

OptimizeRx Corp
Form DEF 14C
June 17, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c)

of the

Securities Exchange Act of 1934

Check the appropriate box:

Preliminary Information Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

Definitive Information Statement

OptimizeRx Corporation

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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£ Fee computed on table below per Exchange Act Rules 14c-5(g)

- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

£ Fee paid previously with preliminary materials.

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- (1) Amount previously paid:
- (2) Form, Schedule, or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

OPTIMIZERX CORPORATION

400 Water Street, Suite 200, Rochester, MI 48307

Telephone: 248-651-6568

June 14, 2013

Dear Shareholders:

The enclosed Information Statement is being furnished to the holders of record of shares of the common stock and preferred stock of OptimizeRx Corporation, a Nevada corporation (the "Company"), as of the close of business on the record date, June 17, 2013. The purpose of the Information Statement is to notify the Company's shareholders that on June 14, 2013, the Company received written consents in lieu of a meeting of shareholders (the "Written Consent") from the holders of our common and preferred stock, representing 52% of the combined voting power of the Company's common and preferred stock. The Written Consent adopted resolutions that approved the Company's 2013 Equity Incentive Plan (the "Plan") and reserved 1,500,000 shares of the Company's common stock for issuance under the Plan.

You are urged to read the Information Statement in its entirety for a description of the actions taken by the majority of shareholders of the Company. The resolutions will become effective twenty calendar days after this Information Statement is first mailed to the Company's shareholders.

THE COMPANY IS NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND A PROXY.

No action is required by you. The enclosed Information Statement is being furnished to you to inform you that the foregoing actions have been approved by the holders of at least a majority of the outstanding shares of all voting stock of the Company. Because shareholders holding at least a majority of the voting rights of the Company's outstanding stock have voted in favor of the foregoing actions, and have sufficient voting power to approve such actions through their ownership of common stock and preferred stock, no other shareholder consents will be solicited in connection with the transactions described in this Information Statement. The Board is not soliciting your proxy in connection with the adoption of these resolutions, and proxies are not requested from stockholders.

This Information Statement is being mailed on or about June 21, 2013 to shareholders of record on June 14, 2013.

Sincerely,

/s/ Shad Stastney

Shad Stastney

President and Chief Executive Officer

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OPTIMIZERX CORPORATION

400 Water Street, Suite 200, Rochester, MI 48307

Telephone: 248-651-6568

INFORMATION STATEMENT

PURSUANT TO SECTION 14(C)

OF THE SECURITIES EXCHANGE ACT OF 1934

AND RULE 14C-2 THEREUNDER

NO VOTE OR OTHER ACTION OF THE COMPANY'S SHAREHOLDERS IS REQUIRED IN CONNECTION WITH THIS INFORMATION STATEMENT.

THE COMPANY IS NOT ASKING YOU FOR A PROXY AND

YOU ARE REQUESTED NOT TO SEND A PROXY.

This Information Statement is being furnished to the holders of record of shares of the common stock and preferred stock of OptimizeRx Corporation, a Nevada corporation (the "Company"), as of the close of business on the record date, June 17, 2013. The purpose of the Information Statement is to notify the Company's shareholders that on June 14, 2013, the Company received written consents in lieu of a meeting of shareholders (the "Written Consent") from the holders of the Company's common and preferred stock, representing 52% of the combined voting power of the Company's common and preferred stock. The Written Consent adopted resolutions that approved the Company's 2013 Equity Incentive Plan (the "Plan") and reserved 1,500,000 shares of the Company's common stock for issuance under the Plan.

You are urged to read the Information Statement in its entirety for a description of the actions taken by the majority of shareholders of the Company. The resolutions will become effective twenty calendar days after this Information Statement is first mailed to the Company's shareholders.

Because shareholders holding at least a majority of the voting rights of our outstanding common stock and preferred stock have voted in favor of the foregoing actions, and have sufficient voting power to approve such actions through their ownership of common stock and preferred stock, no other shareholder consents will be solicited in connection with the transactions described in this Information Statement. The Board is not soliciting proxies in connection with the adoption of these resolutions, and proxies are not requested from shareholders.

In accordance with the Company's bylaws, the Board of Directors has fixed the close of business on June 17, 2013 as the record date for determining the shareholders entitled to notice of the above noted actions. This Information Statement is being mailed on or about June 21, 2013 to shareholders of record on the record date.

DISTRIBUTION AND COSTS

The Company will pay all costs associated with the distribution of this Information Statement, including the costs of printing and mailing. In addition, the Company will only deliver one Information Statement to multiple security holders sharing an address, unless the Company has received contrary instructions from one or more of the security holders. Also, the Company will promptly deliver a separate copy of this Information Statement and future shareholder communication documents to any security holder at a shared address to which a single copy of this Information Statement was delivered, or deliver a single copy of this Information Statement and future shareholder communication documents to any security holder or holders sharing an address to which multiple copies are now delivered, upon written request to the Company at its address noted above.

Shareholders may also address future requests regarding delivery of information statements by contacting the Company at the address noted above.

VOTE REQUIRED; MANNER OF APPROVAL

Approval of the Plan requires the affirmative vote of the holders of a majority of the voting power of the Company. Because shareholders holding at least a majority of the voting rights of the Company's outstanding common and preferred stock have voted in favor of the foregoing actions, and have sufficient voting power to approve such actions through their ownership of common and preferred stock, no other shareholder consents will be solicited in connection with the transactions described in this Information Statement. The Board is not soliciting proxies in connection with the adoption of these proposals, and proxies are not requested from shareholders.

