

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

FORM S-8

REGISTRATION STATEMENT  
Under  
The Securities Act of 1933

**EXELIXIS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**04-3257395**

(I.R.S. Employer Identification Number)

170 Harbor Way  
P.O. Box 511  
South San Francisco, California 94083  
**(650) 837-7000**

(Address of principal executive offices, including zip code)

**Options Assumed By Exelixis, Inc.  
Originally Granted Under The  
Agritope, Inc. 1997 Stock Award Plan**

(Full title of the plan)

Glen Y. Sato  
Chief Financial Officer  
Exelixis, Inc.  
170 Harbor Way  
P.O. Box 511  
South San Francisco, CA 94083  
(650) 837-7000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Robert L. Jones, Esq.  
Cooley Godward llp  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, California 94306**

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Stock Options and Common Stock (par value \$.001)	642,798	\$ 5.71 - \$ 20.00	\$ 8,581,467	\$ 2,265.51

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended. The offering price per share is based upon the exercise prices for shares subject to outstanding options granted under the Agritope, Inc. ("Agritope") 1997 Stock Award Plan.

Approximate date of commencement of proposed sale to the public: as soon as practicable after this Registration Statement becomes effective.

The stock options to be registered hereunder have been assumed by Exelixis, Inc. ("Exelixis") pursuant to an Agreement and Plan of Merger and Reorganization, dated as of September 7, 2000, by and among Exelixis, a Delaware corporation, Athens Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of Exelixis, and Agritope, a Delaware corporation. These options were originally granted to employees and consultants of Agritope under the Agritope 1997 Stock Award Plan.

## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Exelixis, Inc. (the "Company") with the Securities and Exchange Commission (the "SEC") are incorporated by reference into this Registration Statement:

- a. The Company's prospectus filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the "Securities Act"), on April 25, 2000 (No. 333-96335);
- b. The Company's quarterly reports on Form 10-Q for the quarters ended March 31, June 30 and September 30, 2000;
- c. The Company's current reports on Form 8-K dated April 24, September 7 and November 8, 2000; and
- d. The description of the Company's common stock which is contained in the Registration Statement on Form 8-A filed on April 6, 2000, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company 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 have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this registration statement from the date of the filing of such reports and documents.

### INTERESTS OF NAMED EXPERTS AND COUNSEL

The legality of the common stock offered hereby will be passed upon for the Company by Cooley Godward llp, Palo Alto, California.

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Under Section 145 of the Delaware General Corporation Law, the Company has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. The Amended and Restated Bylaws of the Company require the Company to indemnify its directors and executive officers, and permit the Company to indemnify its other officers, employees and other agents, to the extent permitted by Delaware law. Under the Bylaws, indemnified parties are entitled to indemnification for negligence, gross negligence and otherwise to the fullest extent permitted by law. The Bylaws also require the Company to advance litigation expenses in the case of stockholder derivative actions, or other actions, against an undertaking by the indemnified party to repay such advances if it is ultimately determined that the indemnified party is not entitled to indemnification.

The Company has entered into indemnity agreements with each of its directors and executive officers. Such indemnity agreements contain provisions which are in some respects broader than the specific indemnification provisions contained in Delaware law. The Company also maintains an insurance policy for its directors and executive officers insuring against certain liabilities arising in their capacities as such.

### EXHIBITS

#### Exhibit Number

- 4.1\* Amended and Restated Certificate of Incorporation of the Company.
- 4.2\* Restated Bylaws of the Company.
- 5.1 Opinion of Cooley Godward llp.
- 23.1 Consent of Independent Accountants.
- 23.2 Consent of Cooley Godward llp is contained in Exhibit 5.1 to this Registration Statement.
- 24.1 Power of Attorney is contained on the signature pages.
- 99.1 Agritope, Inc. 1997 Stock Award Plan.

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\*Incorporated by reference to the Company's Registration Statement on Form S-1, as amended (File No.333-96335), originally filed with the SEC on February 7, 2000.

### UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of the 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 the 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 Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 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 (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference herein.

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

(c) 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.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference herein 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. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

### SIGNATURES

Pursuant to the requirements of the Securities Act, 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 City of South San Francisco, State of California, on December 18, 2000.

**EXELIXIS, INC.**

By: /s/ George A. Scangos, Ph.D.

George A. Scangos, Ph.D.

President and Chief Executive Officer

### POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints George A. Scangos and Glen Y. Sato, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, 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, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, 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, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ George A. Scangos, Ph.D.</u> George A. Scangos, Ph.D.	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	December 18, 2000
<u>/s/ Glen Y. Sato</u> Glen Y. Sato	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	December 18, 2000
<u>/s/ Steilos Papadopoulos, Ph.D.</u> Stelios Papadopoulos, Ph.D.	Chairman of the Board of Directors	December 18, 2000
<u>/s/ Charles Cohen, Ph.D.</u> Charles Cohen, Ph.D.	Director	December 18, 2000

<u>/s/ Jurgen Drews, M.D.</u> Jurgen Drews, M.D.	Director	December 18, 2000
<u>/s/ Geoffrey Duyk, M.D. Ph.D.</u> Geoffrey Duyk, M.D., Ph.D.	Director	December 18, 2000
<u>/s/ Jason S. Fisherman, M.D.</u> Jason S. Fisherman, M.D.	Director	December 18, 2000
<u>/s/ Jean-Francois Formela, M.D.</u> Jean-Francois Formela, M.D.	Director	December 18, 2000
Edmund Olivier de Vezin	Director	
<u>/s/ Lance Willsey, M.D.</u> Lance Willsey, M.D.	Director	December 18, 2000
<u>/s/ Peter Stadler</u> Peter Stadler, Ph.D.	Director	December 20, 2000

## EXHIBITS

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- 23.1 Consent of Independent Accountants.
- 23.2 Consent of Cooley Godward llp is contained in Exhibit 5.1 to this Registration Statement.
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\*Incorporated by reference to the Company's Registration Statement on Form S-1, as amended (File No.333-96335), originally filed with the SEC on February 7, 2000.

