

Fossil Group, Inc.
Form S-8
June 15, 2018

As filed with the Securities and Exchange Commission on June 15, 2018

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

FOSSIL GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

901 S. Central Expressway
Richardson, Texas
(Address of Principal Executive Offices)

75-2018505
(I.R.S. Employer Identification No.)

75080
(Zip Code)

Fossil Group, Inc. 2016 Long-Term Incentive Plan

(Full title of the plans)

Randy S. Hyne

Vice President, General Counsel and Secretary

Fossil Group, Inc.

901 S. Central Expressway

Richardson, TX 75080

(Name and address of agent for service)

(972) 234-2525

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

with copies of communications to:

Garrett A. DeVries

Akin Gump Strauss Hauer & Feld LLP

1700 Pacific Avenue, Suite 4100

Dallas, Texas 75201

(214) 969-2800

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, smaller reporting company, and emerging growth company in Rule 12b-2 of the Exchange Act. c

Large accelerated filer	<input type="radio"/>	Accelerated filer	<input checked="" type="radio"/>
Non-accelerated filer	<input type="radio"/>	Smaller reporting company	<input type="radio"/>
(Do not check if a smaller reporting company)		Emerging growth company	<input type="radio"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.01 per share	7,288,468(2) \$	28.18(3) \$	205,389,028.24 \$	25,570.93
Total	7,288,468	\$	205,389,028.24 \$	25,570.93

(1) Pursuant to Rule 416 under the Securities Act of 1933, this registration statement also covers an indeterminate number of shares of Common Stock as may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Represents shares of Common Stock, par value \$0.01 per share (the Common Stock), of Fossil Group, Inc. under the Fossil Group, Inc. 2016 Long-Term Incentive Plan as amended effective March 27, 2018 (the 2016 Plan), consisting of (i) 5,000,000 additional shares of Common Stock reserved for issuance under the 2016 Plan, plus (ii) up to 2,288,468 shares of Common Stock subject to equity awards under the Company s 2008 Long-Term Incentive Plan that were outstanding on March 31, 2018 and, on or after March 31, 2018, are forfeited, expire or are canceled.

(3) The proposed maximum offering price per share and the proposed maximum aggregate offering price have been estimated solely for the purpose of calculating the registration fee pursuant to paragraphs (c) and (h)(1) of Rule 457 promulgated under the Securities Act, based upon the average of the high and low prices of the Common Stock as reported on the NASDAQ Global Select Market on June 8, 2018 (within five (5) business days prior to filing this registration statement).

EXPLANATORY NOTE

This Registration Statement on Form S-8 (this Registration Statement) is being filed to register an additional 7,288,468 shares of Common Stock of Fossil Group, Inc. (the Company) available for issuance under the Fossil Group, Inc. 2016 Long-Term Incentive Plan (as amended, the 2016 Plan). As a result of an amendment to the 2016 Plan, which was approved by our shareholders on May 23, 2018, the number of shares of Common Stock authorized for issuance under the 2016 Plan was increased from 3,000,000 to 10,288,468, which such additional shares consist of (i) 5,000,000 additional shares of Common Stock and (ii) up to 2,288,468 shares of Common Stock subject to awards under the Company s 2008 Long-Term Incentive Plan (the 2008 Plan) that were outstanding on March 31, 2018 and, on or after March 31, 2018, are forfeited, expire or are canceled.

In accordance with General Instruction E to Form S-8, the Company incorporates by reference the entire contents of the Company s registration statement on Form S-8, File No. 333-212293, filed with the Securities and Exchange Commission (the Commission) on June 29, 2016, except to the extent modified hereby.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Commission allows us to incorporate by reference certain information we have filed with the Commission into this registration statement, which means that we are disclosing important information to you by referring you to other information we have filed with the Commission. The information we incorporate by reference is considered part of this Registration Statement. We specifically are incorporating by reference the following documents filed with the Commission (excluding those portions of any Form 8-K that are furnished and not deemed filed pursuant to the General Instructions of Form 8-K):

(a) our Annual Report on Form 10-K for the fiscal year ended December 30, 2017, filed with the Commission on March 2, 2018;

(b) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018, filed with the Commission on May 10, 2018;

(c) our Current Reports on Form 8-K, filed with the Commission since December 30, 2017:

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- (i) our Current Report on Form 8-K, filed with the Commission on January 30, 2018;

- (ii) our Current Report on Form 8-K, filed with the Commission on May 24, 2018; and

- (d) the description of our Common Stock as contained in our Amendment No. 4 to Registration Statement on Form 8-A, filed with the Commission on January 26, 2009, including any amendment or report filed for the purpose of updating such description.

All reports and other documents we subsequently file with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, 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, but excluding information furnished to, rather than filed with, the Commission, shall be deemed to be incorporated by reference herein and to be part hereof from the date such documents are filed. Information or statements contained in this Registration Statement modifies or supersedes, as applicable, the information contained in earlier-dated documents incorporated by reference. Information or statements contained in later-dated documents incorporated by reference will automatically supplement, modify or supersede, as applicable, the information contained in this Registration Statement or in earlier-dated documents incorporated by reference. Any such information or statement so modified or superseded shall not be deemed to constitute a part of this registration statement, except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Delaware General Corporation Law

Section 145(a) of the Delaware General Corporation Law, or the DGCL, provides that a corporation may indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(d) of the DGCL provides that any indemnification under subsections (a) and (b) of Section 145 of the DGCL (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even if such directors do not constitute a quorum of the Board of Directors, (2) by a committee of such directors designated by a majority vote of such directors, even if such directors do not constitute a quorum of the Board of Directors, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

Section 145(e) of the DGCL provides that expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in Section 145. Such expenses (including attorneys' fees) incurred by former director or officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Certificate of Incorporation

Our Third Amended and Restated Certificate of Incorporation, as amended, provides that none of our directors shall be personally liable to our company or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to our company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize the further elimination or limitation of the personal liability of directors, the liability of our directors, in addition to the limitation on personal liability described above, shall be limited to the fullest extent permitted by the DGCL, as so amended. Further, any repeal or modification of the provision of the Third Amended and Restated Certificate of Incorporation, as amended, described herein by our stockholders shall be prospective only, and shall not adversely affect any limitation on the personal liability of any of our directors existing at the time of such repeal or modification.

Bylaws

Our Fifth Amended and Restated Bylaws provide that each person who was or is made a party or is threatened to be made a witness in or party to any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was one of our directors, officers, employees or agents or is or was serving at our request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, employee benefit plan or other enterprise, shall be indemnified by our company to the fullest extent authorized by the DGCL, as in effect or as it may be amended from time to time, against all expenses, liability and loss (including without limitation, all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating or being or preparing to be a witness in a proceeding) reasonably incurred by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder and shall inure to the benefit of his or her heirs, executors and administrators. Our Fifth Amended and Restated Bylaws also contain certain provisions designed to facilitate receipt of such benefits by any such persons.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

No.	Description
4.1	<u>Third Amended and Restated Certificate of Incorporation of Fossil Group, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Report on Form 8-K, filed May 25, 2010).</u>
4.2	<u>Certificate of Amendment of the Third Amended and Restated Certificate of Incorporation of Fossil Group, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Report on Form 8-K filed on May 28, 2013).</u>
4.3	<u>Fifth Amended and Restated Bylaws of Fossil Group, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed on April 3, 2017).</u>
4.4	<u>Fossil Group, Inc. 2016 Long-Term Incentive Plan, as amended (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K filed on March 1, 2017).</u>
4.5	<u>First Amendment to the Fossil Group, Inc. 2016 Long-Term Incentive Plan, filed herewith.</u>
5.1	<u>Legal Opinion of Randy S. Hyne, filed herewith.</u>
23.1	<u>Consent of Deloitte & Touche LLP, filed herewith.</u>
23.2	<u>Consent of Randy S. Hyne (included in Exhibit 5.1).</u>
24.1	<u>Powers of Attorney (included on signature page to this Registration Statement).</u>

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 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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% 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)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the 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 Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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 City of Dallas, State of Texas, June 15, 2018.

FOSSIL GROUP, INC.

By: /s/ KOSTA N. KARTSOTIS
Kosta N. Kartsotis
Chairman of the Board of Directors and Chief
Executive Officer (Principal Executive Officer)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned officers and directors of Fossil Group, Inc., a Delaware corporation, do hereby constitute and appoint Kosta N. Kartsotis and Randy S. Hyne, and each of them, their true and lawful attorneys-in-fact and agents or attorney-in-fact and agent, with power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act and any rules and regulations or requirements of the Securities and Exchange Commission in connection with this registration statement. Without limiting the generality of the foregoing power and authority, the powers granted include the full power of substitution and resubstitution, for them and in their name, place and stead, in any and all capacities, the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this registration statement, to any and all amendments (including any post-effective amendments) and supplements thereto, and to any and all instruments or documents filed as part or in connection with this registration statement, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any of them, shall do or cause to be done by virtue hereof. The Power of Attorney may be signed in several counterparts.

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

Signature	Capacity	Date
/s/ KOSTA N. KARTSOTIS Kosta N. Kartsotis	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	June 15, 2018
/s/ JEFFREY N. BOYER Jeffrey N. Boyer	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	June 15, 2018
/s/ MARK R. BELGYA Mark R. Belgya	Director	June 15, 2018
/s/ WILLIAM B. CHIASSON William B. Chiasson	Director	June 15, 2018
/s/ MAURIA A. FINLEY Mauria A. Finley	Director	June 15, 2018
/s/ DIANE L. NEAL Diane L. Neal	Director	June 15, 2018

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/s/ THOMAS M. NEALON Thomas M. Nealon	Director	June 15, 2018
/s/ JAMES E. SKINNER James E. Skinner	Director	June 15, 2018
/s/ GAIL B. TIFFORD Gail B. Tifford	Director	June 15, 2018
/s/ JAMES M. ZIMMERMAN James M. Zimmerman	Director	June 15, 2018

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strator has authority to determine the terms of options granted under the 2004 Plan. Options are granted with an exercise price that is not less than the fair market value of the shares of common stock on the date of the option grant.