The law pertaining to corporate actions of the Company, the Nevada Revised Statutes, provides in substance that shareholders may take action without a meeting of the shareholders and without prior notice if a consent or consents in writing, setting forth the action so taken, is signed by the holders of the outstanding voting shares holding not less than the minimum number of votes that would be necessary to approve such action at a shareholders meeting. The actions take in this Information Statement require the written consent from holders of record of a majority of the outstanding shares of voting stock of the Company.

The common stock, Series A Convertible Preferred Stock and Series B Convertible Preferred Stock constitute the outstanding classes of the Company's voting securities. On June 17, 2013, the record date for determining the identity of stockholders who are entitled to receive this Information Statement, the Company had 14,232,496 shares of common stock issued and outstanding, 35 shares of Series A Convertible Preferred Stock issued and outstanding and 30 shares of Series B Convertible Preferred Stock issued and outstanding. Each share of Series A Convertible Preferred Stock had 100,000 votes and each share of Series B Convertible Preferred Stock had 66,667 votes. Thus, the voting power of all of the Series A Convertible Preferred Stock was 3,500,000 votes and the voting power of all of the Series B Convertible Preferred Stock was 2,000,010 votes. The holders of the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and the common stock vote as a single class on all matters submitted to stockholders, subject to the common shares having 1 vote per share, the Series A Convertible Preferred Stock having 100,000 votes per share and the Series B Convertible Preferred Stock having 66,667 votes per share. Thus, the combined voting power of all of the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and common stock was 19,732,506 votes. Accordingly, the vote or written consent of the shareholders holding at least 9,866,254 shares of the combined outstanding common stock, Series A Convertible Preferred Stock and Series B Convertible Preferred Stock is necessary to approve the Plan.

On June 14, 2013, the Company received the Written Consent from the holders of 4,719,590 shares of the issued and outstanding shares of common stock, 35 shares of the issued and outstanding Series A Convertible Preferred Stock and 30 shares of the issued and outstanding Series B Convertible Preferred Stock, representing 52% of the issued and outstanding shares of common stock, Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. The Written Consent adopted resolutions that approved the Plan and reserved 1,500,000 shares of the Company's common stock for issuance under the Plan.

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Under Rule 14c-2 promulgated under the Securities Exchange Act of 1934, as amended (the “Act”), the corporate actions identified in this Information Statement may not be implemented until twenty (20) calendar days after this Information Statement is first mailed to the Company’s shareholders. As such, the adoption of the Plan is anticipated to be on or about July 11, 2013, twenty (20) days after the mailing of this Information Statement.

ACTION #1

APPROVAL OF THE PLAN

The sole corporate action is to adopt the Plan. The purpose of the Plan is attract and retain the best available personnel for positions of substantial responsibility with the Company, to provide additional incentive to employees, directors and consultants of the Company, and to promote the success of the Company's business. Under the Plan the Company may issue up to an aggregate total of 1,500,000 shares of the Company's common stock. As of June 14, 2013, the Company has not issued any shares of common stock under the Plan. A copy of the Plan is attached hereto as Appendix A. The following summary of the material provisions of the Plan is qualified in its entirety by reference to the complete text of the Plan.

ELIGIBLE PARTICIPANTS

Any director, employee or consultant of the Company and any affiliate of the Company is eligible to be designated a participant in the Plan. However, incentive stock options ("ISOs") may be granted only to employees.

PLAN ADMINISTRATION

The Plan will be administered by the Company's Board of Directors, or a committee appointed by the Board of Directors. The Board may determine persons eligible for grants and the timing, type, amount, fair market value and other provisions of such grants.

The Board will have authority, subject to the express provisions of the Plan, to construe the Plan and the award agreements granted pursuant to the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, and to make all other determinations in the judgment of the Board necessary or desirable for the administration of the Plan. The Board may correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any option agreement in the manner and to the extent it shall deem expedient to promote the best interests of the Company. The Board may suspend or terminate the Plan at any time.

AWARDS UNDER THE PLAN

The Plan provides for the granting of (i) ISOs, which qualify as incentive stock options under the Internal Revenue Code (the “Code”), (ii) non-qualified options which do not qualify as incentive stock options under the Code (“NQSO”), restricted stock, restricted stock units, performance shares, performance units, or other incentive payable in shares of common stock as may be designated by the Board from time to time. Any options that expire prior to exercise or shares of stock which are forfeited will become available for new grants.

ISOs may not be granted at a purchase price less than the fair market value of the common stock on the date of grant (or, for an option granted to a person holding more than 10% of the Company’s voting stock, at less than 110% of fair market value). No option granted under the Plan will be exercisable after 10 years (five years in the case of a 10% shareholder) or such shorter period as specified in the option agreement. An option will not be transferable except by will or by the laws of descent and distribution and is exercisable during the lifetime of the option holder only by the option holder.

If an option holder’s service with the Company terminates (other than for death or disability) the option holder may exercise his or her option to the extent vested for three months. If an option holder’s service with the Company terminates due to death or disability, the option holder may exercise his or her option to the extent vested twelve months.

Shares of restricted stock or restricted stock unit awards granted under the Plan may be subject to forfeiture in accordance with a vesting schedule determined by the Board, and, to the extent not vested may be forfeited to the Company upon the grantee’s termination of service with the Company.

In the event of the Company’s dissolution or liquidation, all outstanding awards under the Plan will terminate. The Board will make proportionate adjustments in the case of a stock dividend, stock split, spin-off, combination or exchange of shares, recapitalization, merger, consolidation, or distribution to stockholders other than a normal cash dividend. In the event of a change in control, all outstanding awards, other than performance shares and performance units, shall become fully and immediately exercisable, and all applicable deferral and restriction limitations or forfeiture provisions shall lapse, immediately prior to the change in control and shall terminate at the effective time of the change in control.

TERM

The Plan will terminate on June 14, 2023.