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Robert L. Jones, Esq.  
Direct: (650) 843-5034  
Internet: jonesrl@cooley.com

December 21, 2000

Exelixis, Inc.  
170 Harbor Way  
P.O. Box 511  
South San Francisco, CA 94083

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by Exelixis, Inc. (the "Company") of a Registration Statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission covering the offering of an aggregate of 642,798 shares of the Company's common stock, \$.001 par value (the "Shares"), issuable upon exercise of options originally granted by Agritope, Inc., ("Agritope"), a wholly-owned subsidiary of the Company and now named Exelixis Plant Sciences, Inc., under the Agritope 1997 Stock Award Plan (the "Plan").

In connection with this opinion, we have examined the Registration Statement and related Prospectus, your Amended and Restated Certificate of Incorporation and Bylaws and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plan, the Registration Statement and the related Prospectus, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

Cooley Godward llp

By: /s/ Robert L. Jones  
Robert L. Jones

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**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated January 31, 2000, except to the sixth paragraph of Note 1 which is as of April 7, 2000, relating to the financial statements of Exelixis, Inc., which appears in the Company' registration statement on Form S-1 (No. 333-96355).

/s/ PricewaterhouseCoopers LLP  
PricewaterhouseCoopers llp

San Jose, California

December 19, 2000

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## 1997 STOCK AWARD PLAN

## AGRITOPE, INC.

## ARTICLE 1

## ESTABLISHMENT AND PURPOSE

1.1 **Establishment.** Agritope, Inc., a Delaware corporation ("Corporation"), hereby establishes the Agritope, Inc., 1997 Stock Award Plan (the "Plan"), effective as of November 14, 1997.

1.2 **Purpose.** The purpose of the Plan is to promote and advance the interests of Corporation and its shareholders by enabling Corporation to attract, retain, and reward key employees, outside advisors, and directors of Corporation and its subsidiaries. It is also intended to strengthen the mutuality of interests between such employees, advisers, and directors and Corporation's shareholders. The Plan is designed to meet this intent by offering stock options and other equity-based incentive awards, thereby providing a proprietary interest in pursuing the long-term growth, profitability, and financial success of Corporation.

## ARTICLE 2

## DEFINITIONS

2.1 **Defined Terms.** For purposes of the Plan, the following terms shall have the meanings set forth below:

"**Advisor**" means a member of an Advisory Committee of Corporation or a Subsidiary, or any other consultant selected by the Committee, who is neither an employee of Corporation or a Subsidiary nor a Non-Employee Director.

"**Advisory Committee**" means a scientific advisory committee to Corporation or a Subsidiary.

"**Award**" means an award or grant made to a Participant of Options, Stock Appreciation Rights, Restricted Awards, Performance Awards, or Other Stock-Based Awards pursuant to the Plan.

"**Award Agreement**" means an agreement as described in Section 6.4.

"**Board**" means the Board of Directors of Corporation.

"**Code**" means the Internal Revenue Code of 1986, as amended and in effect from time to time, or any successor thereto, together with rules, regulations, and interpretations promulgated thereunder. Where the context so requires, any reference to a particular Code section shall be construed to refer to the successor provision to such Code section.

"**Committee**" means the committee appointed by the Board to administer the Plan as provided in Article 3 of the Plan.

"**Common Stock**" means the Common Stock, no par value \$.01 per share, of Corporation or any security of Corporation issued in substitution, exchange, or in lieu of such stock.

"**Continuing Restriction**" means a Restriction contained in Sections 6.5(g), 16.4, 16.5, and 16.7 of the Plan and any other Restrictions expressly designated by the Committee in an Award Agreement as a Continuing Restriction.

"**Corporation**" means Agritope, Inc., an Oregon a Delaware corporation, or any successor corporation.

"**Deferred Compensation Option**" means a Nonqualified Option granted with an option price less than Fair Market Value on the date of grant pursuant to Section 7.9 of the Plan.

"**Disability**" means the condition of being "disabled" within the meaning of Section 422(c)(7) of the Code. However, the Committee may change the foregoing definition of "Disability" or may adopt a different definition for purposes of specific Awards.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended and in effect from time to time, or any successor statute. Where the context so requires, any reference to a particular section of the Exchange Act, or to any rule promulgated under the Exchange Act, shall be construed to refer to successor provisions to such section or rule.

"**Fair Market Value**" means the mean between the reported high and low sale prices, or, if there is no sale on such day, the mean between the reported bid and asked prices, for the Common Stock on that day or, if that day is not a trading day, the last prior trading day, on the securities exchange or automated securities interdealer quotation system on which such Common Stock shall have been listed or traded.

"**Incentive Stock Option**" or "**ISO**" means any Option granted pursuant to the Plan that is intended to be and is specifically designated in its Award Agreement as an "incentive stock option" within the meaning of Section 422 of the Code.

"**Non-Employee Director**" means a member of the Board or of the Board of Directors of a Subsidiary who is not an employee of Corporation or any Subsidiary.

"**Nonqualified Option**" or "**NQO**" means any Option, including a Deferred Compensation Option, granted pursuant to the Plan that is not an Incentive Stock Option.

"**Option**" means an ISO, an NQO, or a Deferred Compensation Option.

"**Other Stock-Based Award**" means an Award as defined in Section 11.1.

"**Participant**" means an employee of Corporation or a Subsidiary, an Advisor, or a Non-Employee Director who is granted an Award under the Plan.

**"Performance Award"** means an Award granted pursuant to the provisions of Article 10 of the Plan, the Vesting of which is contingent on performance attainment.

