

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

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**FORM 8-K**

**CURRENT REPORT**  
**Pursuant to Section 13 or 15 (d) of the**  
**Securities Exchange Act of 1934**

Date of Report — **June 9, 2011**  
(Date of earliest event reported)

**PENN NATIONAL GAMING, INC.**

(Exact name of registrant as specified in its charter)

**Pennsylvania**  
(State or other jurisdiction  
of incorporation)

**0-24206**  
(Commission File Number)

**23-2234473**  
(IRS Employer  
Identification  
Number)

**825 Berkshire Blvd., Suite 200, Wyomissing Professional Center, Wyomissing, PA**  
(Address of principal executive offices)

**19610**  
(Zip Code)

**Area Code (610) 373-2400**  
(Registrant's telephone number)

Check the appropriate box below if the form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 to Form 8-K):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

As previously disclosed in the Proxy Statement for the 2011 Annual Meeting of Shareholders (the "2011 Proxy Statement") of Penn National Gaming, Inc. (the "Company") filed with the Securities and Exchange Commission (the "Commission") on May 2, 2011, on April 22, 2011, the Board of Directors of the Company approved the extension of the employment agreements between the Company and each of William J. Clifford, the Company's Chief Financial Officer and Senior Vice President-Finance, and Jordan B. Savitch, the Company's Senior Vice President and General Counsel, which were to expire at the close of business on June 10, 2011. On June 10, 2011 the Company entered into a First Amendment to Employment Agreement with each of Mr. Clifford and Mr. Savitch (the "Amendments") providing for a renewal of the term of the applicable employment agreement for a three-year period expiring at the close of business on June 10, 2014, unless terminated earlier in accordance with the terms of the applicable employment agreement. No other substantive changes to the existing employment agreements were made pursuant to the Amendments.

A copy of the Amendments are attached as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K. Additional information about the compensation and benefits provided to Mr. Clifford and Mr. Savitch is included in the 2011 Proxy Statement. The employment agreements with each of Mr. Clifford and Mr. Savitch were filed with the Commission as Exhibit 10.4 and Exhibit 10.5 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the Commission on March 2, 2009.

On June 9, 2011, shareholders approved an amendment to the Company's 2008 Long Term Incentive Compensation Plan (the "Plan") to increase the total number of shares available for issuance of awards under the Plan and to approve the Plan for purposes of Section 162(m) of the Internal Revenue Code. The number of shares authorized for issuance increased by 2,350,000 shares to 9,250,000 and the "fungible share" ratio increased from 2.16 to 2.44. The purpose of the "fungible share" feature is to count each share awarded as restricted stock, or pursuant to any other full value award, as an award of 2.44 shares for the purpose of counting the number of shares available for future awards under the Plan.

Additional information about the Plan and the awards made by the Company under the Plan is included in the 2011 Proxy Statement. A copy of the Plan, as amended, is attached as Exhibit 10.3 to this Current Report on Form 8-K.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

The Company held its Annual Meeting of Shareholders (the "Annual Meeting") on June 9, 2011, at 10 a.m., local time, at the offices of Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, Pennsylvania 19103. Of the 78,647,245 shares of the Company's common stock outstanding as of the close of business on April 15, 2011, the record date for the Annual Meeting, 73,303,859 shares, or approximately 93.2%, of the total shares eligible to vote at the Annual Meeting, were represented in person or by proxy. Six proposals, including a shareholder proposal, were submitted to the shareholders at the Annual Meeting and are described in detail in the Company's 2011 Proxy Statement. The following is a brief description of each matter voted upon at the Annual Meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, with respect to each matter, as applicable.

*Election of Directors.* Each of Peter M. Carlino, Harold Cramer and Saul V. Reibstein were elected to hold office, subject to the provisions of the Company's bylaws, until the annual meeting of shareholders of the Company to be held in the year 2014 and until their respective successors are duly elected and qualified, as follows:

2

Director	Votes FOR	Votes WITHHELD	Broker Non-Votes
Peter M. Carlino	53,744,660	13,915,402	5,643,797
Harold Cramer	47,147,671	20,512,391	5,643,797
Saul V. Reibstein	56,599,768	11,060,294	5,643,797

The term of office of each of Wesley R. Edens, Robert P. Levy, David A. Handler, John M. Jacquemin and Barbara Z. Shattuck continued following the meeting.

*Ratify Independent Registered Public Accountants.* The appointment of Ernst & Young LLP to act as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2011 was ratified, as follows:

Votes FOR	Votes AGAINST	Abstentions	Broker Non-Votes
73,131,348	112,926	59,585	None

*Amendment to the Company's 2008 Long Term Incentive Compensation Plan.* Shareholders approved an amendment to the Company's 2008 Long Term Incentive Compensation Plan to increase the total number of shares available for issuance and to approve such plan for purposes of Section 162(m) of the Internal Revenue Code, as follows:

Votes FOR	Votes AGAINST	Abstentions	Broker Non-Votes
44,429,623	23,143,694	86,745	5,643,797

*Say-on-Pay.* The compensation paid to the Company's named executive officers was approved on an advisory basis, as follows:

Votes FOR	Votes AGAINST	Abstentions	Broker Non-Votes
39,362,392	27,984,409	313,261	5,643,797

*Frequency of Say-on-Pay.* The option of "1 year" received the most votes cast on the advisory vote on the frequency with which the Company should hold a shareholder vote on the compensation of the Company's executives. The complete voting results were as follows:

1 Year	2 Years	3 Years	Abstentions	Broker Non-Votes
40,283,867	2,136,992	24,914,224	324,979	5,643,797

*Shareholder Proposal to Adopt a Majority Voting Standard for the Election of Directors.* Shareholders voted in favor of the proposal presented by a shareholder of the Company recommending that the Company take the steps necessary to amend the Company's bylaws to provide that director nominees shall be elected by the affirmative vote of a majority of the votes cast, with a plurality standard retained for contested director election, as follows:

Votes FOR	Votes AGAINST	Abstentions	Broker Non-Votes
40,093,181	27,444,790	122,091	5,643,797

3

**Item 8.01. Other events.**

On June 9, 2011, the Board of Directors authorized the extension of the repurchase program previously authorized by the Board on June 9, 2010 which provided for the purchase of up to \$300 million of the Company's Common Stock, of which, approximately \$265.4 million remains available. The current authorization extends the repurchase program until the annual meeting of shareholders to be held in 2012, unless extended or shortened by the Board of Directors.