The term of each option will be fixed by the Administrator and may not exceed ten years from the date of grant. The Administrator will determine at what time or times each option may be

exercised and, subject to the provisions of the 2004 Plan, the period of time, if any, after retirement, death, disability or termination of employment during which options may be exercised. Options may be made exercisable in installments, and the exercisability of options may be accelerated by the Administrator. In general, unless otherwise permitted by the Administrator, no option granted under the 2004 Plan is transferable by the optionee other than by will or by the laws of descent and distribution, and options may be exercised during the optionee's lifetime only by the optionee, or by the optionee's legal representative or guardian in the case of the optionee's incapacity.

Options granted under the 2004 Plan may be exercised for cash or by transfer to Perini (either actually or by attestation) of shares of common stock that are not then subject to restrictions under any Perini stock plan, and that have a fair market value equivalent to the option exercise price of the shares being purchased. Subject to applicable law, options granted under the 2004 Plan also may be exercised by compliance with certain provisions pursuant to which a securities broker delivers the purchase price for the shares to us.

To qualify as incentive options, options must meet additional federal tax requirements, including a \$100,000 limit on the value of shares subject to incentive options which first become exercisable in any one calendar year, and a shorter term and higher minimum exercise price in the case of ten percent stockholders.

Stock Appreciation Rights. The Administrator may award a stock appreciation right either as a freestanding award or in tandem with a stock option. Upon exercise of the stock appreciation right, the holder will be entitled to receive an amount equal to the excess of the fair market value on the date of exercise of one share of common stock over the exercise price per share specified in the related stock option (or, in the case of a freestanding stock appreciation right, the price per share specified in such right) times the number of shares of common stock with respect to which the stock appreciation right is exercised. This amount may be paid in cash, in shares of common stock, or a combination of cash and common stock, as determined by the Administrator. The exercise price per share of stock appreciation rights may not be less than 100% of the fair market value of the shares of common stock on the date of grant.

Restricted Stock Awards. The Administrator may grant shares, at a purchase price (which may be zero, subject to the limitations of applicable law) determined by the Administrator, of common stock to any participant subject to such conditions and restrictions as the Administrator may determine. These conditions and restrictions may include the achievement of pre-established performance goals and/or continued employment with Perini through a specified vesting period. The vesting period shall be determined by the Administrator. However, in the event these awards have a performance-based goal, the restriction period will be at least one year, and in the event these awards have a time-based restriction, the restriction period will be at least three years. If the applicable performance goals and other restrictions are not attained, the participant will forfeit his or her award of restricted stock.

Unrestricted Stock Awards. The Administrator may also grant shares (at no cost or for a purchase price determined by the Administrator) of common stock that are free from any restrictions under the 2004 Plan. Unrestricted stock may be granted to any participant in recognition of past services or other valid consideration, and may be issued in lieu of cash compensation due to such participant.

Deferred Stock Awards. The Administrator also may award phantom stock units as deferred stock awards to participants. The deferred stock awards are ultimately payable in the form of shares of common stock and may be subject to such conditions and restrictions as the Administrator may determine. These conditions and restrictions may include the achievement of certain performance goals and/or continued employment with Perini through a specified vesting period. However, in the event these awards have a performance-based goal, the restriction period will be at least one year, and in the event these awards have a time-based restriction, the restriction period will be at least

three years. During the deferral period, subject to terms and conditions imposed by the Administrator, the deferred stock awards may be credited with dividend equivalent rights (discussed below). Subject to the consent of the Administrator, a participant may make an advance election to receive a portion of his or her compensation or restricted stock award otherwise due in the form of a deferred stock award.

Dividend Equivalent Rights. The Administrator may grant dividend equivalent rights that entitle the recipient to receive credits for dividends that would be paid if the recipient had held specified shares of common stock. Dividend equivalent rights may be granted as a component of another award or as a freestanding award. Dividend equivalent rights credited under the 2004 Plan may be paid currently or be deemed to be reinvested in additional shares of common stock, that may thereafter accrue additional dividend equivalent rights at fair market value at the time of deemed reinvestment or on the terms then governing the reinvestment of dividends under our dividend reinvestment plan, if any. Dividend equivalent rights may be settled in cash, shares of common stock or a combination thereof, in a single installment or installments, as specified in the award.

Section 162(m) Awards. Stock options and stock appreciation rights granted under the 2004 Plan are intended to qualify as performance-based compensation for purposes of Section 162(m) of the Internal Revenue Code. The Administrator may grant awards of restricted stock and deferred stock that are intended to qualify as performance-based compensation for purposes of Section 162(m) of the Internal Revenue Code. These awards may be granted, vest and be paid based on attainment of specified performance goals established by the Administrator. These performance goals will be based on the attainment of a certain target level of, or a specified increase or decrease in, one or more of the following criteria selected by the Administrator:

- earnings per share;
- operating income;
- gross income;
- net income (before or after taxes);
- cash flow;
- gross profit;
- gross profit return on investment;
- gross margin return on investment;
- gross margin;
- funds from operations;
- operating margin;
- working capital;
- earnings before interest and taxes;
- earnings before interest, tax, depreciation and amortization;
- return on equity;
- return on assets;
- return on capital;
- return on invested capital;
- net revenues;
- gross revenues;

revenue growth;
annual recurring revenues;
recurring revenues;
service revenues;
license revenues;
sales or market share;
total shareholder return;

economic value added;

specified objectives with regard to limiting the level of increase in all or a portion of Perini's bank debt or other long-term or short-term public or private debt or other similar financial obligations of Perini, which may be calculated net of cash balances and/or other offsets and adjustments as may be established by the Administrator in its sole discretion;

the fair market value of the shares of Perini's common stock;

the growth in the value of an investment in Perini's common stock assuming the reinvestment of dividends; or

reduction in operating expenses.

To the extent permitted by law, the Administrator may also exclude the impact of an event or occurrence which the Administrator determines should be appropriately excluded, including:

restructurings, discontinued operations, extraordinary items and other unusual or non-recurring charges;

an event either not directly related to the operations of Perini or not within the reasonable control of Perini's management; or

a change in accounting standards required by generally accepted accounting principles.

Performance goals may also be based on an individual participant's performance goals, as determined by the Administrator, in its sole discretion.

In addition, all performance goals may be based upon the attainment of specified levels of performance by Perini (or subsidiary, division or other operational unit of Perini) under one or more of the measures described above relative to the performance of other corporations. The Administrator may designate additional business criteria on which the performance goals may be based or adjust, modify or amend those criteria.

Tax Withholding. Participants under the 2004 Plan are responsible for the payment of any federal, state or local taxes that we are required by law to withhold upon any option exercise or vesting of other awards. Subject to approval by the Administrator, participants may elect to have the minimum tax withholding obligations satisfied either by authorizing us to withhold shares of common stock to be issued pursuant to an option exercise or other award, or by transferring to us shares of common stock having a value equal to the amount of such taxes.

Adjustments for Stock Dividends, Mergers, etc. The 2004 Plan authorizes the Administrator to make appropriate adjustments to the number of shares of common stock that are subject to the 2004 Plan and to any outstanding stock options to reflect stock dividends, stock splits and similar events. In the event of certain transactions, such as a merger, consolidation, dissolution or liquidation of Perini, all stock options and stock appreciation rights will automatically become fully exercisable and the restrictions and conditions on all other stock based awards will automatically be deemed waived. In addition, upon the effective time of any such transaction, the 2004 Plan and all awards will terminate unless the parties to the transaction, in their discretion, provide for appropriate substitutions or adjustments of outstanding stock options or other awards.

Amendments and Termination. The Board may at any time amend or discontinue the 2004 Plan and the Administrator may at any time amend or cancel any outstanding award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely

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affect the rights under any outstanding awards without the holder's consent. Any amendments that materially change the terms of the 2004 Plan, including any amendments that increase the number of shares reserved for issuance under the 2004 Plan, expand the type of awards available,

materially expand the eligibility to participate or materially extend the term of the 2004 Plan, or materially change the method of determining fair market value, will be subject to approval by our shareholders. To the extent required by the Code to ensure that options granted under the 2004 Plan qualify as incentive options or that compensation earned under awards granted under the 2004 Plan qualify as performance-based compensation under the Code, 2004 Plan amendments shall be subject to approval by our shareholders.

Certain U.S. Federal Income Tax Consequences

The rules concerning the federal income tax consequences with respect to options granted and to be granted pursuant to the 2004 Plan are quite technical. Moreover, the applicable statutory provisions are subject to change, as are their interpretations and applications, which may vary in individual circumstances. Therefore, the following is designed to provide a general understanding of the U.S. federal income tax consequences with respect to such grants. In addition, the following discussion does not set forth any gift, estate, social security or state or local tax consequences that may be applicable and is limited to the U.S. federal income tax consequences to individuals who are citizens or residents of the United States, other than those individuals who are taxed on a residence basis in a foreign country.

Incentive Stock Options. In general, an employee will not realize taxable income upon either the grant or the exercise of an incentive stock option and Perini will not realize an income tax deduction at either of such times. In general, however, for purposes of the alternative minimum tax, the excess of the fair market value of the shares of common stock acquired upon exercise of an incentive stock option (determined at the time of exercise) over the exercise price of the incentive stock option will be considered income. If the recipient was continuously employed from the date of grant until the date three months prior to the date of exercise and such recipient does not sell the shares of common stock received pursuant to the exercise of the incentive stock option within either (i) two years after the date of the grant of the incentive stock option, or (ii) one year after the date of exercise, a subsequent sale of such shares of common stock will result in long-term capital gain or loss to the recipient and will not result in a tax deduction to Perini.