**"Performance Cycle"** means a designated performance period pursuant to the provisions of Section 10.3 of the Plan.

**"Performance Goal"** means a designated performance objective pursuant to the provisions of Section 10.4 of the Plan.

**"Plan"** means this Agritope, Inc., 1997 Stock Award Plan as it may be hereafter amended from time to time.

**"Reporting Person"** means a Participant who is subject to the reporting requirements of Section 16(a) of the Exchange Act.

**"Restricted Award"** means a Restricted Share or a Restricted Unit granted pursuant to Article 9 of the Plan.

**"Restricted Share"** means an Award described in Section 9.1(a) of the Plan.

**"Restricted Unit"** means an Award of units representing Shares described in Section 9.1(b) of the Plan.

**"Restriction"** means a provision in the Plan or in an Award Agreement which limits the exercisability or transferability, or which governs the forfeiture, of an Award or the Shares, cash, or other property payable pursuant to an Award.

**"Retirement"** means:

- (a) For Participants who are employees, retirement from active employment with Corporation and its Subsidiaries at or after age 50, or such earlier retirement date as approved by the Committee for purposes of the Plan;
- (b) For Participants who are Non-Employee Directors, termination of membership on the Board or on the Board of Directors of any Subsidiary after attaining age 50, or such earlier retirement date as approved by the Committee for purposes of the Plan; and
- (c) For Participants who are Advisors, termination of service as an Advisor after attaining age 50, or such earlier retirement date as approved by the Committee for purposes of the Plan.

However, the Committee may change the foregoing definition of "Retirement" or may adopt a different definition for purposes of specific Awards.

**"Share"** means a share of Common Stock.

**"Stock Appreciation Right"** or **"SAR"** means an Award to benefit from the appreciation of Common Stock granted pursuant to the provisions of Article 8 of the Plan.

**"Subsidiary"** means a "subsidiary corporation" of Corporation within the meaning of Section 424 of the Code, namely any corporation in which Corporation directly or indirectly controls 50 percent or more of the total combined voting power of all classes of stock having voting power.

**"Vest"** or **"Vested"** means:

- (a) In the case of an Award that requires exercise, to be or to become immediately and fully exercisable and free of all Restrictions (other than Continuing Restrictions);
- (b) In the case of an Award that is subject to forfeiture, to be or to become nonforfeitable, freely transferable, and free of all Restrictions (other than Continuing Restrictions);
- (c) In the case of an Award that is required to be earned by attaining specified Performance Goals, to be or to become earned and nonforfeitable, freely transferable, and free of all Restrictions (other than Continuing Restrictions); or
- (d) In the case of any other Award as to which payment is not dependent solely upon the exercise of a right, election, exercise, or option, to be or to become immediately payable and free of all Restrictions (except Continuing Restrictions).

2.2 **Gender and Number.** Except where otherwise indicated by the context, any masculine or feminine terminology used in the Plan shall also include the opposite gender; and the definition of any term in Section 2.1 in the singular shall also include the plural, and vice versa.

### ARTICLE 3

#### ADMINISTRATION

3.1 **General.** Except as provided in Section 3.7, the Plan shall be administered by a Committee composed as described in Section 3.2.

3.2 **Composition of the Committee.** The Committee shall be appointed by the Board and shall consist of two or more members of the Board. The Board may from time to time remove members from, or add members to, the Committee. Vacancies on the Committee, however caused, shall be filled by the Board. The initial members of the Committee shall be the members of Corporation's existing Executive Compensation Committee. The Board may at any time replace the Executive Compensation Committee with another Committee. In the event that the Executive Compensation Committee shall cease to satisfy the requirements of Rule 16b-3, the Board shall appoint another Committee satisfying such requirements.

3.3 **Authority of the Committee.** The Committee shall have full power and authority (subject to such orders or resolutions as may be issued or adopted from time to time by the Board) to administer the Plan in its sole discretion, including the authority to:

- (a) Construe and interpret the Plan and any Award Agreement;
- (b) Promulgate, amend, and rescind rules and procedures relating to the implementation of the Plan;
- (c) With respect to employees and Advisors:
  - (i) Select the employees and Advisors who shall be granted Awards;



- (ii) Determine the number and types of Awards to be granted to each such Participant;
- (iii) Determine the number of Shares, or Share equivalents, to be subject to each Award;
- (iv) Determine the option price, purchase price, base price, or similar feature for any Award; and
- (v) Determine all the terms and conditions of all Award Agreements, consistent with the requirements of the Plan.

Decisions of the Committee, or any delegate as permitted by the Plan, shall be final, conclusive, and binding on all Participants.

3.4 Action by the Committee. A majority of the members of the Committee shall constitute a quorum for the transaction of business. Action approved by a majority of the members present at any meeting at which a quorum is present, or action in writing by all the members of the Committee, shall be the valid acts of the Committee.

3.5 Delegation. Notwithstanding the foregoing, the Committee may delegate to one or more officers of Corporation the authority to determine the recipients, types, amounts, and terms of Awards granted to Participants who are not Reporting Persons. 3.6 Liability of Committee Members. No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award, or any Participant.

3.67 Awards to Non-Employee Directors. The Board may grant Awards from time to time to Non-Employee Directors. With respect to an Award granted to a Non-Employee Director, all references to the

"Committee" in the Sections Sections of this Plan relating to that particular Award shall be deemed to be references references to the "Board". Awards to Non-Employee Directors shall be governed by and shall be subject to the terms and conditions set forth in an Award Agreement in a form approved by the Board.

3.8 Costs of Plan. The costs and expenses of administering the Plan shall be borne by Corporation.

#### ARTICLE 4

##### DURATION OF THE PLAN AND SHARES SUBJECT TO THE PLAN

4.1 Duration of the Plan. The Plan is effective November 14, 1997. The Plan shall remain in effect until Awards have been granted covering all the available Shares or the Plan is otherwise terminated by the Board. Termination of the Plan shall not affect outstanding Awards.