Under the extended repurchase program, purchases may be made from time to time in the open market or in privately negotiated transactions in accordance with applicable securities laws. The actual number of shares to be purchased, if any, will depend upon market conditions.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

**Exhibit No.** \_\_\_\_\_ **Description** \_\_\_\_\_

- 10.1 First Amendment to Employment Agreement dated June 10, 2011 by and between the Company and William J. Clifford.
- 10.2 First Amendment to Employment Agreement dated June 10, 2011 by and between the Company and Jordan B. Savitch.
- 10.3 Penn National Gaming, Inc. 2008 Long Term Incentive Compensation Plan, as amended.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: June 15, 2011

PENN NATIONAL GAMING, INC.

By: /s/ Robert S. Ippolito  
Robert S. Ippolito  
Vice President, Secretary and Treasurer

**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
10.1	First Amendment to Employment Agreement dated June 10, 2011 by and between the Company and William J. Clifford.
10.2	First Amendment to Employment Agreement dated June 10, 2011 by and between the Company and Jordan B. Savitch.
10.3	Penn National Gaming, Inc. 2008 Long Term Incentive Compensation Plan, as amended.

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This FIRST AMENDMENT to EMPLOYMENT AGREEMENT (this "**Amendment**") is entered into on this 10<sup>th</sup> day of June by and between Penn National Gaming, Inc., a Pennsylvania corporation (the "**Company**"), and William J. Clifford, an individual residing in Pennsylvania ("**Executive**").

WHEREAS, Executive and Company are party to that certain Employment Agreement dated December 31, 2008 (the "**Agreement**"). All defined terms used in this Amendment, but not defined herein, shall have the meanings given to them in the Agreement;

WHEREAS, the Initial Term of the Agreement will expire on June 10, 2011; and

WHEREAS, pursuant to Section 1.2 of the Agreement, Executive and Company desire to renew of the Agreement on the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
AMENDMENT**

SECTION 1.1 Renewal Term. The Agreement is hereby renewed and extended for a period of three (3) years from the expiration of the Initial Term and shall therefore terminate at the close of business on June 10, 2014, unless earlier terminated in accordance with Section 3 of the Agreement.

SECTION 1.2 Amendment to Exhibit A. Exhibit A to the Agreement shall be replaced in its entirety with Exhibit A attached hereto.

**ARTICLE II  
MISCELLANEOUS**

SECTION 2.1 Effect of Amendment. This Amendment shall not constitute an amendment or modification of any provision of, or exhibit to, the Agreement not expressly referred to in this Amendment. Except as expressly amended or modified in this Amendment, the provisions of the Agreement are and remain in full force and effect. Whenever the Agreement is referred to herein or in any other agreement, document or instrument, such reference shall be deemed to be to the Agreement, as amended by this Amendment, whether or not specific reference is made to this Amendment.

SECTION 2.3 Counterparts. This Amendment may be executed by facsimile and/or in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on of the date first above written.

PENN NATIONAL GAMING, INC.

By: /s/ Peter M. Carlino

Name: Peter M. Carlino

Title: Chairman and Chief Executive Officer

EXECUTIVE

/s/ William J. Clifford

William J. Clifford

Exhibit A

**SEPARATION AGREEMENT AND GENERAL RELEASE**

This is a Separation Agreement and General Release (hereinafter referred to as the "**Agreement**") between \_\_\_\_\_ (hereinafter referred to as the "**Employee**") and Penn National Gaming, Inc. (hereinafter referred to as the "**Employer**"). In consideration of the mutual promises and commitments made in this Agreement, and intending to be legally bound, Employee, on the one hand, and the Employer on the other hand, agree to the terms set forth in this Agreement.

1. Employer and Employee hereby acknowledge that [the Company notified Employee/Employee notified the Company on \_\_\_\_\_ that Employee's employment pursuant to that certain Employment Agreement executed on \_\_\_\_\_ ("Employment Agreement") would be terminated as of [\_\_\_\_\_]. Upon the termination of the Employment Agreement, Employee will be subject to the obligations and be the beneficiary of the surviving benefits, all as described in the Employment Agreement. Employee's last day of work will be \_\_\_\_\_.

2. (a) When used in this Agreement, the word "Releasees" means the Employer and all or any of its past and present parent, subsidiary and affiliated corporations, companies, partnerships, joint ventures and other entities and their groups, divisions, departments and units, and their past and present directors, trustees, officers, managers, partners, supervisors, employees, attorneys, agents and consultants, and their predecessors, successors and assigns.

(b) When used in this Agreement, the word "Claims" means each and every claim, complaint, cause of action, and grievance, whether known or unknown and whether fixed or contingent, and each and every promise, assurance, contract, representation, guarantee, warranty, right and commitment of any kind, whether known or unknown and whether fixed or contingent.