If the recipient is not continuously employed from the date of grant until the date three months prior to the date of exercise or such recipient disposes of the shares of common stock acquired upon exercise of the incentive stock option within either of the time periods described in the immediately preceding paragraph, the recipient will generally realize as ordinary income an amount equal to the lesser of (i) the fair market value of such shares of common stock on the date of exercise over the exercise price, and (ii) the amount realized upon disposition over the exercise price. In such event, subject to the limitations under Sections 162(m) and 280G of the Internal Revenue Code (as described below), Perini generally will be entitled to an income tax deduction equal to the amount recognized as ordinary income. Any gain in excess of such amount realized by the recipient as ordinary income would be taxed at the rates applicable to short-term or long-term capital gains (depending on the holding period).

Nonqualified Stock Options. A recipient will not realize any taxable income upon the grant of a nonqualified stock option and Perini will not receive a deduction at the time of such grant unless such option has a readily ascertainable fair market value (as determined under applicable tax law) at the time of grant. Upon exercise of a nonqualified stock option, the recipient generally will realize ordinary income in an amount equal to the excess of the fair market value of the shares of common stock on the date of exercise over the exercise price. Upon a subsequent sale of such shares of common stock by the recipient, the recipient will recognize short-term or long-term capital gain or loss depending upon his or her holding period of such shares of common stock. Subject to the limitations under Sections 162(m) and 280G of the Internal Revenue Code (as described below), Perini will generally be allowed a deduction equal to the amount recognized by the recipient as ordinary income.

Certain Other Tax Issues. In addition to the matters described above, (i) any entitlement to a tax deduction on the part of Perini is subject to applicable federal tax rules (including, without limitation, Section 162(m) of the Internal Revenue Code regarding the \$1,000,000 limitation on deductible compensation), (ii) the exercise of an incentive stock option may have implications in the computation of alternative minimum taxable income, (iii) certain awards under the 2004 Plan may be subject to the requirements of Section 409A of the Internal Revenue Code (regarding nonqualified deferred compensation), and (iv) if the exercisability or vesting of any option is accelerated because of a change in control, such option (or a portion thereof), either alone or together with certain other payments, may constitute parachute payments under Section 280G of the Internal Revenue Code, which excess amounts may be subject to excise taxes. Officers and directors of Perini subject to Section 16(b) of the Securities Exchange Act of 1934, as amended, may be subject to special tax rules regarding the income tax consequences concerning their options.

The 2004 Plan is not subject to any of the requirements of the Employee Retirement Income Security Act of 1974, as amended. The 2004 Plan is not, nor is it intended to be, qualified under Section 401(a) of the Internal Revenue Code.

Grants and Awards in 2008

As of December 31, 2008, the following outstanding awards have been granted under the 2004 Plan to each of the executive officers named below, all current executive officers as a group, all non-employee directors as a group, and all other employees, respectively:

Name	Options Awards (1)		Stock Awards	
	Number of Securities Underlying Unexercised Unearned Options	Weighted Average Option Exercise Price	Number of Unearned Shares Units or Rights That Have Not Vested	Market Value at 12/31/08 (2)
Ronald N. Tutor	-	-	-	-
Kenneth R. Burk	50,000	\$12.54	50,000	\$ 1,693,000
Robert Band	75,000	\$12.54	75,000	\$ 1,753,500
Mark A. Caspers	50,000	\$12.54	100,000	\$ 2,338,000
Craig W. Shaw	50,000	\$12.54	50,000	\$ 1,169,000
Total executive officers	225,000		275,000	\$ 6,429,500
Non-employee directors	-	-	100,000	\$ 2,338,000
All other employees	580,000	\$23.84	722,500	\$ 16,892,050
Total Outstanding	805,000	\$20.68	1,097,500	\$ 25,659,550

(1) Options vest 9/04/13 (480,000 shares) and 11/18/13 (325,000 shares).

(2) Based on closing market price of \$23.38

Future Plan Awards. The terms and number of options or other awards to be granted in the future under the 2004 Plan are to be determined in the discretion of the Administrator. Since no such determinations regarding awards or grants have yet been made, the benefits or amounts that will be received by or allocated to Perini's executive officers or other eligible employees or non-employee directors cannot be determined at this time.

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As of March 13, 2009, the closing price on the NYSE of Perini's common stock was \$12.70 per share.

Equity Compensation Plan Information

The following table sets forth, as of December 31, 2008, certain information related to Perini's equity compensation plans.

Plan category	Number of securities to be issued upon exercise of outstanding options and warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity Compensation Plans Approved by Security Holders:			
2004 Stock Option and Incentive Plan	2,602,501	\$20.68	1,986,537
Special Equity Incentive Plan	36,500	\$ 3.97	195,634
Equity Compensation Plans Not Approved by Security Holders	-	-	-
Total	2,639,001	\$19.96	2,182,171

(a) This amount includes 841,500 shares covered by outstanding stock options and 1,797,501 shares covered by outstanding restricted stock unit awards. The weighted-average exercise price of awards outstanding under equity compensation plans approved by security holders reflected in column (b) above is calculated based on the outstanding stock options under these plans as the other forms of awards outstanding have no exercise price.

Board Recommendation

THE PERINI BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE SECTION 162(M) PERFORMANCE GOALS AND ANNUAL GRANT LIMITATIONS UNDER THE 2004 PLAN.

PROPOSAL 5 APPROVAL OF THE 2009 GENERAL INCENTIVE COMPENSATION PLAN

The Board has adopted the General Incentive Compensation Plan (the 2009 Plan), for the benefit of eligible executives, managers and key employees of Perini and its subsidiaries, and directed that the 2009 Plan be submitted to our shareholders at the Annual Meeting. Approval of the 2009 Plan will allow certain incentive awards granted under the 2009 Plan to executive officers of Perini to qualify as exempt "performance-based compensation" under Section 162(m) of the Internal Revenue Code, which otherwise generally disallows the corporate tax deduction for certain compensation paid in excess of \$1,000,000 annually to the principal executive officer and to certain of the other most highly compensated executive officers of publicly held companies. Section 162(m) of the Internal Revenue Code generally requires such performance goals to be approved by shareholders every five years.

The Board believes that it is in the best interests of Perini and its shareholders to ensure that Perini have the ability to pay incentive bonuses to its executive officers that are deductible by Perini for federal income tax purposes under Section 162(m) of the Internal Revenue Code, and the 2009 Plan has been structured accordingly.

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Shareholders are requested to approve the adoption of the 2009 Plan. If the 2009 Plan is approved by the shareholders, Perini will have the ability to pay awards under the 2009 Plan that will qualify as "performance-based compensation" under Section 162(m) of the Internal Revenue Code.

If the requisite shareholder approval of the 2009 Plan is not obtained, the 2009 Plan will remain in effect, but awards payable thereunder will not be eligible to qualify for the "performance-based compensation" exception from the deductibility limitations under Section 162(m) of the Internal Revenue Code.

Description of the 2009 General Incentive Compensation Plan

The following description of certain features of the 2009 Plan is intended to be a summary only. The summary is qualified in its entirety by the full text of the 2009 Plan that is attached hereto as Annex B.

Purpose. The purpose of the 2009 Plan is to provide eligible executives, managers and key employees with incentive compensation based upon the level of achievement of financial, business and other performance criteria. It is intended that bonuses awarded under the 2009 Plan will qualify as performance-based compensation within the meaning of Section 162(m) of the Internal Revenue Code.

Administration. The 2009 Plan is administered by the Compensation Committee of the Board. The Compensation Committee has the authority, in its discretion, to make any and all decisions regarding the administration of the 2009 Plan, including selecting executives, managers and key employees eligible to receive awards, establishing performance goals and maximum bonus awards, construing and interpreting the terms of the 2009 Plan and bonuses awarded thereunder, decreasing, paying or declining to pay bonuses under the 2009 Plan, and establishing additional terms, conditions, rules or procedures for the administration of the 2009 Plan, subject, in all cases, to the limitations of Section 162(m) of the Internal Revenue Code with respect to awards intended to comply with the requirements of Section 162(m) of the Internal Revenue Code. All determinations of the Compensation Committee that are not inconsistent with the 2009 Plan will be final and binding on all persons.

Eligibility. Eligible participants under the 2009 Plan are executives, managers and key employees of Perini and its subsidiaries who are selected by the Compensation Committee, based upon the recommendation of the Chief Executive Officer of Perini.

Establishment of Bonuses. For each performance period during the term of the 2009 Plan, the Compensation Committee will designate those executives, managers and key employees who are to be participants in the 2009 Plan for such performance period, assign each participant a maximum award level and establish in writing the performance goals that must be achieved before an award will be paid to the participant. For awards intended to be "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code, the foregoing determinations will be made within the first ninety days of the performance period.