4.2 Shares Subject to the Plan.

4.2.1 General. The shares which may be made subject to Awards under the Plan shall be shares of Common Stock, which may be either authorized and unissued Shares or reacquired Shares. No fractional Shares shall be issued under the Plan. If an Award under the Plan is canceled or expires for any reason prior to having been fully Vested or exercised by a Participant or is settled in cash in lieu of Shares or is exchanged for other Awards, all Shares covered by such Awards shall be made available for future Awards under the Plan. Furthermore, any Shares used as full or partial payment to Corporation by a Participant of the option, purchase, or other exercise price of an Award and any Shares covered by a Stock Appreciation Right which are not issued upon exercise shall become available for future Awards.

4.2.2 Number of Shares. The maximum number of Shares for which Awards may be granted under the Plan is 2,000,000 Shares, subject to adjustment pursuant to Article 14.

4.2.3 Availability of Shares for Future Awards. If an Award under the Plan is canceled or expires for any reason prior to having been fully Vested or exercised by a Participant or is settled in cash in lieu of Shares or is exchanged for other Awards, all Shares covered by such Awards shall be made available for future Awards under the Plan. Furthermore, any Shares used as full or partial payment to Corporation by a Participant of the option, purchase, or other exercise price of an Award and any Shares covered by a Stock Appreciation Right which are not issued upon exercise shall become available for future Awards.

#### ARTICLE 5

##### ELIGIBILITY

5.1 Employees and Advisors. Officers and other key employees of Corporation and its Subsidiaries (who may also be directors of Corporation or a Subsidiary) and Advisors who, in the Committee's judgment, are or will be contributors to the long-term success of Corporation shall be eligible to receive Awards under the Plan.

5.2 Non-Employee Directors. All Non-Employee Directors shall be eligible to receive Awards as provided in Section 3.76 of the Plan.

#### ARTICLE 6

##### AWARDS

6.1 Types of Awards. The types of Awards that may be granted under the Plan are:

- (a) Options governed by Article 7 of the Plan;
- (b) Stock Appreciation Rights governed by Article 8 of the Plan;
- (c) Restricted Awards governed by Article 9 of the Plan;
- (d) Performance Awards governed by Article 10 of the Plan; and
- (e) Other Stock-Based Awards or combination awards governed by Article 11 of the Plan.

In the discretion of the Committee, any Award may be granted alone, in addition to, or in tandem with other Awards under the Plan.

6.2 General. Subject to the limitations of the Plan, the Committee may cause Corporation to grant Awards to such Participants, at such times, of such types, in such amounts, for such periods, with such option prices, purchase prices, or base prices, and subject to such terms, conditions, limitations, and restrictions as the Committee, in its discretion, shall deem appropriate. Awards may be granted as additional compensation to a Participant or in lieu of other compensation to such Participant. A Participant may receive more than one Award and more than one type of Award under the Plan.

6.3 Nonuniform Determinations. The Committee's determinations under the Plan or under one or more Award Agreements, including without limitation, (a) the selection of Participants to receive Awards, (b) the type, form, amount, and timing of Awards, (c) the terms of specific Award Agreements, and (d) elections and determinations made by the Committee with respect to exercise or payments of Awards, need not be uniform and may be made by the Committee selectively among Participants and Awards, whether or not Participants are similarly situated.

6.4 Award Agreements. Each Award shall be evidenced by a written Award Agreement between Corporation and the Participant. Award Agreements may, subject to the provisions of the Plan, contain any provision approved by the Committee.

6.5 Provisions Governing All Awards. All Awards shall be subject to the following provisions:

(a) Alternative Awards. If any Awards are designated in their Award Agreements as alternative to each other, the exercise of all or part of one Award automatically shall cause an immediate equal (or pro rata) corresponding termination of the other alternative Award or Awards.

(b) Rights as ShareStockholders. No Participant shall have any rights of a sharestockholder with respect to Shares subject to an Award until such Shares are issued in the name of the Participant.

(c) Employment Rights. Neither the adoption of the Plan nor the granting of any Award shall confer on any person the right to continued employment with Corporation or any Subsidiary or the right to remain as a director of Corporation or a Subsidiary or a member of any Advisory Committee, as the case may be, nor shall it interfere in any way with the right of Corporation or a Subsidiary to terminate such person's employment or to remove such person as an Advisor or as a director at any time for any reason, with or without cause.

(d) Termination Of Employment. The terms and conditions under which an Award may be exercised, if at all, after a Participant's termination of employment or service as an Advisor or as a Non-Employee Director shall be determined by the Committee and specified in the applicable Award Agreement.

(e) Change in Control. The Committee, in its discretion, may provide in any Award Agreement that in the event of a change in control of Corporation (as the Committee may define such term in the Award Agreement), as of the date of such change in control:

(i) All, or a specified portion of, Awards requiring exercise shall become fully and immediately exercisable, notwithstanding any other limitations on exercise;

(ii) All, or a specified portion of, Awards subject to Restrictions shall become fully Vested; and

(iii) All, or a specified portion of, Awards subject to Performance Goals shall be deemed to have been fully earned.

The Committee, in its discretion, may include change -in -control provisions in some Award Agreements and not in others, may include different change -in -control provisions in different Award Agreements, and may include change in control provisions for some Awards or some Participants and not for others.

(f) Reporting Persons. With respect to all Awards granted to Reporting Persons, the Award Agreement shall provide that:

(i) Awards requiring exercise shall not be exercisable until at least six months after the date the Award was granted, except in the case of the death or Disability of the Participant; and

(ii) Shares issued pursuant to any other Award may not be sold by the Participant for at least six months after acquisition, except in the case of the death or Disability of the Participant;

provided, however, that (unless an Award Agreement provides otherwise) the limitation of this Section 6.5 (f) shall apply only if or to the extent required by Rule 16b-3 under the Exchange Act or any applicable successor provision. Award Agreements for Awards to Reporting Persons shall also comply with any future restrictions imposed by such Rule 16b-3 under the Exchange Act.