3. In consideration of the promises of the Employer set forth in this Agreement and the Employment Agreement, and intending to be legally bound, Employee hereby irrevocably remises, releases and forever discharges all Releasees of and from any and all Claims that he (on behalf of either himself or any other person or persons) ever had or now has against any and all of the Releasees, or which he (or his heirs, executors, administrators or assigns or any of them) hereafter can, shall or may have against any and all of the Releasees, for or by reason of any cause, matter, thing, occurrence or event whatsoever through the effective date of this Agreement. Employee acknowledges and agrees that the Claims released in this paragraph include, but are not limited to, (a) any and all Claims based on any law, statute or constitution or based on contract or in tort on common law, and (b) any and all Claims based on or arising under any civil rights laws, such as any Pennsylvania employment laws, or Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), or the Federal Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.) (hereinafter referred to as the "ADEA"), and (c) any and all Claims under any grievance or complaint procedure of any kind, and (d) any and all Claims based on or arising out of or related to his recruitment by, employment with, the termination of his employment with, his performance of any services in any capacity for, or any business transaction with, each or any of the Releasees. Employee also understands, that by signing this Agreement, he is waiving all Claims against any and all of the Releasees released by this Agreement; provided, however, that as set forth in section 7 (f) (1) (c) of the ADEA, as added by the Older Workers Benefit Protection Act of 1990, nothing in this Agreement constitutes or shall (i) be construed to constitute a waiver by Employee of any rights or claims that may arise after this Agreement is executed by Employee, or (ii) impair Employee's right to file a charge with the U.S. Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board or any state agency or to participate in an investigation or proceeding conducted by the EEOC or any state agency. Notwithstanding the foregoing, Employee agrees to waive Employee's right to recover individual relief in any charge, complaint, or lawsuit filed by Employee or anyone on Employee's behalf.

Notwithstanding the foregoing, this Agreement will not release any right of Employee (x) in his capacity as a shareholder or owner in the Company or any of its affiliates, (y) to be indemnified for any act or omission in his capacity as an employee, officer or director of the Company or any of its affiliates (whether arising under contract,

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the governing documents of the entity, state law or otherwise), or (z) in respect of vested benefits under the Company's retirement or deferred compensation plans.

4. In consideration of the promises of the Employer set forth in this Agreement and the Employment Agreement and intending to be legally bound, Employer hereby irrevocably remises, releases and forever discharges Employee and his heirs, successors and assigns from any and all Claims that the Employer ever had or now has though the effective date of this Agreement. Employee further certifies that he is not aware of any actual or attempted regulatory, EEOC or legal violations by Employer and that his separation is not a result of retaliation based on any legal rights or opposition to an illegal practice.

5. Employee and Employer covenant and agree not to sue each other or any of the Releasees for any Claims released by this Agreement and to waive any recovery related to any Claims covered by this Agreement.

6. Employee agrees to provide reasonable transition assistance to Employer (including without limitation assistance on regulatory matters, operational matters and in connection with litigation) for a period of one year from the execution of this Agreement at no additional cost; provided, such assistance shall not unreasonably interfere with Employee's pursuit of gainful employment or result in Employee not having a separation from service (as defined in Section 409A of the Internal Revenue Code of 1986). Any assistance beyond this period will be provided at a mutually agreed cost. Employee further agrees that he will return to the Employer all property in his possession, including, but not limited to, keys, identification cards and credit cards, files, records, publications, address lists and documents that belong to each or any of the Releasees. Such documents also include, without limitation, any documents created or made by Employee during his employment with the Employer.

7. Employee agrees that, except as specifically provided in this Agreement and the Employment Agreement, there are no compensation, benefits, or other payments due or owed to him by each or any of the Releasees. Employee further acknowledges that he has not experienced or reported any work-related injury or illness.

8. Except where disclosure has been made by the Company pursuant to applicable federal or state law, rule or regulation, Employee agrees that the terms of this Agreement are confidential and that he will not disclose or publicize the terms of this Agreement and the amounts paid or agreed to be paid pursuant to this Agreement to any person or entity, except to his spouse, his attorney, his accountant, and to a government agency for the purpose of payment or collection of taxes or application for unemployment compensation benefits. Employee agrees that his disclosure of the terms of this Agreement to his spouse, his attorney and his accountant shall be conditioned upon him obtaining agreement from them, for the benefit of the Employer, not to disclose or publicize to any person or entity the terms of this Agreement and the amounts paid or agreed to be paid under this Agreement. Further, Employer and Employee agree not to make any false, misleading, defamatory or disparaging communications about the other party (including without limitation Employer's products, services, partners, investors or personnel) and to refrain from taking any action designed to harm the public perception of the other party or the Releasees. Employee further agrees that he has disclosed to Employer all information, if any, in his possession, custody or control related to any legal, compliance or regulatory obligations of Employer and any failures to meet such obligations.

9. The terms of this Agreement are not to be considered as an admission on behalf of either party. Neither this Agreement nor its terms shall be admissible as evidence of any liability or wrongdoing by each or any of the Releasees in any judicial, administrative or other proceeding now pending or hereafter instituted by any person or entity. The Employer is entering into this Agreement solely for the purpose of effectuating a mutually satisfactory separation of Employee's employment.

10. All provisions of this Agreement are severable and if any of them is determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.

11. This Agreement shall be governed by and interpreted under and in accordance with the laws of Pennsylvania. Any suit, claim or cause of action arising under or related to this Agreement shall be submitted by the

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parties hereto to the exclusive jurisdiction of the courts of Pennsylvania or to the federal courts located therein if they otherwise have jurisdiction.