FEDERAL INCOME TAX CONSEQUENCES

The following generally summarizes the United States federal income tax consequences that generally will arise with respect to option awards granted under the Plan. This summary is based on the tax laws in effect as of the date of this Information Statement. Changes to these laws could alter the tax consequences described below.

To the Optionees.

NSOs. An optionee generally will not recognize any income for federal income tax purposes on the grant of an NSO. Upon the exercise of an NSO, an optionee generally will recognize compensation taxable as ordinary income, equal to the difference between the fair market value of the Company's common stock on the date of exercise and the exercise price. This compensation is subject to withholding taxes. An optionee will recognize gain or loss on the sale or exchange of stock acquired pursuant to an exercise of an NSO. Such gain or loss will be equal to the difference between the optionee's adjusted basis in the stock, which will include the exercise price and any ordinary income recognized on exercise of the option, and the fair market value of the stock on the date of sale or exchange. The gain may be subject to preferential tax treatment if the stock has been held for more than one year.

ISOs. An optionee will not recognize any income for federal income tax purposes on the grant of an ISO. Upon the exercise of an ISO, tax is deferred until the underlying stock is sold (though the spread at exercise may be a tax preference for purposes of the Alternative Minimum Tax). When sold, the ISO is taxed at the capital gains rate on the full amount of appreciation for the sales proceeds over the option cost, provided the employee has satisfied the holding period prescribed for ISOs—the longer of two (2) years from the date of grant or one (1) year from the date of exercise. If the ISO stock is sold within the holding period, the option is taxed as an NSO.

Generally, a participant will not recognize income upon the grant of restricted stock. When the shares of restricted stock vest, the participant will recognize ordinary income equal to the fair market value of the stock and also will be subject to income and employment tax withholding. We will receive a tax compensation deduction equal to the amount of ordinary income recognized by the participant. A participant who receives a restricted stock award may elect to accelerate his or her tax obligation by submitting a Code Section 83(b) election within 30 days after the grant date, pursuant to which the participant will be taxed on the fair market value of the restricted stock as of the grant

date, and we will receive a tax compensation deduction as of the grant date equal to the ordinary income recognized by the participant. Any gain or loss upon a subsequent disposition of the shares will be long-term capital gain or loss if the shares are held for more than one year and otherwise will be short-term capital gain or loss. If, after making the Section 83(b) election, the shares are forfeited, the participant will not be entitled to a loss deduction.

To the Company.

With the exception of ISO awards, the Company generally is entitled to a business expense deduction at the time and in the amount that the optionee recognizes ordinary income in connection with the grant or exercise of the award. As to grants of ISOs, the Company generally receives no deduction associated with such grant except when the recipient has a disqualifying disposition. Upon a disqualifying disposition, the option loses its ISO status, converts to a NSO, and is taxed accordingly. As a result of Section 162(m) of the Code, the Company's deduction for certain awards under the Plan may be limited to the extent that the chief executive officer or other executive officer whose compensation is required to be reported in the summary compensation table receives compensation in excess of \$1 million a year (other than performance-based compensation that otherwise meets the requirements of Section 162(m) of the Code).

Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth, as of June 14, 2013, the beneficial ownership of our common and preferred stock by each executive officer and director, by each person known by us to beneficially own more than 5% of the our common stock and by the executive officers and directors as a group. Unless otherwise noted, the address of each beneficial owner is located at 400 Water Street, Ste. 200, Rochester, MI 48307.

Title of class	Name and address of beneficial owner ⁽¹⁾	Amount of beneficial ownership	Percent of class ⁽²⁾
Common	David Lester ⁽³⁾	573,000	2%
Common	David Harrell ⁽⁴⁾	3,538,750	17%
Common	Terence J. Hamilton ⁽⁵⁾	974,500	4%
Common	Shad Stastney	0	-
Total of All Directors and Executive Officers:		5,086,250	24%
More Than 5% Beneficial Owners:			
Common/	Vicis Capital Master Fund ⁽⁶⁾	16,386,350	55%
Preferred			

As used in this table, "beneficial ownership" means the sole or shared power to vote, or to direct the voting of, a security, or the sole or shared investment power with respect to a security (i.e., the power to dispose of, or to direct the disposition of, a security). In addition, for purposes of this table, a person is deemed, as of any date, to have "beneficial ownership" of any security that such person has the right to acquire within 60 days after such date.

The percent of class is based on 19,732,506 voting shares as of June 14, 2013, comprised of 14,232,496 shares of the Company's common stock issued and outstanding as of June 14, 2013, 35 shares of the Company's Series A Convertible Preferred Stock issued and outstanding as of June 14, 2013, which has the power to vote 3,500,000 shares, and 30 shares of the Company's Series B Convertible Preferred Stock issued and outstanding as of June 14, 2013, which has the power to vote 2,000,010 shares.

⁽³⁾ Includes 18,000 shares held in his name, warrants to purchase 500,000 shares of common stock at prices ranging from of \$0.35 to \$2.00 per share and options to purchase 55,000 shares of common stock at \$1.00 per share.

⁽⁴⁾ Includes 3,136,250 shares held in his name, options to purchase 402,500 shares of common stock at prices ranging from of \$1.00 to \$1.81 per share.

⁽⁵⁾ Includes 697,000 shares held in his name and options to purchase 277,500 shares of common stock at a price of \$1.00 per share.

⁽⁶⁾ Includes 886,340 shares of common stock held in its name, 35 shares of the Company's Series A Convertible Preferred Stock, which has the power to vote 3,500,000 shares, 30 shares of the Company's Series B Convertible Preferred Stock, which has the power to vote 2,000,010 shares, and warrants to purchase 10,000,000 shares of common stock at strike prices ranging from \$2.00 to \$3.00 per share.