(g) Service Periods. At the time of granting Awards, the Committee may specify, by resolution or in the Award Agreement, the period or periods of service performed or to be performed by the Participant in connection with the grant of the Award.

(h) Restrictions on Transfer. An Award shall not be transferable otherwise than by will or the laws of descent and distribution; provided, however, that, with the consent of the Committee, which consent may be withheld in its sole discretion or conditioned on such requirements as the Committee shall deem appropriate, all or any portion of a NQO may be assigned or transferred without consideration to the Participant's immediate family (i.e., children, stepchildren, grandchildren, spouse, parents and siblings), to trusts for the benefit of the Participant's immediate family members, to partnerships or limited liability companies for the Participant's immediate family members, and pursuant to qualified domestic relations orders.

## ARTICLE 7

### OPTIONS

7.1 Types of Options. Options granted under the Plan may be in the form of Incentive Stock Options or Nonqualified Options (including Deferred Compensation Options). The grant of each Option and the Award Agreement governing each Option shall identify the Option as an ISO or an NQO. In the event the Code is amended to provide for tax-favored forms of stock options other than or in addition to Incentive Stock Options, the Committee may grant Options under the Plan meeting the requirements of such forms of options.

7.2 General. Options shall be subject to the terms and conditions set forth in Article 6 and this Article 7 and shall contain such additional terms and conditions, not inconsistent with the express provisions of the Plan, as the Committee (or the Board with respect to Awards to Non-Employee Directors) shall deem desirable.

7.3 Option Price. Each Award Agreement for Options shall state the option exercise price per Share of Common Stock purchasable under the Option, which shall not be less than:

- (a) \$1 per share in the case of a Deferred Compensation Option;
- (b) 75 percent of the Fair Market Value of a Share on the date of grant for all other Nonqualified Options; or
- (c) 100 percent of the Fair Market Value of a Share on the date of grant for all Incentive Stock Options.

7.4 Option Term. The Award Agreement for each Option shall specify the term of each Option, which may be unlimited or may have a specified period during which the Option may be exercised, as determined by the Committee.

7.5 Time of Exercise. The Award Agreement for each Option shall specify, as determined by the Committee:

- (a) The time or times when the Option shall become exercisable and whether the Option shall become exercisable in full or in graduated amounts over a period specified in the Award Agreement;
- (b) Such other terms, conditions, and restrictions as to when the Option may be exercised as shall be determined by the Committee; and
- (c) The extent, if any, to which the Option shall remain exercisable after the Participant ceases to be an employee, Advisor, or director of Corporation or a Subsidiary.

An Award Agreement for an Option may, in the discretion of the Committee, provide whether, and to what extent, the Option will become immediately and fully exercisable (i) in the event of the death, Disability, or Retirement of the Participant, or (ii) upon the occurrence of a change in control of Corporation.

7.6 Method of Exercise. The Award Agreement for each Option shall specify the method or methods of payment acceptable upon exercise of an Option. An Award Agreement may provide that the option price is payable in full in cash or, at the discretion of the Committee:

- (a) In installments on such terms and over such period as the Committee shall determine;
- (b) In previously acquired Shares (including Restricted Shares);
- (c) By surrendering outstanding Awards under the Plan denominated in Shares or in Share-equivalent units;
- (d) By delivery (in a form approved by the Committee) of an irrevocable direction to a securities broker acceptable to the Committee:
  - (i) To sell Shares subject to the Option and to deliver all or a part of the sales proceeds to Corporation in payment of all or a part of the option price and withholding taxes due; or
  - (ii) To pledge Shares subject to the Option to the broker as security for a loan and to deliver all or a part of the loan proceeds to Corporation in payment of all or a part of the option price and withholding taxes due; or
- (e) In any combination of the foregoing or in any other form approved by the Committee.

If Restricted Shares are surrendered in full or partial payment of an Option price, a corresponding number of the Shares issued upon exercise of the Option shall be Restricted Shares subject to the same Restrictions as the surrendered Restricted Shares.

7.7 Special Rules for Incentive Stock Options. In the case of an Option designated as an Incentive Stock Option, the terms of the Option and the Award Agreement shall be in conformance with the statutory and regulatory requirements specified in Section 422 of the Code, as in effect on the date such ISO is granted. ISOs may be granted only to employees of Corporation or a Subsidiary. ISOs may not be granted under the Plan after November 14, 2007, unless the ten-year limitation of Section 422(b)(2) of the Code is removed or extended.

7.8 Restricted Shares. In the discretion of the Committee, the Shares issuable upon exercise of an Option may be Restricted Shares if so provided in the Award Agreement.

7.9 Deferred Compensation Options. The Committee may, in its discretion, grant Deferred Compensation Options with an option price less than Fair Market Value to provide a means for deferral of compensation to future dates. The option price shall be determined by the Committee subject to Section 7.3(a) of the Plan. The number of Shares subject to a Deferred Compensation Option shall be determined by the Committee, in its discretion, by dividing the amount of compensation to be deferred by the difference between the Fair Market Value of a Share on the date of grant and the option price of the Deferred Compensation Option. Amounts of compensation deferred with Deferred Compensation Options may include amounts earned under Awards granted under the Plan or under any other compensation program or arrangement of Corporation as permitted by the Committee. The Committee shall grant Deferred Compensation Options only if it reasonably determines that the recipient of such an Option is not likely to be deemed to be in constructive receipt for income tax purposes of the income being deferred.