12. This Agreement constitutes a complete and final agreement between the parties and supersedes and replaces all prior or contemporaneous agreements, offer letters, negotiations, or discussions relating to the subject matter of this Agreement. With the exception of the Employment Agreement, no other agreement shall be binding upon each or any of the Releasees, including, but not limited to, any agreement made hereafter, unless in writing and signed by an officer of the Employer, and only such agreement shall be binding against the Employer.

13. Employee is advised, and acknowledges that he has been advised, to consult with an attorney before signing this Agreement.

14. Employee acknowledges that he is signing this Agreement voluntarily, with full knowledge of the nature and consequences of its terms.

15. All executed copies of this Agreement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

16. Employee acknowledges that he has been given up to twenty-one (21) days within which to consider this Agreement before signing it. Subject to paragraph 17 below, this Agreement will become effective on the date of Employee's signature hereof.

17. For a period of seven (7) calendar days following his signature of this Agreement, Employee may revoke the Agreement, and the Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. Employee may revoke this Agreement at any time within that seven (7) day period, by sending a written notice of revocation to the \_\_\_\_\_ . Such written notice must be actually received by the Employer within that seven (7) day period in order to be valid. If a valid revocation is received within that seven (7) day period, this Agreement shall be null and void for all purposes. Payment of the severance pay amount set forth in the Employment Agreement will be paid in the manner and at the time(s) described in the Employment Agreement.

IN WITNESS WHEREOF, the Parties have read, understand and do voluntarily execute this Separation Agreement and General Release which consists of four pages.

EMPLOYER

EMPLOYEE

By: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This FIRST AMENDMENT to EMPLOYMENT AGREEMENT (this “**Amendment**”) is entered into on this 10<sup>th</sup> day of June by and between Penn National Gaming, Inc., a Pennsylvania corporation (the “**Company**”), and Jordan B. Savitch, an individual residing in Pennsylvania (“**Executive**”).

WHEREAS, Executive and Company are party to that certain Employment Agreement dated December 31, 2008 (the “**Agreement**”). All defined terms used in this Amendment, but not defined herein, shall have the meanings given to them in the Agreement;

WHEREAS, the Initial Term of the Agreement will expire on June 10, 2011; and

WHEREAS, pursuant to Section 1.2 of the Agreement, Executive and Company desire to renew of the Agreement on the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
AMENDMENT**

SECTION 1.1 Renewal Term. The Agreement is hereby renewed and extended for a period of three (3) years from the expiration of the Initial Term and shall therefore terminate at the close of business on June 10, 2014, unless earlier terminated in accordance with Section 3 of the Agreement.

SECTION 1.2 Amendment to Exhibit A. Exhibit A to the Agreement shall be replaced in its entirety with Exhibit A attached hereto.

**ARTICLE II  
MISCELLANEOUS**

SECTION 2.1 Effect of Amendment. This Amendment shall not constitute an amendment or modification of any provision of, or exhibit to, the Agreement not expressly referred to in this Amendment. Except as expressly amended or modified in this Amendment, the provisions of the Agreement are and remain in full force and effect. Whenever the Agreement is referred to herein or in any other agreement, document or instrument, such reference shall be deemed to be to the Agreement, as amended by this Amendment, whether or not specific reference is made to this Amendment.

SECTION 2.3 Counterparts. This Amendment may be executed by facsimile and/or in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Amendment on of the date first above written.

PENN NATIONAL GAMING, INC.

By: /s/ Peter M. Carlino

Name: Peter M. Carlino

Title: Chairman and Chief Executive Officer

EXECUTIVE

/s/ Jordan B. Savitch

Jordan B. Savitch

Exhibit A

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1. Employer and Employee hereby acknowledge that [the Company notified Employee/Employee notified the Company on \_\_\_\_\_ that Employee’s employment pursuant to that certain Employment Agreement executed on \_\_\_\_\_ (“**Employment Agreement**”) would be terminated as of [\_\_\_\_\_]. Upon the termination of the Employment Agreement, Employee will be subject to the obligations and be the beneficiary of the surviving benefits, all as described in the Employment Agreement. Employee’s last day of work will be \_\_\_\_\_.

2. (a) When used in this Agreement, the word "Releasees" means the Employer and all or any of its past and present parent, subsidiary and affiliated corporations, companies, partnerships, joint ventures and other entities and their groups, divisions, departments and units, and their past and present directors, trustees, officers, managers, partners, supervisors, employees, attorneys, agents and consultants, and their predecessors, successors and assigns.

(b) When used in this Agreement, the word "Claims" means each and every claim, complaint, cause of action, and grievance, whether known or unknown and whether fixed or contingent, and each and every promise, assurance, contract, representation, guarantee, warranty, right and commitment of any kind, whether known or unknown and whether fixed or contingent.

3. In consideration of the promises of the Employer set forth in this Agreement and the Employment Agreement, and intending to be legally bound, Employee hereby irrevocably remises, releases and forever discharges all Releasees of and from any and all Claims that he (on behalf of either himself or any other person or persons) ever had or now has against any and all of the Releasees, or which he (or his heirs, executors, administrators or assigns or any of them) hereafter can, shall or may have against any and all of the Releasees, for or by reason of any cause, matter, thing, occurrence or event whatsoever through the effective date of this Agreement. Employee acknowledges and agrees that the Claims released in this paragraph include, but are not limited to, (a) any and all Claims based on any law, statute or constitution or based on contract or in tort on common law, and (b) any and all Claims based on or arising under any civil rights laws, such as any Pennsylvania employment laws, or Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), or the Federal Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.) (hereinafter referred to as the "ADEA"), and (c) any and all Claims under any grievance or complaint procedure of any kind, and (d) any and all Claims based on or arising out of or related to his recruitment by, employment with, the termination of his employment with, his performance of any services in any capacity for, or any business transaction with, each or any of the Releasees. Employee also understands, that by signing this Agreement, he is waiving all Claims against any and all of the Releasees released by this Agreement; provided, however, that as set forth in section 7 (f) (1) (c) of the ADEA, as added by the Older Workers Benefit Protection Act of 1990, nothing in this Agreement constitutes or shall (i) be construed to constitute a waiver by Employee of any rights or claims that may arise after this Agreement is executed by Employee, or (ii) impair Employee's right to file a charge with the U.S. Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board or any state agency or to participate in an investigation or proceeding conducted by the EEOC or any state agency. Notwithstanding the foregoing, Employee agrees to waive Employee's right to recover individual relief in any charge, complaint, or lawsuit filed by Employee or anyone on Employee's behalf.

