accordance with and governed by the internal laws of Delaware, without giving effect to the principles of the conflicts of laws thereof.

12.4 *Variation of Pronouns.* When used herein, pronouns and variations thereof shall be deemed to refer to the masculine, feminine or neuter or to the singular or plural as the identity of the person or persons referenced or the context may require.