OTHER MATTERS

The Board knows of no other matters other than those described in this Information Statement which have been approved or considered by the holders of a majority of the shares of the Company's voting stock.

IF YOU HAVE ANY QUESTIONS REGARDING THIS INFORMATION STATEMENT AND/OR THE PLAN, PLEASE CONTACT:

OPTIMIZERX CORPORATION

400 Water Street, Suite 200

Rochester, MI 48307

Telephone: 248-651-6568

Sincerely,

/s/ Shad Stastney

Shad Stastney

President and Chief Executive Officer

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Appendix A

OPTIMIZERX CORPORATION

(the “Company”)

2013 INCENTIVE PLAN

Section

1. PURPOSE

The purpose of the OptimizeRx Corporation 2013 Incentive Plan is to attract, retain and motivate employees, officers, directors, consultants, agents, advisors and independent contractors of the Company and its Related Companies by providing them the opportunity to acquire a proprietary interest in the Company and to align their interests and efforts to the long-term interests of the Company’s stockholders.

Section

2. DEFINITIONS

Certain capitalized terms used in the Plan have the meanings set forth in Appendix A.

Section

3. ADMINISTRATION

3.1

Administration of the Plan

The Plan shall be administered by the Board or its Compensation Committee. The Compensation Committee shall be composed of two or more directors, each of whom is a “non-employee director” within the meaning of Rule 16b-3(b)(3) promulgated under the Exchange Act, or any successor definition adopted by the Securities and Exchange Commission. As used in this Plan, the term “Compensation Committee” shall be construed as if followed by the words “(if any)”; and nothing in this Plan requires the Board to have a Compensation Committee.

3.2

Delegation

Notwithstanding the foregoing, the Board may delegate responsibility for administering the Plan with respect to designated classes of Eligible Persons to different committees consisting of one or more members of the Board, subject to such limitations as the Board deems appropriate, except with respect to Awards to any Participants who are then subject to Section 16 of the Exchange Act. Members of any committee shall serve for such term as the Board may determine, subject to removal by the Board at any time. To the extent consistent with applicable law, the Board or the Compensation Committee may authorize one or more officers of the Company to grant Awards to designated classes of Eligible Persons, within limits specifically prescribed by the Board or the Compensation Committee; provided, however, that no such officer shall have or obtain authority to grant Awards to himself or herself or to any person then subject to Section 16 of the Exchange Act. All references in the Plan to the “Committee” shall be, as applicable, to the Board, the Compensation Committee or any other committee or any officer to whom the Board or the Compensation Committee has delegated authority to administer the Plan.

3.3

Administration and Interpretation by Committee

(a) Except for the terms and conditions explicitly set forth in the Plan and to the extent permitted by applicable law, the Committee shall have full power and exclusive authority, subject to such orders or resolutions not inconsistent with the provisions of the Plan as may from time to time be adopted by the Board, to

- (i) select the Eligible Persons to whom Awards may from time to time be granted under the Plan;
- (ii) determine the type or types of Awards to be granted to each Participant under the Plan;

- (iii) determine the number of shares of Common Stock, if any, to be covered by each Award granted under the Plan;
 - (iv) determine the terms and conditions of any Award granted under the Plan;
 - (v) approve the forms of notice or agreement for use under the Plan;
 - (vi) determine whether, to what extent and under what circumstances Awards may be settled in cash, shares of Common Stock or other property or canceled or suspended;
 - (vii) determine whether, to what extent and under what circumstances cash, shares of Common Stock, other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant;
 - (viii) interpret and administer the Plan and any instrument evidencing an Award, notice or agreement executed or entered into under the Plan;
 - (ix) establish such rules and regulations as it shall deem appropriate for the proper administration of the Plan;
 - (x) delegate ministerial duties to such of the Company's employees as it so determines; and
 - (xi) make any other determination and take any other action that the Committee deems necessary or desirable for administration of the Plan.
- (b) The Committee shall have the right, without stockholder approval, to cancel or amend outstanding Options or SARs for the purpose of repricing, replacing or regranting such Options or SARs with Options or SARs that have a purchase or grant price that is less than the purchase or grant price for the original Options or SARs except in connection with adjustments provided in Section 15.
- (c) The effect on the vesting of an Award of a Company-approved leave of absence or a Participant's working less than full-time shall be determined by the Company's chief human resources officer or other person performing that function or, with respect to directors or executive officers, by the Committee, whose determination shall be final.
- (d) Decisions of the Committee shall be final, conclusive and binding on all persons, including the Company, any Participant, any stockholder and any Eligible Person. A majority of the members of the Committee may determine its actions.

Section

4.1

4. SHARES SUBJECT TO THE PLAN

Authorized Number of Shares

Subject to adjustment from time to time as provided in subsection 15.1, a maximum of 1,500,000 shares of Common Stock shall be available for issuance under the Plan. Shares issued under the Plan shall be drawn from authorized and unissued shares or shares now held or subsequently acquired by the Company as treasury shares.

4.2

Share Usage

(a) Shares of Common Stock covered by an Award shall not be counted as used unless and until they are actually issued and delivered to a Participant. If any Award lapses, expires, terminates or is canceled prior to the issuance of shares thereunder or if shares of Common Stock are issued under the Plan to a Participant and thereafter are forfeited to or otherwise reacquired by the Company, the shares subject to such Awards and the forfeited or reacquired shares shall again be available for issuance under the Plan. Any shares of Common Stock.