Notwithstanding the foregoing, this Agreement will not release any right of Employee (x) in his capacity as a shareholder or owner in the Company or any of its affiliates, (y) to be indemnified for any act or omission in his capacity as an employee, officer or director of the Company or any of its affiliates (whether arising under contract, the governing documents of the entity, state law or otherwise), or (z) in respect of vested benefits under the Company's retirement or deferred compensation plans.

4. In consideration of the promises of the Employee set forth in this Agreement and the Employment Agreement and intending to be legally bound, Employer hereby irrevocably remises, releases and forever discharges Employee and his heirs, successors and assigns from any and all Claims that the Employer ever had or now has though the effective date of this Agreement. Employee further certifies that he is not aware of any actual or attempted regulatory, EEOC or legal

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violations by Employer and that his separation is not a result of retaliation based on any legal rights or opposition to an illegal practice.

5. Employee and Employer covenant and agree not to sue each other or any of the Releasees for any Claims released by this Agreement and to waive any recovery related to any Claims covered by this Agreement.

6. Employee agrees to provide reasonable transition assistance to Employer (including without limitation assistance on regulatory matters, operational matters and in connection with litigation) for a period of one year from the execution of this Agreement at no additional cost; provided, such assistance shall not unreasonably interfere with Employee's pursuit of gainful employment or result in Employee not having a separation from service (as defined in Section 409A of the Internal Revenue Code of 1986). Any assistance beyond this period will be provided at a mutually agreed cost. Employee further agrees that he will return to the Employer all property in his possession, including, but not limited to, keys, identification cards and credit cards, files, records, publications, address lists and documents that belong to each or any of the Releasees. Such documents also include, without limitation, any documents created or made by Employee during his employment with the Employer.

7. Employee agrees that, except as specifically provided in this Agreement and the Employment Agreement, there are no compensation, benefits, or other payments due or owed to him by each or any of the Releasees. Employee further acknowledges that he has not experienced or reported any work-related injury or illness.

8. Except where disclosure has been made by the Company pursuant to applicable federal or state law, rule or regulation, Employee agrees that the terms of this Agreement are confidential and that he will not disclose or publicize the terms of this Agreement and the amounts paid or agreed to be paid pursuant to this Agreement to any person or entity, except to his spouse, his attorney, his accountant, and to a government agency for the purpose of payment or collection of taxes or application for unemployment compensation benefits. Employee agrees that his disclosure of the terms of this Agreement to his spouse, his attorney and his accountant shall be conditioned upon him obtaining agreement from them, for the benefit of the Employer, not to disclose or publicize to any person or entity the terms of this Agreement and the amounts paid or agreed to be paid under this Agreement. Further, Employer and Employee agree not to make any false, misleading, defamatory or disparaging communications about the other party (including without limitation Employer's products, services, partners, investors or personnel) and to refrain from taking any action designed to harm the public perception of the other party or the Releasees. Employee further agrees that he has disclosed to Employer all information, if any, in his possession, custody or control related to any legal, compliance or regulatory obligations of Employer and any failures to meet such obligations.

9. The terms of this Agreement are not to be considered as an admission on behalf of either party. Neither this Agreement nor its terms shall be admissible as evidence of any liability or wrongdoing by each or any of the Releasees in any judicial, administrative or other proceeding now pending or hereafter instituted by any person or entity. The Employer is entering into this Agreement solely for the purpose of effectuating a mutually satisfactory separation of Employee's employment.

10. All provisions of this Agreement are severable and if any of them is determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.



11. This Agreement shall be governed by and interpreted under and in accordance with the laws of Pennsylvania. Any suit, claim or cause of action arising under or related to this Agreement shall be submitted by the parties hereto to the exclusive jurisdiction of the courts of Pennsylvania or to the federal courts located therein if they otherwise have jurisdiction.

12. This Agreement constitutes a complete and final agreement between the parties and supersedes and replaces all prior or contemporaneous agreements, offer letters, negotiations, or discussions relating to the subject matter of this Agreement. With the exception of the Employment Agreement, no other agreement shall be binding upon each or any of the Releasees, including, but not limited to, any agreement made hereafter, unless in writing and signed by an officer of the Employer, and only such agreement shall be binding against the Employer.

13. Employee is advised, and acknowledges that he has been advised, to consult with an attorney before signing this Agreement.

14. Employee acknowledges that he is signing this Agreement voluntarily, with full knowledge of the nature and consequences of its terms.

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15. All executed copies of this Agreement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

16. Employee acknowledges that he has been given up to twenty-one (21) days within which to consider this Agreement before signing it. Subject to paragraph 17 below, this Agreement will become effective on the date of Employee's signature hereof.