Performance Goals. Bonuses granted under the 2009 Plan may qualify as performance-based compensation for purposes of Section 162(m) of the Internal Revenue Code. To the extent that bonuses under the 2009 Plan are intended to be "performance-based compensation" under Section 162(m) of the Internal Revenue Code, such bonuses will be granted, vest and be paid based on attainment of specified performance goals established by the Compensation Committee. Such performance goals will be based on the attainment of a certain target level of, or a specified increase or decrease in, one or more of the following criteria selected by the Compensation Committee:

earnings per share;

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operating income;

gross income;

net income (before or after taxes);

cash flow;
gross profit;
gross profit return on investment;
gross margin return on investment;
gross margin;
funds from operations;
operating margin;
working capital;
earnings before interest and taxes;
earnings before interest, tax, depreciation and amortization;
return on equity;
return on assets;
return on capital;
return on invested capital;
net revenues;
gross revenues;
revenue growth;
annual recurring revenues;
recurring revenues;
service revenues;
license revenues;
sales or market share;
total shareholder return;
economic value added;
specified objectives with regard to limiting the level of increase in all or a portion of Perini's bank debt or other long-term or short-term public or private debt or other similar financial obligations of Perini, which may be calculated net of cash balances and/or other offsets and adjustments as may be established by the Compensation Committee in its sole discretion;
the fair market value of the shares of Perini's common stock;
the growth in the value of an investment in Perini's common stock assuming the reinvestment of dividends; or
reduction in operating expenses.

To the extent permitted by law, the Compensation Committee may also exclude the impact of an event or occurrence which the Compensation Committee determines should be appropriately excluded, including:

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restructurings, discontinued operations, extraordinary items and other unusual or non-recurring charges;
an event either not directly related to the operations of Perini or not within the reasonable control of Perini's management; or
a change in accounting standards required by generally accepted accounting principles.

Performance goals may also be based on an individual participant's performance goals, as determined by the Compensation Committee, in its sole discretion.

In addition, all performance goals may be based upon the attainment of specified levels of performance by Perini (or subsidiary, division or other operational unit of Perini) under one or more of the measures described above relative to the performance of other corporations. To the extent permitted under Section 162(m) of the Internal Revenue Code, the Committee may also designate

additional business criteria on which the performance goals may be based or adjust, modify or amend those business criteria.

For purposes of any award under the 2009 Plan intended to be "performance-based compensation" under Section 162(m) of the Internal Revenue Code, the maximum value of any payment in respect of such award to any participant in the 2009 Plan for any 12-month period will be \$3,281,250.

Determination of Bonuses. As soon as practicable after the end of each performance period, the Compensation Committee will certify in writing whether the stated performance goals were met and will determine the amount of the bonus to be paid to each 2009 Plan participant. In determining that amount, the Compensation Committee will consider the target bonuses established at the beginning of the performance period, the degree to which the established standards were satisfied, and any other objective or subjective factors it deems appropriate (subject to the limitations of Section 162(m) of the Internal Revenue Code for awards intended to be "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code), and may reduce the amount of, or eliminate altogether, any bonus that would otherwise be payable. In certain instances with respect to bonuses not subject to the limitations of Section 162(m) of the Internal Revenue Code, a participant's bonus can be increased by reallocating a portion of a bonus from other participants as determined by the Compensation Committee in its sole discretion based upon the recommendations of the Chief Executive Officer of Perini.

Payment of Bonuses. All bonuses will be paid in cash, Perini common stock, or any combination thereof, in the calendar year following the calendar year in which the applicable performance periods ends, which will generally be on or before April 14 of such following calendar year. Any stock to be awarded as part of a bonus under the 2009 Plan will be issued pursuant to the terms and conditions of any shareholder-approved equity plan of Perini (if any) as in effect from time to time. To the extent that there is no shareholder-approved equity plan of Perini with an available share reserve to cover the issuance of stock in connection with the payment of any bonus under the 2009 Plan, the full amount of the bonus will be paid in cash.

Amendment and Termination. The Board may amend, modify, suspend or terminate the 2009 Plan, in whole or in part, at any time and in any respect, subject to shareholder approval to the extent required by applicable law, regulation or exchange listing rules. However, in no event may any such amendment, modification, suspension or termination result in an increase in the amount of compensation payable pursuant to any award under the 2009 Plan or the failure of any such award to qualify for the performance-based compensation exception under Section 162(m) of the Internal Revenue Code to the extent applicable.

Benefits under the 2009 General Incentive Compensation Plan

The amount of incentive compensation to be paid in the future to Perini's executive officers and other 2009 Plan participants cannot be determined at this time. Actual amounts will depend upon actual performance for future performance periods. The table below shows the cash bonus compensation awarded for 2008 to individuals who will be participating in the 2009 Plan.

Name	Cash Bonus Compensation for 2008 Paid in 2009
Ronald N. Tutor	\$ 1,512,850
Kenneth R. Burk	\$ 309,700
Robert Band	\$ 576,000
Mark A. Caspers	\$ 517,400
Craig W. Shaw	\$ 517,400
All Executive Officers as a Group (5 people)	\$ 3,433,350
 All Other Employees	 \$ 7,970,250

Board Recommendation

THE PERINI BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE 2009 GENERAL INCENTIVE COMPENSATION PLAN.

SHAREHOLDER PROPOSALS FOR 2010 ANNUAL MEETING

Any proposal of a shareholder submitted pursuant to Exchange Act Rule 14a-8 for inclusion in Perini's proxy statement and form of proxy for its 2010 annual meeting of shareholders must be received by Perini on or before December 18, 2009 in order to be considered for inclusion in its proxy statement and form of proxy. If the 2010 annual meeting is advanced or delayed by more than 30 calendar days from May 28, 2010, Perini will inform shareholders of such change and the new dates for submitting shareholder proposals for inclusion in the 2010 annual meeting proxy statement. Such proposals must comply with the requirements as to form and substance established by the SEC if such proposals are to be included in the proxy statement and form of proxy. Any such proposal should be mailed to: Perini Corporation, 73 Mt. Wayte Avenue, Framingham, Massachusetts 01701-9160, Attn: Corporate Secretary.

Perini's bylaws require that Perini be given advance written notice of matters that shareholders wish to present for action at an annual meeting of shareholders (other than matters included in Perini's proxy materials in accordance with Rule 14a-8 under the Exchange Act). Any proposal of a shareholder intended to be presented at Perini's 2010 annual meeting of shareholders, other than shareholder proposals submitted pursuant to Exchange Act Rule 14a-8, must be received by us not earlier than November 29, 2009, nor later than March 14, 2010. If the 2010 annual meeting is advanced or delayed by more than 7 calendar days from May 28, 2010, Perini will inform shareholders of such change and the new dates for submitting shareholder proposals pursuant to the Perini bylaws (other than shareholder proposals submitted pursuant to Exchange Act Rule 14a-8) for presentation at the 2010 annual meeting. If a shareholder fails to provide timely notice of a proposal to be presented at the 2010 annual meeting, the proxies designated by the Board will have discretionary authority to vote on any such proposal that may come before the meeting. In addition, shareholder proposals must comply with the requirements of our bylaws. Any such proposal should be mailed to: Perini Corporation, 73 Mt. Wayte Avenue, Framingham, Massachusetts 01701-9160, Attn: Corporate Secretary.

Please see Nominations for Director , on page 10 for a description of the requirements for submitting a candidate for nomination as a director at the 2010 annual meeting of shareholders.

OTHER MATTERS

The Board knows of no other matters that are likely to be brought before the meeting. However, if any other matters of which the Board is not aware are presented to the meeting for action, it is the intention of the persons named in the accompanying form of proxy to vote said proxy in accordance with their judgment on such matters.

HOUSEHOLDING OF ANNUAL MEETING MATERIALS

Some banks, brokers and other nominee record holders may be participating in the practice of householding proxy statements and annual reports. This means that only one copy of our proxy statement or annual report may have been sent to multiple shareholders in your household. We will promptly deliver a separate copy of either document to you if you call or write us at the following address or telephone number: Perini Corporation, 73 Mt. Wayte Avenue, Framingham, MA 01701, Attention: Corporate Secretary, (508) 628-2000. If you want to receive separate copies of the annual report and proxy statement in the future, or if you are receiving multiple copies and would like to receive only one copy for your household, you should contact your bank, broker, or other nominee record holder, or you may contact us at the above address and telephone number.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

Perini files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, proxy statements or other information that we file with the SEC at the following location of the SEC:

Public Reference Room

100 F. Street, N.E.

Washington, D.C. 20549

Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. You may also obtain copies of reports, proxy statements or other information concerning us, including any document incorporated by reference in this proxy statement, without charge, by written or telephonic request directed to us at Perini Corporation, 73 Mt. Wayte Avenue, Framingham, MA 01701, Attention: Corporate Secretary, (508) 628-2000. If you would like to request documents, please do so by May 18, 2009 in order to receive them before the annual meeting.

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PERINI CORPORATION

2004 STOCK OPTION AND INCENTIVE PLAN

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the Perini Corporation 2004 Stock Option and Incentive Plan (the *Plan*). The purpose of the Plan is to encourage and enable the officers, employees, non-employee directors and other key persons (including consultants and prospective employees) of Perini Corporation (the *Company*) and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

Act means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

Administrator is defined in Section 2(a).

Award or *Awards*, except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Deferred Stock Awards, Restricted Stock Awards, Unrestricted Stock Awards and Dividend Equivalent Rights.

Board means the Board of Directors of the Company.

Code means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

Committee means the Committee of the Board referred to in Section 2.

Covered Employee means an employee who is a *Covered Employee* within the meaning of Section 162(m) of the Code.

Deferred Stock Award means Awards granted pursuant to Section 8.

Dividend Equivalent Right means Awards granted pursuant to Section 11.

Effective Date has the meaning set forth in Section 17.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

Fair Market Value of the Stock on any given date means the fair market value of the Stock determined by its closing price on the New York Stock Exchange. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations.

Incentive Stock Option means any Stock Option designated and qualified as an *incentive stock option* as defined in Section 422 of the Code.

Non-Qualified Stock Option means any Stock Option that is not an Incentive Stock Option.

Option or *Stock Option* means any option to purchase shares of Stock granted pursuant to Section 5.