(i) tendered by a Participant or retained by the Company as full or partial payment to the Company for the purchase price of an Award or to satisfy tax withholding obligations in connection with an Award, or

(ii) covered by an Award that is settled in cash, or in a manner such that some or all of the shares of Common Stock covered by the Award are not issued,

shall be available for Awards under the Plan. The number of shares of Common Stock available for issuance under the Plan shall not be reduced to reflect any dividends or dividend equivalents that are reinvested into additional shares of Common Stock or credited as additional shares of Common Stock subject or paid with respect to an Award.

(b) The Committee shall also, without limitation, have the authority to grant Awards as an alternative to or as the form of payment for grants or rights earned or due under other compensation plans or arrangements of the Company.

(c) Notwithstanding anything in the Plan to the contrary, the Committee may grant Substitute Awards under the Plan. Substitute Awards shall not reduce the number of shares authorized for issuance under the Plan. In the event that an Acquired Entity has shares available for awards or grants under one or more preexisting plans not adopted in contemplation of such acquisition or combination, then, to the extent determined by the Committee, the shares available for grant pursuant to the terms of such preexisting plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to holders of common stock of the entities that are parties to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the number of shares of Common Stock authorized for issuance under the Plan; provided, however, that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of such preexisting plans, absent the acquisition or combination, and shall only be made to individuals who were not employees or directors of the Company or a Related Company prior to such acquisition or combination. In the event that a written agreement between the Company and an Acquired Entity pursuant to which a merger or consolidation is completed is approved by the Board and that agreement sets forth the terms and conditions of the substitution for or assumption of outstanding awards of the Acquired Entity, those terms and conditions shall be deemed to be the action of the Committee without any further action by the Committee, except as may be required for compliance with Rule 16b-3 under the Exchange Act, and the persons holding such awards shall be deemed to be Participants.

(d) Notwithstanding the other provisions in this subsection, the maximum number of shares that may be issued upon the exercise of Incentive Stock Options shall equal the aggregate share number stated in subsection 4.1, subject to adjustment as provided in subsection 15.1.

Section

5. ELIGIBILITY

An Award may be granted to any employee, officer or director of the Company or a Related Company whom the Committee from time to time selects. An Award may also be granted to any consultant, agent, advisor or independent contractor for bona fide services rendered to the Company or any Related Company that:

(a) are not in connection with the offer and sale of the Company's securities in a capital-raising transaction, and

(b) do not directly or indirectly promote or maintain a market for the Company's securities.

Section

6. AWARDS

6.1

Form, Grant and Settlement of Awards

The Committee shall have the authority, in its sole discretion, to determine the type or types of Awards to be granted under the Plan. Such Awards may be granted either alone or in addition to or in tandem with any other type of Award. Any Award settlement may be subject to such conditions, restrictions and contingencies as the Committee shall

determine.

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6.2 Evidence of Awards

Awards granted under the Plan shall be evidenced by a written, including an electronic, notice or agreement that shall contain such terms, conditions, limitations and restrictions as the Committee shall deem advisable and that are not inconsistent with the Plan.

6.3 Deferrals

The Committee may permit or require a Participant to defer receipt of the payment of any Award if and to the extent set forth in the instrument evidencing the Award at the time of grant. If any such deferral election is permitted or required, the Committee, in its sole discretion, shall establish rules and procedures for such payment deferrals, which may include the grant of additional Awards or provisions for the payment or crediting of interest or dividend equivalents, including converting such credits to deferred stock unit equivalents; provided, however, that the terms of any deferrals under this subsection shall comply with all applicable law, rules and regulations, including, without limitation, Section 409A of the Code.

6.4 Dividends and Distributions

Participants may, if and to the extent the Committee so determines and sets forth in the instrument evidencing the Award at the time of grant, be credited with dividends paid with respect to shares of Common Stock underlying an Award in a manner determined by the Committee in its sole discretion. The Committee may apply any restrictions to the dividends or dividend equivalents that the Committee deems appropriate. The Committee, in its sole discretion, may determine the form of payment of dividends or dividend equivalents, including cash, shares of Common Stock, Restricted Stock or Stock Units.

Section 7. OPTIONS

7.1 Grant of Options

The Committee may grant Options designated as Incentive Stock Options or Nonqualified Stock Options.

7.2 Option Exercise Price

The exercise price for shares purchased under an Option shall be at least 100% of the Fair Market Value on the Grant Date (and shall not be less than the minimum exercise price required by Section 422 of the Code with respect to Incentive Stock Options), except in the case of Substitute Awards.

7.3 Term of Options

Subject to earlier termination in accordance with the terms of the Plan and the instrument evidencing the Option, the maximum term of a Nonqualified Stock Option shall be ten years from the Grant Date.

7.4 Exercise of Options

The Committee shall establish and set forth in each instrument that evidences an Option the time at which, or the installments in which, the Option shall vest and become exercisable, any of which provisions may be waived or modified by the Committee at any time.

To the extent an Option has vested and become exercisable, the Option may be exercised in whole or from time to time in part by delivery to or as directed or approved by the Company of a properly executed stock option exercise agreement or notice, in a form and in accordance with procedures established by the Committee, setting forth the number of shares with respect to which the Option is being exercised, the restrictions imposed on the shares purchased under such exercise agreement, if any, and such representations and agreements as may be required by the Committee, accompanied by payment in full as described in subsection 7.5 and Section 13. An Option may be exercised only for whole shares and may not be exercised for less than a reasonable number of shares at any one time, as determined by the Committee.