7.10 Reload Options. The Committee, in its discretion, may provide in an Award Agreement for an Option that in the event all or a portion of the Option is exercised by the Participant using previously acquired Shares, the Participant shall automatically be granted a replacement Option (with an option price equal to the Fair Market Value of a Share on the date of such exercise) for a number of Shares equal to (or equal to a portion of) the number of shares surrendered upon exercise of the Option. Such reload Option features may be subject to such terms and conditions as the Committee shall determine, including without limitation, a condition that the Participant retain the Shares issued upon exercise of the Option for a specified period of time.

7.11 Limitation on Number of Shares Subject to Options. In no event may options for more than 500,000 Shares be granted to any individual under the Plan during any fiscal year period.

## ARTICLE 8

### STOCK APPRECIATION RIGHTS

8.1 General. Stock Appreciation Rights shall be subject to the terms and conditions set forth in Article 6 and this Article 8 and shall contain such additional terms and conditions, not inconsistent with the express terms of the Plan, as the Committee (or the Board with respect to Awards to Non-Employee Directors) shall

deem desirable.

8.2 Nature of Stock Appreciation Right. A Stock Appreciation Right is an Award entitling a Participant to receive an amount equal to the excess (or if the Committee shall determine at the time of grant, a portion of the excess) of the Fair Market Value of a Share of Common Stock on the date of exercise of the SAR over the base price, as described below, on the date of grant of the SAR, multiplied by the number of Shares with respect to which the SAR shall have been exercised. The base price shall be designated by the Committee in the Award Agreement for the SAR and may be the Fair Market Value of a Share on the grant date of the SAR or such other higher or lower price as the Committee shall determine.

8.3 Exercise. A Stock Appreciation Right may be exercised by a Participant in accordance with procedures established by the Committee. The Committee may also provide that a SAR shall be automatically exercised on one or more specified dates or upon the satisfaction of one or more specified conditions. In the case of SARs granted to Reporting Persons, exercise of the SAR shall be limited by the Committee to the extent required to comply with the applicable requirements of Rule 16b-3 under the Exchange Act.

8.4 Form of Payment. Payment upon exercise of a Stock Appreciation Right may be made in cash, in installments, in Shares, by issuance of a Deferred Compensation Option, or in any combination of the foregoing, or in any other form as the Committee shall determine.

8.5 Limitation on Number of Shares Subject to Stock Appreciation Rights. In no event may SARs for more than 500,000 Shares be granted to any individual under the Plan during any fiscal year period.

## ARTICLE 9

### RESTRICTED AWARDS

9.1 Types of Restricted Awards. Restricted Awards granted under the Plan may be in the form of either Restricted Shares or Restricted Units.

(a) Restricted Shares. A Restricted Share is an Award of Shares transferred to a Participant subject to such terms and conditions as the Committee deems appropriate, including, without limitation, restrictions on the sale, assignment, transfer, or other disposition of such Restricted Shares and may include a requirement that the Participant forfeit such Restricted Shares back to Corporation upon termination of Participant's employment (or service as an Advisor or Non-Employee Director) for specified reasons within a specified period of time or upon other conditions, as set forth in the Award Agreement for such Restricted Shares. Each Participant receiving a Restricted Share shall be issued a stock certificate in respect of such Shares, registered in the name of such Participant, and shall execute a stock power in blank with respect to the Shares evidenced by such certificate. The certificate evidencing such Restricted Shares and the stock power shall be held in custody by Corporation until the Restrictions thereon shall have lapsed.

(b) Restricted Units. A Restricted Unit is an Award of units (with each unit having a value equivalent to one Share) granted to a Participant subject to such terms and conditions as the Committee deems appropriate, and may include a requirement that the Participant forfeit such Restricted Units upon termination of Participant's employment (or service as an Advisor or Non-Employee Director) for specified reasons within a specified period of time or upon other conditions, as set forth in the Award Agreement for such Restricted Units.

9.2 General. Restricted Awards shall be subject to the terms and conditions of Article 6 and this Article 9 and shall contain such additional terms and conditions, not inconsistent with the express provisions of the Plan, as the Committee (or the Board with respect to Awards to Non-Employee Directors) shall deem desirable.

9.3 Restriction Period. Restricted Awards shall provide that such Awards, and the Shares subject to such Awards, may not be transferred, and may provide that, in order for a Participant to Vest in such Awards, the Participant must remain in the employment (or remain as an Advisor or Non-Employee Director) of Corporation or its Subsidiaries, subject to relief for reasons specified in the Award Agreement, for a period commencing on the date of the Award and ending on such later date or dates as the Committee may designate at the time of the Award (the "Restriction Period"). During the Restriction Period, a Participant may not sell, assign, transfer, pledge, encumber, or otherwise dispose of Shares received under or governed by a Restricted Award grant. The Committee, in its sole discretion, may provide for the lapse of restrictions in installments during the Restriction Period. Upon expiration of the applicable Restriction Period (or lapse of Restrictions during the Restriction Period where the Restrictions lapse in installments) the Participant shall be entitled to settlement of the Restricted Award or portion thereof, as the case may be. Although Restricted Awards shall usually Vest based on continued employment (or service as an Advisor or Non-Employee Director) and Performance Awards under Article 10 shall usually Vest based on attainment of Performance Goals, the Committee, in its discretion, may condition Vesting of Restricted Awards on attainment of Performance Goals as well as continued employment (or service as an Advisor or Non-Employee Director). In such case, the Restriction Period for such a Restricted Award shall include the period prior to satisfaction of the Performance Goals.

9.4 Forfeiture. If a Participant ceases to be an employee, Non-Employee Director or Advisor of Corporation or a Subsidiary during the Restriction Period for any reason other than reasons which may be specified in an Award Agreement (such as death, Disability, or Retirement), the Award Agreement may require that all non-Vested Restricted Awards previously granted to the Participant be forfeited and returned to Corporation.