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Performance Cycle means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more performance criteria will be measured for the purpose of determining a grantee's right to and the payment of a Restricted Stock Award or Deferred Stock Award.

Performance Goals is defined in Exhibit A.

Restricted Stock Award means Awards granted pursuant to Section 7.

Section 162(m) Award is defined in Section 10.

Stock means the Common Stock, par value \$1.00 per share, of the Company.

Stock Appreciation Right means any Award granted pursuant to Section 6.

Subsidiary means any corporation or other entity (other than the Company) in which the Company has a controlling interest, either directly or indirectly.

Unrestricted Stock Award means any Award granted pursuant to Section 9.

SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEEES AND DETERMINE AWARDS

- (a) **Committee**. The Plan shall be administered by the Compensation Committee of the Board. (the Administrator).
- (b) **Powers of Administrator**. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:
- (i) to select the individuals to whom Awards may from time to time be granted;
 - (ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Deferred Stock Awards, Unrestricted Stock Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;
 - (iii) to determine the number of shares of Stock to be covered by any Award;
 - (iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the form of written instruments evidencing the Awards;
 - (v) to accelerate at any time the exercisability or vesting of all or any portion of any Award;
 - (vi) subject to the provisions of Section 5(a)(ii), to extend at any time the period in which Stock Options may be exercised;
 - (vii) to determine at any time whether, to what extent, and under what circumstances distribution or the receipt of Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the grantee and whether and to what extent the Company shall pay or credit amounts constituting interest (at rates determined by the Administrator) or dividends or deemed dividends on such deferrals; and

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(viii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees.

(c) Delegation of Authority to Grant Awards. The Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Administrator's authority and duties with respect to the granting of Awards, to individuals who are not subject to the reporting and other provisions of Section 16 of the Exchange Act and who are not Covered Employees. Any such delegation by the Administrator shall include a limitation as to the amount of Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price of any Stock Option or Stock Appreciation Right, the conversion ratio or price of other Awards and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(d) Indemnification. Neither the Board nor the Committee, nor any member of either or any delegatee thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Committee (and any delegatee thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors' and officers' liability insurance coverage which may be in effect from time to time.

SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan shall be 5,500,000 shares, subject to adjustment as provided in Section 3(b). For purposes of this limitation, the shares of Stock underlying any Awards (including any awards granted pursuant to the Company's Special Equity Incentive Plan which are forfeited, canceled, held back upon exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance of Stock or otherwise terminated (other than by exercise)) shall be added back to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that Stock Options or Stock Appreciation Rights with respect to no more than 200,000 shares of Stock may be granted to any one individual grantee during any one calendar year period. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Changes in Stock. Subject to Section 3(c) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or

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other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for a different number or kind of securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, (ii) the number of Stock Options or Stock Appreciation Rights that can be granted to any one individual grantee and the maximum number of shares that may be granted under a performance-based Award, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iv) the repurchase price, if any, per share subject to each outstanding Restricted Stock Award, and (v) the price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

The Administrator may also 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 Administrator that such adjustment is appropriate to avoid distortion in the operation of the Plan, provided that no such adjustment shall be made in the case of an Incentive Stock Option, without the consent of the grantee, if it would constitute a modification, extension or renewal of the Option within the meaning of Section 424(h) of the Code.

(c) Mergers and Other Transactions. In the case of and subject to the consummation of (i) the dissolution or liquidation of the Company, (ii) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (iii) a merger, reorganization or consolidation in which the outstanding shares of Stock are converted into or exchanged for a different kind of securities of the successor entity and the holders of the Company's outstanding voting power immediately prior to such transaction do not own 40 percent or more of the outstanding voting power of the successor entity immediately upon completion of such transaction, or (iv) the sale of 60 percent or more of the Stock of the Company to an unrelated person or entity (in each case, a Sale Event), all Options and Stock Appreciation Rights that are not exercisable immediately prior to the effective time of the Sale Event shall become fully exercisable as of the effective time of the Sale Event and all other Awards shall become fully vested and nonforfeitable as of the effective time of the Sale Event, except as the Administrator may otherwise specify with respect to particular Awards in the relevant Award documentation. Upon the effective time of the Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate, unless provision is made in connection with the Sale Event in the sole discretion of the parties thereto for the assumption or continuation of Awards theretofore granted by the successor entity, or the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties shall agree (after taking into account any acceleration hereunder). In the event of such termination, each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Administrator, to exercise all outstanding Options and Stock Appreciation Rights held by such grantee, including those that will become exercisable upon the consummation of the Sale Event; provided, however, that the exercise of Options and Stock Appreciation Rights not exercisable prior to the Sale Event shall be subject to the consummation of the Sale Event.

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Notwithstanding anything to the contrary in this Section 3(c), in the event of a Sale Event pursuant to which holders of the Stock of the Company will receive upon consummation thereof a cash payment for each share surrendered in the Sale Event, the Company shall have the right, but not the obligation, to make or provide for a cash payment to the grantees holding Options and Stock Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the value as determined by the Administrator of the consideration payable per share of Stock pursuant to the Sale Event (the Sale Price) times the number of shares of Stock subject to outstanding Options and Stock Appreciation Rights (to the extent then exercisable at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Stock Appreciation Rights.

(d) Substitute Awards. The Administrator may grant Awards under the Plan in substitution for stock and stock based awards held by employees, directors or other key persons of another corporation in connection with the merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Administrator may direct that the substitute awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances. Any substitute Awards granted under the Plan shall not count against the share limitation set forth in Section 3(a).

SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, non-employee directors and key persons (including consultants and prospective employees) of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

SECTION 5. STOCK OPTIONS

Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a subsidiary corporation within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

(a) Grant of Stock Options. The Administrator in its discretion may grant Stock Options to eligible employees, non-employee directors and key persons of the Company or any Subsidiary. Stock Options granted pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the optionee's election, subject to such terms and conditions as the Administrator may establish and subject to the limitations of Section 409A of the Code.

(i) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(a) shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation and an Incentive Stock Option is

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granted to such employee, the option price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date.

(ii) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than 10 years after the date the Stock Option is granted. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation and an Incentive Stock Option is granted to such employee, the term of such Stock Option shall be no more than five years from the date of grant.

(iii) Exercisability: Rights of a Stockholder. Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(iv) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods to the extent provided in the Option Award agreement:

(A) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(B) Through the delivery (or attestation to the ownership) of shares of Stock that are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date; or

(C) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure.

Payment instruments will be received subject to collection. The delivery of certificates representing the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Option Award agreement or applicable provisions of laws. In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of shares attested to.

(v) Annual Limit on Incentive Stock Options. To the extent required for incentive stock option treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive

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Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

(b) Non-transferability of Options. No Stock Option shall be transferable by the optionee otherwise than by will or by the laws of descent and distribution and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee, or by the optionee's legal representative or guardian in the event of the optionee's incapacity. Notwithstanding the foregoing, the Administrator, in its sole discretion, may provide in the Award agreement regarding a given Option that the optionee may transfer his Non-Qualified Stock Options to members of his immediate family, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Option.

SECTION 6. STOCK APPRECIATION RIGHTS

(a) Nature of Stock Appreciation Rights. A Stock Appreciation Right is an Award entitling the recipient to receive an amount in cash or shares of Stock or a combination thereof having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right, which price shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised, with the Administrator having the right to determine the form of payment.

(b) Grant and Exercise of Stock Appreciation Rights. Stock Appreciation Rights may be granted by the Administrator in tandem with, or independently of, any Stock Option granted pursuant to Section 5 of the Plan. In the case of a Stock Appreciation Right granted in tandem with a Non-Qualified Stock Option, such Stock Appreciation Right may be granted either at or after the time of the grant of such Option. In the case of a Stock Appreciation Right granted in tandem with an Incentive Stock Option, such Stock Appreciation Right may be granted only at the time of the grant of the Option.

A Stock Appreciation Right or applicable portion thereof granted in tandem with a Stock Option shall terminate and no longer be exercisable upon the termination or exercise of the related Option.

(c) Terms and Conditions of Stock Appreciation Rights. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined from time to time by the Administrator, subject to the following:

- (i) Stock Appreciation Rights granted in tandem with Options shall be exercisable at such time or times and to the extent that the related Stock Options shall be exercisable.
- (ii) Upon exercise of a Stock Appreciation Right, the applicable portion of any related Option shall be surrendered.
- (iii) All Stock Appreciation Rights shall be exercisable during the grantee's lifetime only by the grantee or the grantee's legal representative.

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SECTION 7. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Awards. A Restricted Stock Award is an Award entitling the recipient to acquire, at such purchase price (which may be zero) as determined by the Administrator, shares of Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant (Restricted Stock). Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The grant of a Restricted Stock Award is contingent on the grantee executing the Restricted Stock Award agreement. The terms and conditions of each such agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

(b) Rights as a Stockholder. Upon execution of a written instrument setting forth the Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the voting of the Restricted Stock, subject to such conditions contained in the written instrument evidencing the Restricted Stock Award. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Stock shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Stock are vested as provided in Section 7(d) below, and (ii) certificated Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.

(c) Restrictions. Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award agreement. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, if any, if a grantee's employment (or other service relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Stock that has not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other service relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a shareholder. Following such deemed reacquisition of unvested Restricted Stock that are represented by physical certificates, grantee shall surrender such certificates to the Company upon request without consideration.

(d) Vesting of Restricted Stock. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Notwithstanding the foregoing, in the event that any such Restricted Stock shall have a performance-based goal, the restriction period with respect to such shares shall not be less than one year, and in the event any such Restricted Stock shall have a time-based restriction, the restriction period with respect to such shares shall not be less than three years. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed vested. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a grantee's rights in any shares of Restricted Stock that have not vested shall automatically terminate upon the

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grantee's termination of employment (or other service relationship) with the Company and its Subsidiaries and such shares shall be subject to the provisions of Section 7(c) above.