7.5

Payment of Exercise Price

The exercise price for shares purchased under an Option shall be paid in full to the Company by delivery of consideration equal to the product of the Option exercise price and the number of shares purchased. Such consideration must be paid before the Company will issue the shares being purchased and must be in a form or a combination of forms acceptable to the Committee for that purchase, which forms may include:

- (a) cash;
- (b) check or wire transfer;
- (c) having the Company withhold shares of Common Stock that would otherwise be issued on exercise of the Option that have an aggregate Fair Market Value equal to the aggregate exercise price of the shares being purchased under the Option;
- (d) tendering (either actually or, so long as the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, by attestation) shares of Common Stock owned by the Participant that have an aggregate Fair Market Value equal to the aggregate exercise price of the shares being purchased under the Option;
- (e) so long as the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, and to the extent permitted by law, delivery of a properly executed exercise notice, together with irrevocable instructions to a brokerage firm designated or approved by the Company to deliver promptly to the Company the aggregate amount of proceeds to pay the Option exercise price and any withholding tax obligations that may arise in connection with the exercise, all in accordance with the regulations of the Federal Reserve Board; or
- (f) such other consideration as the Committee may permit.

7.6

Effect of Termination of Service

The Committee shall establish and set forth in each instrument that evidences an Option whether the Option shall continue to be exercisable, and the terms and conditions of such exercise, after a Termination of Service, any of which provisions may be waived or modified by the Committee at any time. If not so established in the instrument evidencing the Option, the Option shall be exercisable according to the following terms and conditions, which may be waived or modified by the Committee at any time:

- (a) Any portion of an Option that is not vested and exercisable on the date of a Participant's Termination of Service shall expire on such date.
- (b) Any portion of an Option that is vested and exercisable on the date of a Participant's Termination of Service shall expire on the earliest to occur of:
 - (i) if the Participant's Termination of Service occurs for reasons other than Cause, Retirement, Disability or death, the date that is three months after such Termination of Service;
 - (ii) if the Participant's Termination of Service occurs by reason of Retirement, Disability or death, the one-year anniversary of such Termination of Service; and
 - (iii) the Option Expiration Date.

Notwithstanding the foregoing, if a Participant dies after his or her Termination of Service but while an Option is otherwise exercisable, the portion of the Option that is vested and exercisable on the date of such Termination of Service shall expire upon the earlier to occur of (y) the Option Expiration Date and (z) the one-year anniversary of the date of death, unless the Committee determines otherwise. Also notwithstanding the foregoing, in case a Participant's Termination of Service occurs for Cause, all Options granted to the Participant shall automatically expire upon first notification to the Participant of such termination, unless the Committee determines otherwise. If a Participant's employment or service relationship with the Company is suspended pending an investigation of whether the Participant shall be terminated for Cause, all the Participant's rights under any Option shall likewise be suspended during the period of investigation. If any facts that would constitute termination for Cause are discovered after a Participant's Termination of Service, any Option then held by the Participant may be immediately terminated by the Committee, in its sole discretion.

(c) If the exercise of the Option following a Participant's Termination of Service, but while the Option is otherwise exercisable, would be prohibited solely because the issuance of Common Stock would violate either the registration requirements under the Securities Act or the Company's insider trading policy, then the Option shall remain exercisable until the earlier of (i) the Option Expiration Date and (ii) the expiration of a period of three months (or such longer period of time as determined by the Committee in its sole discretion) after the Participant's Termination of Service during which the exercise of the Option would not be in violation of such Securities Act or insider trading policy requirements.

Section

8. INCENTIVE STOCK OPTION LIMITATIONS

Notwithstanding any other provisions of the Plan, the terms and conditions of any Incentive Stock Options shall also comply in all respects with Section 422 of the Code, or any successor provision, and any applicable regulations thereunder, including, to the extent required thereunder, the following:

8.1

Dollar Limitation

To the extent the aggregate Fair Market Value (determined as of the Grant Date) of Common Stock with respect to which a Participant's Incentive Stock Options become exercisable for the first time during any calendar year (under the Plan and all other stock option plans of the Company and its parent and subsidiary corporations) exceeds \$100,000, such portion in excess of \$100,000 shall be treated as a Nonqualified Stock Option. In the event the Participant holds two or more such Options that become exercisable for the first time in the same calendar year, such limitation shall be applied on the basis of the order in which such Options are granted.

8.2

Eligible Employees.

Individuals who are not employees of the Company or one of its parent or subsidiary corporations may not be granted Incentive Stock Options.

8.3

Exercise Price

The exercise price of an Incentive Stock Option shall be at least 100% of the Fair Market Value of the Common Stock on the Grant Date, and in the case of an Incentive Stock Option granted to a Participant who owns more than 10% of the total combined voting power of all classes of the stock of the Company or of its parent or subsidiary corporations (a "Ten Percent Stockholder"), shall not be less than 110% of the Fair Market Value of the Common Stock on the Grant Date. The determination of more than 10% ownership shall be made in accordance with Section 422 of the Code.

8.4

Option Term

Subject to earlier termination in accordance with the terms of the Plan and the instrument evidencing the Option, the maximum term of an Incentive Stock Option shall not exceed ten years, and in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, shall not exceed five years.

8.5 Exercisability

An Option designated as an Incentive Stock Option shall cease to qualify for favorable tax treatment as an Incentive Stock Option to the extent it is exercised (if permitted by the terms of the Option) (a) more than three months after the date of a Participant's Termination of Service if termination was for reasons other than death or disability, (b) more than one year after the date of a Participant's Termination of Service if termination was by reason of disability, or (c) after the Participant has been on leave of absence for more than 90 days, unless the Participant's reemployment rights are guaranteed by statute or contract.

8.6 Taxation of Incentive Stock Options

In order to obtain certain tax benefits afforded to Incentive Stock Options under Section 422 of the Code, the Participant must hold the shares acquired upon the exercise of an Incentive Stock Option for two years after the Grant Date and one year after the date of exercise.

A Participant may be subject to the alternative minimum tax at the time of exercise of an Incentive Stock Option. The Participant shall give the Company prompt notice of any disposition of shares acquired on the exercise of an Incentive Stock Option prior to the expiration of such holding periods.