9.5 Settlement of Restricted Awards.

(a) Restricted Shares. Upon Vesting of a Restricted Share Award, the legend on such Shares will be removed and the Participant's stock power will be returned and the Shares will no longer be Restricted Shares. The Committee may also, in its discretion, permit a Participant to receive, in lieu of unrestricted Shares at the conclusion of the Restriction Period, payment in cash, installments, or by issuance of a Deferred Compensation Option equal to the Fair Market Value of the Restricted Shares as of the date the Restrictions lapse.

(b) Restricted Units. Upon Vesting of a Restricted Unit Award, a Participant shall be entitled to receive payment for Restricted Units in an amount equal to the aggregate Fair Market Value of the Shares covered by such Restricted Units at the expiration of the applicable Restriction Period. Payment in settlement of a Restricted Unit shall be made as soon as practicable following the conclusion of the applicable Restriction Period in cash, in installments, in Shares equal to the number of Restricted Units, by issuance of a Deferred Compensation Option, or in any other manner or combination of such methods as the Committee, in its sole discretion, shall determine.

9.6 Rights as a Shareholder. A Participant shall have, with respect to unforfeited Shares received under a grant of Restricted Shares, all the rights of a shareholder of Corporation, including the right to vote the shares, and the right to receive any cash dividends. Stock dividends issued with respect to Restricted Shares shall be treated as additional Shares covered by the grant of Restricted Shares and shall be subject to the same Restrictions.

## ARTICLE 10

## PERFORMANCE AWARDS

10.1 General. Performance Awards shall be subject to the terms and conditions set forth in Article 6 and this Article 10 and shall contain such other terms and conditions not inconsistent with the express provisions of the Plan, as the Committee (or the Board with respect to Awards to Non-Employee Directors) shall deem desirable.

10.2 Nature of Performance Awards. A Performance Award is an Award of units (with each unit having a value equivalent to one Share) granted to a Participant subject to such terms and conditions as the Committee deems appropriate, including, without limitation, the requirement that the Participant forfeit such Performance Award or a portion thereof in the event specified performance criteria are not met within a designated period of time.

10.3 Performance Cycles. For each Performance Award, the Committee shall designate a performance period (the "Performance Cycle") with a duration to be determined by the Committee in its discretion within which specified Performance Goals are to be attained. There may be several Performance Cycles in existence at any one time and the duration of Performance Cycles may differ from each other.

10.4 Performance Goals. The Committee shall establish Performance Goals for each Performance Cycle on the basis of such criteria and to accomplish such objectives as the Committee may from time to time select. Performance Goals may be based on performance criteria for Corporation, a Subsidiary, or an operating group, or based on a Participant's individual performance. Performance Goals may include objective and subjective criteria. During any Performance Cycle, the Committee may adjust the Performance Goals for

such Performance Cycle as it deems equitable in recognition of unusual or nonrecurring events affecting Corporation, changes in applicable tax laws or accounting principles, or such other factors as the Committee may determine.

10.5 Determination of Awards. As soon as practicable after the end of a Performance Cycle, the Committee shall determine the extent to which Performance Awards have been earned on the basis of performance in relation to the established Performance Goals.

10.6 Timing and Form of Payment. Settlement of earned Performance Awards shall be made to the Participant as soon as practicable after the expiration of the Performance Cycle and the Committee's determination under Section 10.5, in the form of cash, installments, Shares, Deferred Compensation Options, or any combination of the foregoing or in any other form as the Committee shall determine.

### ARTICLE 11

#### OTHER STOCK-BASED AND COMBINATION AWARDS

11.1 Other Stock-Based Awards. The Committee (or the Board with respect to Awards to Non-Employee Directors) may grant other Awards under the Plan pursuant to which Shares are or may in the future be acquired, or Awards denominated in or measured by Share -equivalent units, including Awards valued using measures other than the market value of Shares. Such Other Stock- Based Awards may be granted either alone, in addition to, or in tandem with, any other type of Award granted under the Plan.

11.2 Combination Awards. The Committee may also grant Awards under the Plan in tandem or combination with, in exchange for, or as alternatives to, other Awards, or in tandem or combination with, in exchange for, or as alternatives to, grants or rights under any other employee plan of Corporation or any Subsidiary, including the plan of any acquired entity. No action authorized by this section shall reduce the amount of any existing benefits or change the terms and conditions thereof without the Participant's consent.

### ARTICLE 12

#### DEFERRAL ELECTIONS

The Committee may permit a Participant to elect to defer receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise, earn-out, or Vesting of an Award made under the Plan. If any such election is permitted, the Committee shall establish rules and procedures for such payment deferrals, including, but not limited to: (a) payment or crediting of reasonable interest on such deferred amounts credited in cash, (b) the payment or crediting of dividend equivalents in respect of deferrals credited in Share equivalent units, or (c) granting of Deferred Compensation Options.

### ARTICLE 13

#### DIVIDEND EQUIVALENTS

Any Awards may, at the discretion of the Committee, earn dividend equivalents. In respect of any such Award which is outstanding on a dividend record date for Common Stock, the Participant may be credited with an amount equal to the amount of cash or stock dividends that would have been paid on the Shares covered by such Award, had such covered Shares been issued and outstanding on such dividend record date. The Committee shall establish such rules and procedures governing the crediting of dividend equivalents, including the timing, form of payment, and payment contingencies of such dividend equivalents, as it deems are appropriate or necessary.

### ARTICLE 14

#### ADJUSTMENTS UPON CHANGES IN CAPITALIZATION, ETC.

14.1 Plan Does Not Restrict Corporation. The existence of the Plan and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Board or the shareholders of Corporation to make or authorize any adjustment, recapitalization, reorganization, or other change in Corporation's capital structure or its business, any merger or consolidation of the Corporation, any issue of bonds, debentures, preferred or prior preference stocks ahead of or affecting Corporation's capital stock or the rights thereof, the dissolution or liquidation of Corporation or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding.