SECTION 8. DEFERRED STOCK AWARDS

(a) Nature of Deferred Stock Awards. A Deferred Stock Award is an Award of phantom stock units to a grantee, subject to restrictions and conditions as the Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The grant of a Deferred Stock Award is contingent on the grantee executing the Deferred Stock Award agreement. The terms and conditions of each such agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. Notwithstanding the foregoing, in the event that any such Deferred Stock Award shall have a performance-based goal, the restriction period with respect to such award shall not be less than one year, and in the event any such Deferred Stock Award shall have a time-based restriction, the restriction period with respect to such award shall not be less than three years. At the end of the deferral period, the Deferred Stock Award, to the extent vested, shall be paid to the grantee in the form of shares of Stock.

(b) Election to Receive Deferred Stock Awards in Lieu of Compensation. The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of the cash compensation or Restricted Stock Award otherwise due to such grantee in the form of a Deferred Stock Award. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with rules and procedures established by the Administrator. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate, in all cases, consistent with the requirements of Section 409A of the Code.

(c) Rights as a Stockholder. During the deferral period, a grantee shall have no rights as a stockholder; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Deferred Stock Award, subject to such terms and conditions as the Administrator may determine.

(d) Restrictions. A Deferred Stock Award may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of during the deferral period.

(e) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a grantee's right in all Deferred Stock Awards that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

SECTION 9. UNRESTRICTED STOCK AWARDS

The Administrator may, in its sole discretion, grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Stock Award to any grantee pursuant to which such grantee may receive shares of Stock free of any restrictions (Unrestricted Stock) under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

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SECTION 10. SECTION 162(m) AWARDS

(a) Performance Based Compensation. Restricted Stock Awards and Deferred Stock Awards granted to Covered Employees under the Plan may qualify as performance-based compensation under Section 162(m) of the Code and the regulations promulgated thereunder (a Section 162(m) Award) if the awards are granted or become payable or vested based upon the achievement of Performance Goals in accordance with this Section 10. Awards of Stock Options and Stock Appreciation Rights granted under the Plan are intended by their terms to qualify as Section 162(m) Awards.

(b) Performance Criteria. In the case of a Restricted Stock Award or Deferred Stock Award that is intended to be a Section 162(m) Award, the Administrator shall make such determinations with respect to such an award and shall establish the objective performance criteria and the individual target award (if any) applicable to each participant or class of participants in writing within ninety (90) days after the beginning of the applicable Performance Cycle (or such other time period as is required under Section 162(m) of the Code) and while the outcome of the Performance Goals is substantially uncertain. The applicable performance criteria shall be based on one or more of the Performance Goals set forth in Exhibit A hereto.

(c) Grant; Vesting.

(i) Subject to the provisions of the Plan, the Administrator shall, in its sole discretion, have authority to determine the eligible participants to whom, and the time or times at which, Section 162(m) Awards shall be made, the vesting and payment provisions applicable to such awards, and all other terms and conditions of such awards. As and to the extent required by Section 162(m) of the Code, the terms of an award that is a Section 162(m) Award must state, in terms of an objective formula or standard, the method of computing the amount of compensation payable under the award, and must preclude discretion to increase the amount of compensation payable under the terms of the award (but may allow the Administrator discretion to decrease the amount of compensation payable).

(ii) For each participant, the Administrator may specify a targeted performance award. The individual target award may be expressed, at the Administrator's discretion, as a fixed dollar amount, a percentage of base pay or total pay (excluding payments made under the Plan), or an amount determined pursuant to an objective formula or standard. Establishment of an individual target award for a participant for a calendar year shall not imply or require that the same level individual target award (if any such award is established by the Administrator for the relevant participant) be set for any subsequent calendar year. At the time the Performance Goals are established, the Administrator shall prescribe a formula to determine the percentages (which may be greater than 100%) of the individual target award which may be payable based upon the degree of attainment of the Performance Goals during the Performance Cycle.

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(iii) The measurements used in Performance Goals set under the Plan shall be determined in accordance with generally accepted accounting principles, except, to the extent that any objective Performance Goals are used, if any measurements require deviation from generally accepted accounting principles, such deviation shall be at the discretion of the Administrator at the time the Performance Goals are set or at such later time to the extent permitted under Section 162(m) of the Code.

(d) Payment. At the expiration of the applicable Performance Cycle, the Administrator shall determine and certify in writing the extent to which the Performance Goals established pursuant to this Section 10 have been achieved and the percentage of the participant's individual target award that has been vested and earned. Following the Administrator's determination and certification in accordance with the foregoing, the Section 162(m) Award shall become vested and payable (or deferred, in the case of deferred stock units) in accordance with the terms and conditions of the applicable award agreement.

(e) Maximum Award Payable. The maximum Section 162(m) Award payable to any one Covered Employee under the Plan for any twelve (12)-month period is 200,000 Shares (subject to adjustment as provided in Section 3(b) hereof).

SECTION 11. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right is an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of another Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award agreement. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other award.

(b) Interest Equivalents. Any Award under this Plan that is settled in whole or in part in cash on a deferred basis may provide in the grant for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a grantee's rights in all Dividend Equivalent Rights or interest equivalents granted as a component of another Award that has not vested shall automatically terminate upon the

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grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

SECTION 12. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver stock certificates to any grantee is subject to and conditioned on tax obligations being satisfied by the grantee.

(b) Payment in Stock. Subject to approval by the Administrator, a grantee may elect to have the minimum required tax withholding obligation satisfied, in whole or in part, by (i) authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due, or (ii) transferring to the Company shares of Stock owned by the grantee with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due.

SECTION 13. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

(a) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or

(b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-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 Administrator otherwise so provides in writing.

SECTION 14. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(b) or 3(c), in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or effect repricing through cancellation and re-grants. Any material Plan amendments (other than amendments that curtail the scope of the Plan), including any Plan amendments that (i) increase the number of shares reserved for issuance under the Plan, (ii) expand the type of Awards available, materially expand the eligibility to participate or materially extend the term of the Plan, or (iii) materially change the method of determining Fair Market Value, shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. In addition, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code or to ensure that compensation earned under Awards qualifies as performance-based compensation under Section 162(m) of the Code, Plan

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amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 14 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(c).

SECTION 15. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 16. GENERAL PROVISIONS

(a) No Distribution: Compliance with Legal Requirements. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

No shares of Stock shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange or similar requirements have been satisfied. The Administrator may require the placing of such stop-orders and restrictive legends on certificates for Stock and Awards as it deems appropriate.

(b) Delivery of Stock Certificates. Stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic book entry records).

(c) Other Compensation Arrangements: No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(d) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to such Company's insider trading policy and procedures, as in effect from time to time.

(e) Designation of Beneficiary. Each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

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SECTION 17. EFFECTIVE DATE OF PLAN

This Plan originally became effective on May 13, 2004 (the Effective Date). No grants of Stock Options and other Awards may be made hereunder after the tenth (10th) anniversary of the Effective Date and no grants of Incentive Stock Options may be made hereunder after the tenth (10th) anniversary of the date the Plan was originally approved by the Board.

SECTION 18. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, applied without regard to conflict of law principles.

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EXHIBIT A

PERFORMANCE GOALS

To the extent permitted under Section 162(m) of the Code, performance goals established for purposes of the grant or vesting of awards of restricted stock and deferred stock units, each intended to be performance-based under Section 162(m) of the Code, shall be based on the attainment of certain target levels of, or a specified increase or decrease (as applicable) in one or more of the following performance goals (Performance Goals):

- earnings per share;
- operating income;
- gross income
- net income (before or after taxes);
- cash flow;
- gross profit;
- gross profit return on investment;
- gross margin return on investment;
- gross margin;
- funds from operations;
- operating margin;
- working capital;
- earnings before interest and taxes;
- earnings before interest, tax, depreciation and amortization;
- return on equity;
- return on assets;
- return on capital;
- return on invested capital;
- net revenues;
- gross revenues;
- revenue growth;
- annual recurring revenues;
- recurring revenues;
- services revenues;
- license revenues;
- sales or market share;
- total shareholder return;
- economic value added;
- specified objectives with regard to limiting the level of increase in all or a portion of the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated

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net of cash balances and/or other offsets and adjustments as may be established by the Administrator in its sole discretion;
the fair market value of the shares of the Stock;
the growth in the value of an investment in the Stock assuming the reinvestment of dividends; or

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reduction in operating expenses.

To the extent permitted under Section 162(m) of the Code, the Administrator may, in its sole discretion, also exclude, or adjust to reflect, the impact of an event or occurrence that the Administrator determines should be appropriately excluded or adjusted, including:

- (a) restructurings, discontinued operations, extraordinary items or events, and other unusual or non-recurring charges as described in Accounting Principles Board Opinion No. 30 and/or management's discussion and analysis of financial condition and results of operations appearing or incorporated by reference in the Company's Form 10-K for the applicable year;
- (b) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management; or
- (c) a change in tax law or accounting standards required by generally accepted accounting principles.

Performance Goals may also be based upon individual participant's performance goals, as determined by the Administrator, in its sole discretion.

In addition, such Performance Goals may be based upon the attainment of specified levels of Company (or subsidiary, division, other operational unit or administrative department of the Company) performance under one or more of the measures described above relative to the performance of other corporations. To the extent permitted under Section 162(m) of the Code, but only to the extent permitted under Section 162(m) of the Code (including, without limitation, compliance with any requirements for stockholder approval), the Administrator may also:

- (a) designate additional business criteria on which the performance goals may be based; or
- (b) adjust, modify or amend the aforementioned business criteria.