8.7 Code Definitions

For the purposes of this Section, "disability" "parent corporation" and "subsidiary corporation" shall have the meanings attributed to those terms for purposes of Section 422 of the Code.

Section 9. STOCK APPRECIATION RIGHTS
9.1 Grant of Stock Appreciation Rights

The Committee may grant Stock Appreciation Rights to Participants at any time on such terms and conditions as the Committee shall determine in its sole discretion. An SAR may be granted in tandem with an Option or alone ("freestanding"). The grant price of a tandem SAR shall be equal to the exercise price of the related Option. The grant price of a freestanding SAR shall be established in accordance with procedures for Options set forth in subsection 7.2. An SAR may be exercised upon such terms and conditions and for the term as the Committee determines in its sole discretion; provided, however, that, subject to earlier termination in accordance with the terms of the Plan and the instrument evidencing the SAR, the maximum term of a freestanding SAR shall be ten years, and in the case of a tandem SAR, (a) the term shall not exceed the term of the related Option and (b) the tandem SAR may be exercised for all or part of the shares subject to the related Option upon the surrender of the right to exercise the equivalent portion of the related Option, except that the tandem SAR may be exercised only with respect to the shares for which its related Option is then exercisable.

9.2 Payment of SAR Amount

Upon the exercise of an SAR, a Participant shall be entitled to receive payment in an amount determined by multiplying:

- (a) the difference between the Fair Market Value of the Common Stock on the date of exercise over the grant price of the SAR by
- (b) the number of shares with respect to which the SAR is exercised.

At the discretion of the Committee as set forth in the instrument evidencing the Award, the payment upon exercise of an SAR may be in cash, in shares, in some combination thereof or in any other manner approved by the Committee in its sole discretion.

9.3 Waiver of Restrictions

Subject to subsection 18.5, the Committee, in its sole discretion, may waive any other terms, conditions or restrictions on any SAR under such circumstances and subject to such terms and conditions as the Committee shall deem appropriate.

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Section 10. STOCK AWARDS, RESTRICTED STOCK AND STOCK UNITS

10.1 Grant of Stock Awards, Restricted Stock and Stock Units

The Committee may grant Stock Awards, Restricted Stock and Stock Units on such terms and conditions and subject to such repurchase or forfeiture restrictions, if any, which may be based on continuous service with the Company or a Related Company or the achievement of any performance goals, as the Committee shall determine in its sole discretion, which terms, conditions and restrictions shall be set forth in the instrument evidencing the Award.

10.2 Vesting of Restricted Stock and Stock Units

Upon the satisfaction of any terms, conditions and restrictions prescribed with respect to Restricted Stock or Stock Units, or upon a Participant's release from any terms, conditions and restrictions of Restricted Stock or Stock Units, as determined by the Committee, and subject to the provisions of Section 13:

(a) the shares of Restricted Stock covered by each Award of Restricted Stock shall become freely transferable by the Participant, and

(b) Stock Units shall be paid in shares of Common Stock or, if set forth in the instrument evidencing the Awards, in cash or a combination of cash and shares of Common Stock.

Any fractional shares subject to such Awards shall be paid to the Participant in cash.

10.3 Waiver of Restrictions

Subject to subsection 18.5, the Committee, in its sole discretion, may waive the repurchase or forfeiture period and any other terms, conditions or restrictions on any Restricted Stock or Stock Unit under such circumstances and subject to such terms and conditions as the Committee shall deem appropriate.

Section 11. PERFORMANCE AWARDS

11.1 Performance Shares

The Committee may grant Awards of Performance Shares, designate the Participants to whom Performance Shares are to be awarded and determine the number of Performance Shares and the terms and conditions of each such Award. Performance Shares shall consist of a unit valued by reference to a designated number of shares of Common Stock, the value of which may be paid to the Participant by delivery of shares of Common Stock or, if set forth in the instrument evidencing the Award, of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee. Subject to subsection 18.5, the amount to be paid under an Award of Performance Shares may be adjusted on the basis of such further consideration as the Committee shall determine in its sole discretion.

11.2 Performance Units

The Committee may grant Awards of Performance Units, designate the Participants to whom Performance Units are to be awarded and determine the number of Performance Units and the terms and conditions of each such Award. Performance Units shall consist of a unit valued by reference to a designated amount of property other than shares of Common Stock, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee. Subject to subsection 18.5, the amount to be paid under an Award of Performance Units may be adjusted on the basis of such further consideration as the Committee shall determine in its sole discretion.

Section 12. OTHER STOCK OR CASH-BASED AWARDS

Subject to the terms of the Plan and such other terms and conditions as the Committee deems appropriate, the Committee may grant other incentives payable in cash or in shares of Common Stock under the Plan.

Section 13. WITHHOLDING

The Company may require the Participant to pay to the Company the amount of:

(a) any taxes that the Company is required by applicable federal, state, local or foreign law to withhold with respect to the grant, vesting or exercise of an Award (“tax withholding obligations”); and

(b) any amounts due from the Participant to the Company or to any Related Company (“other obligations”).

The Company shall not be required to issue any shares of Common Stock or otherwise settle an Award under the Plan until such tax withholding obligations and other obligations are satisfied. The Committee may permit or require a Participant to satisfy all or part of the Participant’s tax withholding obligations and other obligations by:

(i) paying cash to the Company,

(ii) having the Company withhold an amount from any cash amounts otherwise due or to become due from the Company to the Participant,

(iii) having the Company withhold a number of shares of Common Stock that would otherwise be issued to the Participant (or become vested, in the case of Restricted Stock) having a Fair Market Value equal to the tax withholding obligations and other obligations, or

(iv) surrendering a number of shares of Common Stock the Participant already owns having a value equal to the tax withholding obligations and other obligations.