17. For a period of seven (7) calendar days following his signature of this Agreement, Employee may revoke the Agreement, and the Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. Employee may revoke this Agreement at any time within that seven (7) day period, by sending a written notice of revocation to the \_\_\_\_\_ . Such written notice must be actually received by the Employer within that seven (7) day period in order to be valid. If a valid revocation is received within that seven (7) day period, this Agreement shall be null and void for all purposes. Payment of the severance pay amount set forth in the Employment Agreement will be paid in the manner and at the time(s) described in the Employment Agreement.

IN WITNESS WHEREOF, the Parties have read, understand and do voluntarily execute this Separation Agreement and General Release which consists of four pages.

EMPLOYER

EMPLOYEE

By: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## PENN NATIONAL GAMING, INC.

2008 LONG TERM INCENTIVE  
COMPENSATION PLAN

Effective November 12, 2008, as amended

## Table of Contents

	<u>Page</u>
ARTICLE I PURPOSE	1
ARTICLE II DEFINITIONS AND CONSTRUCTION	1
Section 2.1    Definitions	1
<i>Act</i>	1
<i>Award</i>	1
<i>Award Agreement</i>	1
<i>Beneficiary</i>	1
<i>Board</i>	1
<i>Cause</i>	2
<i>Chairman</i>	2
<i>Change of Control</i>	2
<i>Code</i>	3
<i>Committee</i>	3
<i>Common Stock</i>	3
<i>Company</i>	3
<i>Date of Grant</i>	3
<i>Director</i>	3
<i>Disability</i>	3
<i>Effective Date</i>	3
<i>Employee</i>	4
<i>Fair Market Value</i>	4
<i>Grantee</i>	4
<i>Grantor</i>	4
<i>Holder</i>	4
<i>Incentive Stock Option or ISO</i>	4
<i>Non-Qualified Stock Option</i>	4
<i>Nonreporting Person</i>	4
<i>Option or Stock Option</i>	4
<i>Option Period</i>	4
<i>Option Price</i>	4
<i>Other Award</i>	4
<i>Performance Goals</i>	4
<i>Phantom Stock Unit</i>	5
<i>Phantom Stock Unit Award</i>	5
<i>Plan</i>	5
<i>Reporting Person</i>	5
<i>Restricted Period</i>	5
<i>Restricted Stock</i>	5
<i>Restricted Stock Award</i>	5
<i>Retirement</i>	5
	i
	5
<i>Rule 16b-3</i>	5
<i>SAR Base Amount</i>	5
<i>Stock Appreciation Right or SAR</i>	5
<i>Stock Appreciation Right Award</i>	5
<i>Stock Option Award</i>	5
<i>Subsidiary</i>	5
<i>Ten Percent Shareholder</i>	6
Section 2.2    Construction	6
ARTICLE III STOCK AVAILABLE FOR AWARDS	6
Section 3.1    Common Stock	6
Section 3.2    Number of Shares Deliverable	6
Section 3.3    Reusable Shares	6
ARTICLE IV AWARDS AND AWARD AGREEMENTS	7

Section 4.1	General	7
Section 4.2	Eligibility	7
Section 4.3	Terms and Conditions; Award Agreements	7
4.3.1	<i>Terms and Conditions</i>	8
4.3.2	<i>Award Agreements</i>	8
ARTICLE V OPTIONS		8
Section 5.1	Award of Options	8
5.1.1	<i>Grants</i>	8
5.1.2	<i>Types of Options</i>	8
5.1.3	<i>Maximum Award To An Individual</i>	8
5.1.4	<i>Internal Revenue Code Limits</i>	8
Section 5.2	Option Price	9
Section 5.3	Option Periods	9
Section 5.4	Exercisability	9
5.4.3	<i>Method of Exercise</i>	9
Section 5.5	Time and Method of Payment for Options	9
5.5.1	<i>Form of Payment</i>	9
5.5.2	<i>Time of Payment</i>	10
5.5.3	<i>Methods for Tendering Shares</i>	10
Section 5.6	Delivery of Shares Pursuant to Exercise of Option	10
ARTICLE VI STOCK APPRECIATION RIGHTS		10
Section 6.1	Award of SARs	10
6.1.1	<i>Grants</i>	10
6.1.2	<i>Maximum Award To An Individual</i>	10
6.1.3	<i>SAR Base Amount</i>	10
Section 6.2	SAR Periods	11
Section 6.3	Exercisability	11
ii		
<hr/>		
Section 6.4	Method of Exercise	11
Section 6.5	Payment Amount, Time and Method of Payment With Respect to SARs	11
Section 6.6	Nature of SARs	11
ARTICLE VII RESTRICTED STOCK AWARDS		12
Section 7.1	Grants	12
Section 7.2	Maximum Award to An Individual	12
Section 7.3	Restricted Period	12
Section 7.4	Restrictions and Forfeiture	12
Section 7.5	Issuance of Stock and Stock Certificate(s)	12
7.5.1	<i>Issuance</i>	12
7.5.2	<i>Custody and Registration</i>	13
Section 7.6	Shareholder Rights	13
Section 7.7	Delivery of Shares	13
ARTICLE VIII PHANTOM STOCK UNIT AWARDS		13
Section 8.1	Grants	13
Section 8.2	Maximum Award to An Individual	14
Section 8.3	Vesting of Phantom Stock Unit Awards	14
Section 8.4	Cash Value of Phantom Stock Unit Payments	14
Section 8.5	Time of Payment	14
Section 8.6	Nature of Phantom Stock Units	14
ARTICLE IX OTHER AWARDS		14
Section 9.1	Grants	14
Section 9.2	Maximum Award to An Individual	15
9.2.1	<i>Awards Denominated or Payable with Reference to Common Stock</i>	15
9.2.2	<i>Awards Denominated or Payable with Reference to Cash</i>	15
Section 9.3	Description of Other Awards	15
ARTICLE X TERMINATION OF EMPLOYMENT OR CESSATION OF BOARD SERVICE		15
Section 10.1	Stock Options and SARs	15
Section 10.2	Restricted Stock and Phantom Stock Units	15
Section 10.3	Date of Termination of Employment	16
Section 10.4	Specified Employee Restriction	16
Section 10.5	Immediate Forfeiture; Acceleration	16
Section 10.6	Terms of Award Agreement	16
ARTICLE XI CERTAIN TERMS APPLICABLE TO ALL AWARDS		16
Section 11.1	Withholding Taxes	16
Section 11.2	Adjustments to Reflect Capital Changes	17