ANNEX B

PERINI CORPORATION

2009 GENERAL INCENTIVE COMPENSATION PLAN

1. PURPOSE

The Plan is designed to encourage profitable performance at the corporate level and to reward and recognize those who directly affect and contribute to the achievement of targeted profit levels. It is anticipated that by tying incremental compensation to operating performance over which the Participants have a substantial degree of influence, the Plan will promote higher levels of productivity and/or substantial additional profit for the Company's stockholders.

In order to accomplish the objective of increased productivity and corporate profitability, the Plan has been designed to meet the following criteria:

- That there be a Bonus available to key executives at the corporate executive and staff levels that is directly related to overall corporate profitability.
- That the total Bonus payable to managers with responsibilities at more than one level would depend on the profitability of each level.
- That outstanding achievement will result in outstanding reward, subject to overall Plan limitations, including a possible funding limit based on the Company's actual level of profits.

2. DEFINITIONS

For Plan purposes, except where the context otherwise indicates, the following terms shall have the meanings set forth below:

Base Salary shall mean the annual base salary of a Participant as reported on such Participant's W-2 Form, inclusive of amounts deducted for 401(k) contributions and group insurance premiums, but exclusive of overtime compensation, housing or travel allowances, incentive bonuses, deferred compensation or other special compensation of any kind.

Beneficiary shall mean the person or persons who are designated by a Participant from time to time in the manner prescribed by the Committee to receive benefits under the Plan in the event of a Participant's death.

Board shall mean the Board of Directors of the Company.

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Bonus shall mean Stock issued or cash paid to a Participant in satisfaction of an award hereunder. Any Stock to be awarded as part of a Bonus hereunder shall be issued pursuant to the terms and conditions of any shareholder-approved equity plan of the Company (if any) as in effect from time to time.

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Bonus Period shall mean a period, generally a calendar year, over which performance will be measured as determined by the Committee.

Bonus Pool has the meaning set forth in Section 5.A hereof.

CEO shall mean the Chief Executive Officer of the Company.

Code shall mean the United States Internal Revenue Code of 1986, as amended.

Committee shall mean the Compensation Committee, or such other Committee of the Board, which shall be designated by the Board to administer the Plan. The Committee shall be composed of such number of directors as from time to time are appointed to serve by the Board. Each member of the Committee, while serving as such, shall also be a member of the Board and shall be a non-employee director within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934, and to the extent required by Section 162(m) of the Code, an outside director as defined under Section 162(m) of the Code.

Company shall mean Perini Corporation and its consolidated subsidiaries.

Participant shall mean an individual designated as a participant hereunder by the Committee upon recommendation of the CEO. Such individual shall be a participant at the corporate level of the Company.

Payment Date shall mean the date in the calendar year following the calendar year in which the applicable Bonus Period ends on which a Bonus is paid to a Participant.

Performance Goal shall mean such Bonus Period objective or objectives for such Participants as selected by the Committee from one of the performance goals set forth on Exhibit A hereto.

Plan shall mean the Perini Corporation 2009 General Incentive Compensation Plan as set forth herein and as amended from time to time.

Section 162(m) Award shall mean any Bonus under the Plan that is intended to qualify for the performance-based compensation exception under Section 162(m) of the Code and the treasury regulations and other official guidance promulgated thereunder.

Section 409A shall mean Section 409A of the Code and the treasury regulations and other official guidance promulgated thereunder.

Stock shall mean the common stock of the Company having a par value of \$1.00 per share.

3. ADMINISTRATION

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(a) The Committee shall administer the Plan. The administration of the Plan shall include the power to: (i) approve Participants' participation in the Plan; (ii) establish Performance Goals; (iii) determine if and when any Bonuses shall be paid; (iv) pay out Bonuses, in cash or Stock or a combination thereof, as the Committee shall determine from year to year, subject to the limitations of the Plan; (v) determine the amount, which may be calculated utilizing the allocations established in accordance with Section 5 hereof, and if deemed appropriate, to adjust targets or payments to reflect special achievements for which no bonus would, by strictest adherence to the Plan, be due or to adjust actual results to be used for performance measures in the event of one-time-only or unusual charges or additions to earnings such as special write-ups or extraordinary gains, subject, in all cases, to the limitations of Section 162(m) of the Code with respect to awards hereunder intended to be Section 162(m) Awards; (vi) impose, and change from time to time, the maximum amounts or percentages payable under the Plan, subject to the limitations and conditions of Section 162(m) of the Code with respect to awards hereunder intended to be Section 162(m) Awards; (vii) construe and interpret the Plan; and (viii) establish rules and regulations and to perform all other acts that the Committee believes reasonable and proper, including the authority to delegate responsibilities to others to assist in administering the Plan. Any decision made, or action taken, by the Committee, arising out of, or in connection with, the interpretation and administration of the Plan shall be final, binding and conclusive on all parties.

(b) Until such time as the Committee makes a determination to make payment of a Bonus hereunder with respect to the actual results compared to the Performance Goals for the immediately preceding Bonus Period, no Participant shall have any vested right to receive any amount which might be calculated as payable pursuant to the Plan. Furthermore, for any Bonus Period and up until the Payment Date, the Committee may cancel any Bonus awarded under the Plan if a Participant engages in conduct which the Committee determines to be contrary to the best interests of the Company.

4. ELIGIBILITY

(a) Eligibility to participate under the Plan is limited to individuals who are executives, managers and key employees of the Company whose duties and responsibilities provide them the opportunity to (i) make a material and significant impact to the financial performance of the Company, (ii) have major responsibility in the control of the corporate assets, and (iii) provide critical staff support necessary to enhance operating profitability.

(b) Eligibility and designated levels of participation will be determined by the Committee based upon the recommendations of the CEO. Such eligibility and level of participation may be revised and updated from time to time for unusual circumstances, subject to the limitations of Section 162(m) of the Code with respect to awards hereunder intended to be Section 162(m) Awards. The fixing of eligibility and level of participation shall not create any vested right in any Participant to receive a Bonus hereunder.

(c) A Participant may have responsibilities at more than one level and therefore qualify to receive a Bonus, if any, based on the performance of such other level or levels. The

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Committee, as it deems fair and equitable in its sole discretion, shall apportion such Participant's Base Salary between such pools for purposes of determining such Participant's Bonus allocation.

(d) Eligible Participants who are transferred during the Bonus Period may have their Bonuses pro-rated, based on their normal Base Salary charged to such corporate, business unit or other level within the Company during such Bonus Period.

5. ESTABLISHMENT AND ALLOCATION OF THE BONUS POOL (CORPORATE)

A. Calculation of Bonus Pool Earned

For each Bonus Period, the pool established for the determination of Bonuses (the Bonus Pool) is a function of (i) the Performance Goal or Performance Goals established, (ii) levels of achievement, (iii) Base Salary of Participants, and (iv) individual Bonus limits assigned to Participants expressed as a percentage of Base Salary.

At the beginning of the Bonus Period, the CEO will recommend to the Committee (i) certain Performance Goals to be achieved during the current fiscal year, (ii) a list of Participants and (iii) level of participation expressed as the maximum percentage of Base Salary that could be earned as a Bonus assuming 100% achievement of each Performance Goal. Unless otherwise determined by the Committee, the individual levels of participation (or Bonus limits) are as follows:

Executive Management - up to 100% of Base Salary

Corporate Officers - up to 50% of Base Salary

Corporate Staff - up to 30% of Base Salary

From the above information, the maximum Bonus can be calculated assuming the Performance Goal or each of the Performance Goals, if more than one, are achieved at the 100% level.

Unless otherwise determined by the Committee, Bonuses for levels of achievement that are less than 100% are:

Actual Achievement
Level of Corporate Goals

Percentage Payout of
Maximum Bonus

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Less than 80%	Zero
80%	80%
81-100%	Interpolate to 100% on straight line basis
100% or more	100%

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In the event of multiple Performance Goals, the achievement of one could still result in a partial Bonus depending on the weighting of each objective and the actual target level of achievement.

Example Assume Performance Goals for a corporate officer Participant are weighted 60% for gross profit and 40% for cash flow and results are as follows:

(1)	Corporate Gross Profit Target:	\$20	
	Corporate Gross Profit Actual:	\$18	(Basis for 90% of total Bonus)
	% Achievement	90%	
(2)	Corporate Cash Flow Target:	\$20	
	Corporate Cash Flow Actual:	\$16	(Basis for 80% of total Bonus)
	% Achievement	80%	

The Participant with a potential Bonus of 50% of Base Salary would get 43% of Base Salary as the Bonus amount earned (i.e., 86% multiplied by 50%) based on the following:

Corporate Profit	60% x 90%	=	54.00%
Corporate Cash Flow	40% x 80%	=	<u>32.00%</u>
TOTAL			86.00%

The actual Bonus amount paid is limited to the lower of the percentage payout of the maximum Bonus earned and 100% of the Participant's participation level.

Reallocation Within the Bonus Pool

Except as otherwise prohibited by Section 162(m) of the Code for awards hereunder intended to be Section 162(m) Awards, once the final Bonus Pool is calculated, the amount of a Participant's Bonus can be increased by reallocating a portion of a Bonus from other Participants as determined by the Committee in its sole discretion based upon the recommendations of the CEO.

6. SECTION 162(m) COMPLIANCE

Notwithstanding any other provision of the Plan to the contrary, the provisions of this Section 6 shall apply to the extent that a Bonus under the Plan is intended to be a Section 162(m) Award.