The value of the shares so withheld or tendered may not exceed the employer’s minimum required tax withholding rate.

Section 14. ASSIGNABILITY

No Award or interest in an Award may be sold, assigned, pledged (as collateral for a loan or as security for the performance of an obligation or for any other purpose) or transferred by a Participant or made subject to attachment or similar proceedings otherwise than by will or by the applicable laws of descent and distribution, except to the extent the Participant designates one or more beneficiaries on a Company-approved form who may exercise the Award or receive payment under the Award after the Participant’s death. During a Participant’s lifetime, an Award may be exercised only by the Participant. Notwithstanding the foregoing and to the extent permitted by Section 422 of the Code, the Committee, in its sole discretion, may permit a Participant to assign or transfer an Award subject to such terms and conditions as the Committee shall specify.

Section
15.1

15. ADJUSTMENTS
Adjustment of Shares

In the event, at any time or from time to time, a stock dividend, stock split, spin-off, combination or exchange of shares, recapitalization, merger, consolidation, distribution to stockholders other than a normal cash dividend, or other change in the Company's corporate or capital structure results in

- (a) the outstanding shares of Common Stock, or any securities exchanged therefor or received in their place, being exchanged for a different number or kind of securities of the Company or
- (b) new, different or additional securities of the Company or any other company being received by the holders of shares of Common Stock,

then the Committee shall make proportional adjustments in

- (i) the maximum number and kind of securities available for issuance under the Plan;
- (ii) the maximum number and kind of securities issuable as Incentive Stock Options as set forth in subsection 4.2; and
- (iii) the number and kind of securities that are subject to any outstanding Award and the per share price of such securities, without any change in the aggregate price to be paid therefor.

The determination by the Committee, as to the terms of any of the foregoing adjustments shall be conclusive and binding. Notwithstanding the foregoing, the issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, for cash or property, or for labor or services rendered, either upon direct sale or upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Company convertible into such shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, outstanding Awards. Also notwithstanding the foregoing, a dissolution or liquidation of the Company or a Company Transaction shall not be governed by this subsection but shall be governed by subsections 15.2 and 15.3, respectively.

15.2

Dissolution or Liquidation

To the extent not previously exercised or settled, and unless otherwise determined by the Committee in its sole discretion, Awards shall terminate immediately prior to the dissolution or liquidation of the Company. To the extent a vesting condition, forfeiture provision or repurchase right applicable to an Award has not been waived by the Committee, the Award shall be forfeited immediately prior to the consummation of the dissolution or liquidation.

15.3

Change in Control

Notwithstanding any other provision of the Plan to the contrary, unless the Committee shall determine otherwise in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, in the event of a Change in Control:

- (a) All outstanding Awards, other than Performance Shares and Performance Units, shall become fully and immediately exercisable, and all applicable deferral and restriction limitations or forfeiture provisions shall lapse, immediately prior to the Change in Control and shall terminate at the effective time of the Change in Control; provided, however, that with respect to a Change in Control that is a Company Transaction, such Awards shall become fully and immediately exercisable, and all applicable deferral and restriction limitations or forfeiture provisions shall lapse, only if and to the extent such Awards are not converted, assumed or replaced by the Successor Company. For the purposes of this paragraph, an Award shall be considered converted, assumed or replaced by the Successor Company if following the Company Transaction the option or right confers the right to purchase or receive,

for each share of Common Stock subject to the Award immediately prior to the Company Transaction, the consideration (whether stock, cash or other securities or property) received in the Company Transaction by holders of Common Stock for each share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares); provided, however, that if such consideration received in the Company Transaction is not solely common stock of the Successor Company, the Committee may, with the consent of the Successor Company, provide for the consideration to be received upon the exercise of the Option, for each share of Common Stock subject thereto, to be solely common stock of the Successor Company substantially equal in fair market value to the per share consideration received by holders of Common Stock in the Company Transaction. The determination of such substantial equality of value of consideration shall be made by the Committee, and its determination shall be conclusive and binding.

(b) All Performance Shares or Performance Units earned and outstanding as of the date the Change in Control is determined to have occurred shall be payable in full at the target level in accordance with the payout schedule pursuant to the instrument evidencing the Award. Any remaining Performance Shares or Performance Units (including any applicable performance period) for which the payout level has not been determined shall be prorated at the target payout level up to and including the date of such Change in Control and shall be payable in full at the target level in accordance with the payout schedule pursuant to the instrument evidencing the Award. Any existing deferrals or other restrictions not waived by the Committee in its sole discretion shall remain in effect.

(c) Notwithstanding paragraphs 15.3(a) and 15.3(b), the Committee, in its sole discretion, may (unless otherwise provided in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company) instead provide in the event of a Change in Control that is a Company Transaction

(i) for adjustments to the Plan and outstanding Awards as contemplated by subsection 15.1 or

(ii) that a Participant's outstanding Awards shall terminate upon or immediately prior to such Company Transaction and that such Participant shall receive, in exchange therefor, a cash payment equal to the amount (if any) by which (x) the value of the per share consideration received by holders of Common Stock in the Company Transaction, or, if the Company Transaction is a sale of assets or otherwise does not result in direct receipt of consideration by holders of Common Stock, the value of the deemed per share consideration received, in each case as determined by the Committee in its sole discretion, multiplied by the number of shares of Common Stock subject to such outstanding Awards (to the extent then vested and exercisable or whether or not then vested and exercisable, as determined by the Committee in its sole discretion) exceeds (y) if applicable, the respective aggregate exercise price or grant price for such Awards.