14.2 Adjustments by the Committee. In the event of any change in capitalization affecting the Common Stock of Corporation, such as a stock dividend, stock split, recapitalization, merger, consolidation, split-up, combination or exchange of shares or other form of reorganization, or any other change affecting the Common Stock, such proportionate adjustments, if any, as the Committee, in its sole discretion, may deem appropriate to reflect such change, shall be made with respect to the aggregate number of Shares for which Awards in respect thereof may be granted under the Plan, the maximum number of Shares which may be sold or awarded to any Participant, the number of Shares covered by each outstanding Award, and the price per Share in respect of outstanding Awards. The Committee may also make such adjustments in the number of Shares covered by, and price or other value of, any outstanding Awards in the event of a spin-off or other distribution (other than normal cash dividends), of Corporation assets to shareholders.

## ARTICLE 15

### AMENDMENT AND TERMINATION

Without further approval of Corporation's shareholders, the Board may at any time terminate the Plan, or may amend it from time to time in such respects as the Board may deem advisable, except that the Board may not, without approval of the shareholders, make any amendment that would materially increase the aggregate number of shares of Common Stock that may be issued under the Plan (except for adjustments pursuant to Article 14 of the Plan). Without further shareholder approval, the Board may amend the Plan to take into account changes in applicable securities laws, federal income tax laws, and other applicable laws. Further, should the provisions of Rule 16b-3, or any successor rule, under the Exchange Act be amended, the Board, without further shareholder approval, may amend the Plan as necessary to comply with any modifications to such rule.

## ARTICLE 16

### MISCELLANEOUS

#### 16.1 Tax Withholding.

16.1.1 General. Corporation shall have the right to deduct from any settlement, including the delivery or vesting of Shares, made under the Plan any federal, state, or local taxes of any kind required by law to be withheld with respect to such payments or to take such other action as may be necessary in the opinion of Corporation to satisfy all obligations for the payment of such taxes. The recipient of any payment or distribution under the Plan shall make arrangements satisfactory to Corporation for the satisfaction of any such withholding tax obligations. Corporation shall not be required to make any such payment or distribution under the Plan until such obligations are satisfied.

16.1.2 Stock Withholding. The Committee, in its sole discretion, may permit a Participant to satisfy all or a part of the withholding tax obligations incident to the settlement of an Award involving payment or delivery of Shares to the Participant by having Corporation withhold a portion of the Shares that would otherwise be issuable to the Participant. Such Shares shall be valued based on their Fair Market Value on the date the tax withholding is required to be made. Any stock withholding with respect to a Reporting Person shall be subject to such limitations as the Committee may impose to comply with the requirements of the Exchange Act.

16.2 Unfunded Plan. The Plan shall be unfunded and Corporation shall not be required to segregate any assets that may at any time be represented by Awards under the Plan. Any liability of Corporation to any person with respect to any Award under the Plan shall be based solely upon any contractual obligations that may be effected pursuant to the Plan. No such obligation of Corporation shall be deemed to be secured by any pledge of, or other encumbrance on, any property of Corporation.

16.3 Payments to Trust. The Committee is authorized to cause to be established a trust agreement or several trust agreements whereunder the Committee may make payments of amounts due or to become due to Participants in the Plan.

16.4 Annulment of Awards. Any Award Agreement may provide that the grant of an Award payable in cash is provisional until cash is paid in settlement thereof or that grant of an Award payable in Shares is provisional until the Participant becomes entitled to the certificate in settlement thereof. In the event the employment (or service as an Advisor or membership on the Board) of a Participant is terminated for cause (as defined below), any Award which is provisional shall be annulled as of the date of such termination for cause. For the purpose of this Section 16.4, the term "for cause" shall have the meaning set forth in the Participant's employment agreement, if any, or otherwise means any discharge (or removal) for material or flagrant violation of the policies and procedures of Corporation or for other job performance or conduct which is materially detrimental to the best interests of Corporation, as determined by the Committee.

16.5 Engaging in Competition With Corporation. Any Award Agreement may provide that, if a Participant terminates employment with Corporation or a Subsidiary for any reason whatsoever, and within 18 months after the date thereof accepts employment with any competitor of (or otherwise engages in competition with) Corporation, the Committee, in its sole discretion, may require such Participant to return to Corporation the economic value of any Award that is realized or obtained (measured at the date of exercise, Vesting, or payment) by such Participant at any time during the period beginning on the date that is six months prior to the date of such Participant's termination of employment with Corporation.

16.6 Other Corporation Benefit and Compensation Programs. Payments and other benefits received by a Participant under an Award made pursuant to the Plan shall not be deemed a part of a Participant's regular, recurring compensation for purposes of the termination indemnity or severance pay law of any state or country and shall not be included in, or have any effect on, the determination of benefits under any other employee benefit plan or similar arrangement provided by Corporation or a Subsidiary unless expressly so provided by such other plan or arrangements, or except where the Committee expressly determines that an Award or portion of an Award should be included to accurately reflect competitive compensation practices or to recognize that an Award has been made in lieu of a portion of cash compensation. The Plan notwithstanding, Corporation or any Subsidiary may adopt such other compensation programs and additional compensation arrangements as it deems necessary to attract, retain, and reward employees and directors for their service with Corporation and its Subsidiaries.

16.7 Securities Law Restrictions. No Shares shall be issued under the Plan unless counsel for Corporation shall be satisfied that such issuance will be in compliance with applicable federal and state securities laws. Certificates for Shares delivered under the Plan may be subject to such stop-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange or automated securities interdealer quotation system upon which the Common Stock is then listed or traded, and any applicable federal or state securities law. The Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

16.8 Governing Law. Except with respect to references to the Code or federal securities laws, the Plan and all actions taken thereunder shall be governed by and construed in accordance with the laws of the state of Oregon.

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