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(a) For purposes of any Bonus payable hereunder that is intended to be a Section 162(m) Award, the Committee shall make such determinations with respect to such Bonus and shall establish the objective performance criteria and the individual target Bonus (if any) applicable to each Participant or class of Participants in writing within ninety (90) days after the beginning of the applicable Bonus Period (or such other time period as is required under Section

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162(m) of the Code) and while the outcome of the Performance Goals is substantially uncertain. The applicable performance criteria shall be based on one or more of the Performance Goals set forth in Exhibit A hereto.

(b) Subject to the limitations of the Plan, the Committee shall, in its sole discretion, have authority to determine the eligible Participants to whom, and the time or times at which, Section 162(m) Awards shall be made, the vesting and payment provisions applicable to such awards, and all other terms and conditions of such awards. As and to the extent required by Section 162(m) of the Code, the terms of an award that is a Section 162(m) Award must state, in terms of an objective formula or standard, the method of computing the amount of compensation payable under the award, and must preclude discretion to increase the amount of compensation payable under the terms of the award (but may allow the Committee discretion to decrease the amount of compensation payable).

(c) For each Participant, the Committee may specify a target Bonus. The individual target Bonus may be expressed, at the Committee's discretion, as a fixed dollar amount, a percentage of Base Salary, or an amount determined pursuant to an objective formula or standard. Establishment of an individual target Bonus for a Participant for a Bonus Period shall not imply or require that the same level individual target Bonus (if any such award is established by the Committee for the relevant Participant) be set for any subsequent Bonus Period. At the time the Performance Goals are established, the Committee shall prescribe a formula to determine the percentages (which may be greater than 100%) of the individual target Bonus which may be payable based upon the degree of attainment of the Performance Goals during the Bonus Period.

(d) The measurements used in Performance Goals set under the Plan shall be determined in accordance with generally accepted accounting principles, except, to the extent that any objective Performance Goals are used, if any measurements require deviation from generally accepted accounting principles, such deviation shall be at the discretion of the Committee at the time the Performance Goals are set or at such later time to the extent permitted under Section 162(m) of the Code.

(e) At the expiration of the applicable Bonus Period, the Committee shall determine and certify in writing the extent to which the Performance Goals established pursuant to this Section 6 have been achieved and the percentage of the Participant's individual target Bonus that has been vested and earned. Following the Committee's determination and certification in accordance with the foregoing, the Section 162(m) Award shall become vested and payable in accordance with the terms and conditions of the Plan.

(f) The maximum value of any payment under any Section 162(m) Award to any Participant in the Plan with respect to any twelve (12)-month period shall be \$ 3,281,250.

7. PAYMENT OF BONUSES

Payment of any Bonus under the Plan shall be made on the Payment Date. Bonuses may be paid in cash or Stock or any percentage of cash and Stock as the Committee shall determine in

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its sole discretion, provided that any Stock to be awarded as part of a Bonus hereunder shall be issued pursuant to the terms and conditions of any shareholder-approved equity plan of the Company (if any) as in effect from time to time. To the extent that there is no shareholder-approved equity plan of the Company with an available share reserve to cover the issuance of Stock in connection with the payment of any Bonus hereunder, the full amount of the Bonus shall be paid in cash.

8. TERMINATION OF EMPLOYMENT

Unless otherwise determined by the Committee, in the event that a Participant ceases to be employed by the Company:

(a) Due to normal retirement, or early retirement with Committee consent, under a formal plan or policy of the Company, or total and permanent disability, as determined by the Committee, or death, a Participant's eligibility shall continue to remain in effect for the duration of the applicable Bonus Period on a pro rata basis. In the event of such a termination of employment, the Participant, or the Participant's Beneficiary (if applicable) shall receive the Participant's pro rated Bonus for the applicable Bonus Period on the Payment Date.

(b) In the event that a Participant shall cease to be an employee of the Company upon the occurrence of any other event, the Participant's eligibility under the Plan shall be canceled and terminated forthwith, and no Bonus shall be payable under the Plan to such Participant.

(c) For purposes of the preceding, it shall not be considered a termination of employment when a Participant is placed by the Company on military or sick leave or such other type of leave of absence, for a period of six (6) months or less, which is considered as continuing intact the employment relationship of the Participant. For any such leave extending beyond six (6) months, the Committee shall decide whether and when there has been a termination of employment.

9. AMENDMENT AND TERMINATION OF PLAN

The Board may, at any time, and from time to time, suspend or terminate the Plan in whole or in part or amend it from time to time in such respects as the Board may deem appropriate and in the best interests of the Company, subject to shareholder approval to the extent required by applicable law, regulation or exchange listing rules. However, in no event may any such amendment, modification, suspension or termination result in an increase in the amount of compensation payable pursuant to any award under the Plan or the failure of any such award to qualify for the performance-based compensation exception under Section 162(m) to the extent applicable.

10. UNFUNDED PLAN

The Plan shall not be deemed to create a trust or other funded arrangement. The rights of a Participant with respect to any Bonus hereunder shall be those of a general unsecured creditor of the Company, and under no circumstances shall any Participant have any other interest in any

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assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations with respect to the Plan.

11. MISCELLANEOUS PROVISIONS

(a) No person shall have any claim or right to be granted a Bonus under the Plan, and the grant of a Bonus under the Plan shall not be construed as giving any Participant the right to be retained in the employ of the Company. The Company expressly reserves the right at any time to dismiss a Participant with or without cause, free from any liability, or any claim under the Plan.

(b) Except by will or the laws of descent and distribution, no right or interest of any Participant in the Plan shall be assignable or transferable and no right or interest of any Participant shall be liable for, or subject to, any lien, obligation or liability of such Participant.

(c) The Company shall have the right to withhold from cash payments sufficient amounts to cover tax withholding for income and employment taxes and any other taxes required to be withheld by applicable law, and if the amount of cash payment is insufficient, the Company may require the Participant to pay to it the balance required to be withheld. Likewise, the Company may require a payment to cover applicable withholding taxes in the event that any part of the Bonus is paid in Stock.

(d) All expenses of administering the Plan shall be borne by the Company.

(e) No persons, including a Participant, or such Participant's Beneficiary, shall have any claim or right to the payment of a Bonus, if, in the opinion of counsel for the Company, such payment does not comply with legal requirements, or is opposed to governmental public policy.

(f) No opinion shall be deemed to be expressed or warranties made as to the effect for federal, state or local tax purposes of any Bonus hereunder.

(g) The place of administration of the Plan shall be in the Commonwealth of Massachusetts, and the validity, construction, interpretation, administration and effect of the Plan and of its rules and regulations, and rights relating to the Plan, shall be determined solely in accordance with the laws of the Commonwealth of Massachusetts.

(h) Although the Company makes no guarantee with respect to the tax treatment of payments hereunder and shall not be responsible in any event with regard to non-compliance with Section 409A, the Plan is intended to either comply with, or be exempt from, the requirements of Section 409A. To the extent that the Plan is not exempt from the requirements of Section 409A, the Plan is intended to comply with the requirements of Section 409A and shall be limited, construed and interpreted in accordance with such intent. Accordingly, the Company reserves the right to amend the provisions of the Plan at any time and in any manner without the consent of Participants solely to comply with the requirements of Section 409A and to avoid the imposition of the additional tax, interest or income inclusion under Section 409A on any

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payment to be made hereunder. Notwithstanding the foregoing, in no event whatsoever shall the Company be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on a Participant by Section 409A (or any similar state or local law) or for damages for failing to comply with Section 409A (or any similar state or local law).

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EXHIBIT A

PERFORMANCE GOALS

To the extent permitted under Section 162(m) of the Code, performance goals established for purposes of Bonuses intended to be performance-based compensation under Section 162(m) of the Code, shall be based on the attainment of certain target levels of, or a specified increase or decrease (as applicable) in one or more of the following performance goals (Performance Goals):

earnings per share;
operating income;
gross income;
net income (before or after taxes);
cash flow;
gross profit;
gross profit return on investment;
gross margin return on investment;
gross margin;
funds from operations;
operating margin;
working capital;
earnings before interest and taxes;
earnings before interest, tax, depreciation and amortization;
return on equity;
return on assets;
return on capital;
return on invested capital;
net revenues;
gross revenues;
revenue growth;
annual recurring revenues;
recurring revenues;
service revenues;
license revenues;
sales or market share;
total shareholder return;

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economic value added;

specified objectives with regard to limiting the level of increase in all or a portion of the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated net of cash balances and/or other offsets and adjustments as may be established by the Committee in its sole discretion;

the fair market value of the a share of Stock;

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the growth in the value of an investment in the Stock assuming the reinvestment of dividends; or
reduction in operating expenses.

To the extent permitted under Section 162(m) of the Code, the Committee may, in its sole discretion, also exclude, or adjust to reflect, the impact of an event or occurrence that the Committee determines should be appropriately excluded or adjusted, including:

- (a) restructurings, discontinued operations, extraordinary items or events, and other unusual or non-recurring charges as described in Accounting Principles Board Opinion No. 30 and/or management's discussion and analysis of financial condition and results of operations appearing or incorporated by reference in the Company's Form 10-K for the applicable year;
- (b) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management; or
- (c) a change in tax law or accounting standards required by generally accepted accounting principles.

Performance Goals may also be based upon individual participant performance goals, as determined by the Committee, in its sole discretion.

In addition, such Performance Goals may be based upon the attainment of specified levels of Company (or subsidiary, division, other operational unit or administrative department of the Company) performance under one or more of the measures described above relative to the performance of other corporations. To the extent permitted under Section 162(m) of the Code, but only to the extent permitted under Section 162(m) of the Code (including, without limitation, compliance with any requirements for stockholder approval), the Committee may also:

- (a) designate additional business criteria on which the performance goals may be based; or
- (b) adjust, modify or amend the aforementioned business criteria.