11.2.1	<i>Recapitalization, etc</i>	17
11.2.2	<i>Sale or Reorganization</i>	17
11.2.3	<i>Options to Purchase Stock of Acquired Companies</i>	17
Section 11.3	Failure to Comply with Terms and Conditions	18
Section 11.4	Regulatory Approvals and Listing	18
Section 11.5	Restrictions Upon Resale of Stock	18
Section 11.6	Reporting Person Limitation	19
ARTICLE XII ADMINISTRATION OF THE PLAN		19
Section 12.1	Committee	19
Section 12.2	Committee Actions	19
Section 12.3	Designation of Beneficiary	19
Section 12.4	No Right to an Award or to Continued Employment	19
Section 12.5	Discretion of the Grantor	20
Section 12.6	Indemnification and Exculpation	20
12.6.1	<i>Indemnification</i>	20
12.6.2	<i>Exculpation</i>	20
Section 12.7	Unfunded Plan	20
Section 12.8	Inalienability of Rights and Interests	21
Section 12.9	Awards Not Includable for Benefit Purposes	21
Section 12.10	No Issuance of Fractional Shares	21
Section 12.11	Modification for International Grantees	22
Section 12.12	Leaves of Absence	22
Section 12.13	Communications	22
12.13.1	<i>Communications by the Grantor</i>	22
12.13.2	<i>Communications by the Directors, Employees, and Others</i>	22
Section 12.14	Parties in Interest	22
Section 12.15	Severability	23
Section 12.16	Compliance with Laws	23
Section 12.17	No Strict Construction	23
Section 12.18	Modification	23
Section 12.19	Governing Law	23
ARTICLE XIII CHANGE OF CONTROL		23
Section 13.1	Options and SARS	23
Section 13.2	Restricted Stock Awards and Phantom Stock Unit Awards	24
ARTICLE XIV AMENDMENT AND TERMINATION		24
Section 14.1	Amendment; No Repricing	24
Section 14.2	Suspension or Termination	24
ARTICLE XV SECTION 409A		25

ARTICLE XVI EFFECTIVE DATE AND TERM OF THE PLAN	25
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**PENN NATIONAL GAMING, INC.  
2008 LONG TERM INCENTIVE COMPENSATION PLAN**

**ARTICLE I  
PURPOSE**

The 2008 Long Term Incentive Compensation Plan is intended to advance the interests of Penn National Gaming, Inc., a Pennsylvania corporation, and its shareholders by providing a means by which the Company and its subsidiaries and affiliates shall be able to motivate directors and selected key employees (including officers) to direct their efforts to those activities that will contribute materially to the Company's success. The Plan is also intended to serve the best interests of the shareholders by linking remunerative benefits paid to employees who have substantial responsibility for the successful operation, administration and management of the Company and/or its subsidiaries and affiliates with the enhancement of shareholder value while such key employees increase their proprietary interest in the Company. Finally, the Plan is intended to enable the Company to attract and retain in its service highly qualified persons for the successful conduct of its business.

**ARTICLE II  
DEFINITIONS AND CONSTRUCTION**

**Section 2.1 Definitions**

The following words and phrases when used in the Plan with an initial capital letter, unless their context clearly indicates to the contrary, shall have the respective meanings set forth below in this Section 2.1:

**Act.** The Securities Exchange Act of 1934, as now in effect or as hereafter amended from time to time. References to any Section or Subsection of the Act are to such Section or Subsection as the same may from time to time be amended or renumbered and/or any comparable or succeeding provisions of any legislation that amends, supplements or replaces such Section or Subsection.

**Award.** A grant of one of the following under the Plan: “Stock Option Award”; “Stock Appreciation Right Award”; “Restricted Stock Award”; “Phantom Stock Unit Award”; and “Other Award”; all as further defined herein.

**Award Agreement.** The written instrument delivered by the Company to a Grantee evidencing an Award, and setting forth such terms and conditions of the Award as may be deemed appropriate by the Grantor. The Award Agreement shall be in a form approved by the Grantor, and once executed, shall be amended from time to time to include such additional or amended terms and conditions as the Grantor may specify after the execution in the exercise of his or its, as the case may be, powers under the Plan.

**Beneficiary.** Any individual, estate or trust who or which by designation of the a Holder pursuant to Section 12.3 or operation of law succeeds to the rights and obligations of the Holder under the Plan and one or more Award Agreements.

**Board.** The Board of Directors of the Company, as it may be constituted from time to time.

1

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**Cause.** Fraud, embezzlement, theft or dishonesty against the Company, conviction of a felony, willful misconduct, being found unsuitable by a regulatory authority having jurisdiction over the Company, willful and wrongful disclosure of confidential information, engagement in competition with the Company and any other conduct defined as cause in any agreement between a Grantee and the Company or any Subsidiary, in each case during employment with the Company and all Subsidiaries or service as a Director, as the case may be.

**Chairman.** The Chairman of the Board of the Company or his designee(s).

**Change of Control.**

(a) With respect to Awards that are not “deferred compensation” under Section 409A of the Code, any of the following events shall constitute a Change of Control for purposes of this Plan:

(i) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Act) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of fifty percent (50%) or more of either (A) the then outstanding shares of the Company (the “Outstanding Company Shares”) or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that for purposes of this Subsection (i), the following acquisitions shall not constitute a Change of Control: (1) any acquisition directly from the Company; (2) any acquisition by the Company; (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company; or (4) any acquisition pursuant to a transaction which complies with clauses (A), (B) and (C) of Subsection (iii) below; or

(ii) approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(iii) consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company or the acquisition of assets of another entity (each, a “Corporate Transaction”), in each case, unless, following such Corporate Transaction, (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Shares and Outstanding Company Voting Securities immediately prior to such Corporate Transaction beneficially own, directly or indirectly, more than fifty percent (50%) of, respectively, the then outstanding shares and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation or other entity resulting from such Corporate Transaction (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction of the Outstanding Company Shares and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan or related trust of the Company or such corporation resulting from such Corporate Transaction) beneficially owns, directly or indirectly, twenty percent (20%) or more of, respectively, the then outstanding shares of the corporation resulting from such Corporate Transaction or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership of the Company existed prior to the

2

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Corporate Transaction and (C) at least a majority of the members of the board of directors of the corporation (or other governing board of a non-corporate entity) resulting from such Corporate Transaction were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Corporate Transaction; or

(iv) individuals who, as of the Effective Date, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least two-thirds ( $\frac{2}{3}$ ) of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board.

(b) With respect to Awards that are “deferred compensation” under Section 409A of the Code, each of the foregoing events shall only be deemed to be a Change of Control for purposes of the Plan to the extent such event qualifies as a “change in control event” for purposes of Section 409A of the Code. The Grantor shall be entitled to amend or interpret the terms of any Award to the extent necessary to avoid adverse Federal income tax consequences to a Grantee under Section 409A of the Code.

**Code.** The Internal Revenue Code of 1986, amended from time to time, and any successor thereto, the Treasury Regulations thereunder and other relevant interpretive guidance issued by the Internal Revenue Service or the Treasury Department. Reference to any specific section of the Code shall be deemed to include such regulations and guidance, as well as any successor provision of the Code.

**Committee.** The Compensation Committee of the Board.

**Common Stock.** Common stock of the Company, par value \$.01.

**Company.** Penn National Gaming, Inc., a Pennsylvania corporation, and its successors and assigns.

**Date of Grant.** The date as of which the Grantor grants an Award.

**Director.** A member of the Board who is not also an employee of the Company or any Subsidiary.

**Disability.** A physical or mental impairment sufficient to make the Grantee who is an Employee eligible for benefits under the Company’s or Subsidiary’s long-term disability plan in which the Grantee is a participant. A Grantee who is a Director shall be treated as having a Disability if a physical or mental impairment would have made the Director eligible for benefits under the Company’s long-term disability plan had the Director been an Employee.

**Effective Date.** November 12, 2008, the date on which the shareholders of the Company approved the Plan.

3

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**Employee.** An employee of the Company or any Subsidiary or “parent corporation” within the meaning of Section 424(e) of the Code.

**Fair Market Value.** With respect to the Common Stock on any day, (i) the closing sales price on the immediately preceding business day of a share of Common Stock as reported on the principal securities exchange on which shares of Common Stock are then listed or admitted to trading, or (ii) if the Common Stock is not listed or admitted to trading on a securities exchange, as determined in a manner specified by the Committee determined in accordance with Section 409A of the Code. A “business day” is any day on which the relevant market is open for trading.

**Grantee.** An Employee or former Employee of the Company or any Subsidiary to whom an Award is or has been granted. With respect to an Award, other than an Incentive Stock Option, a Director to whom an Award is or has been granted is also a Grantee.

**Grantor.** With respect to an Award granted to an Employee, the Committee or the Chairman, as the case may be, that grants the Award. With respect to an Award granted to a Director, the Board or Committee is the Grantor.

**Holder.** The individual who holds an Award, who shall be the Grantee or a Beneficiary.

**Incentive Stock Option or ISO.** An Option that is intended to meet, and structured with a view to satisfying, the requirements of Section 422 of the Code and is designated by the Grantor as an Incentive Stock Option.

**Non-Qualified Stock Option.** An Option that is not designated by the Grantor as an Incentive Stock Option, or an Option that is designated by the Grantor as an Incentive Stock Option if it does not satisfy the requirements of Section 422 of the Code.

**Nonreporting Person.** A Grantee who is not subject to Section 16 of the Act.

**Option or Stock Option.** A right granted pursuant to Article V.

**Option Period.** The period beginning on the Date of Grant of an Option and ending on the date the Option terminates.

**Option Price.** The per share price at which shares of Common Stock may be purchased upon exercise of a particular Option.

**Other Award.** Awards granted pursuant to Article IX.

**Performance Goals.** One or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or related company, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to a previous year’s results or to a designated comparison group, in each case as specified by the Grantor in the Award: free cash flow, EBITDA, sales, revenue, revenue growth, income, operating income, net income, net earnings, earnings per share, return on total capital, return on equity, cash flow, operating profit and margin rate, gross margins, debt leverage (debt to capital), market capitalization, total enterprise value (market capitalization plus debt), total shareholder return and stock price. With respect to any Award that is intended to be “performance-based

4

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compensation” under Section 162 of the Code, (i) the outcome of the Performance Goals must be substantially uncertain at the time the Grantor establishes the Performance Goals, and (ii) to the extent consistent with Section 162 of the Code, the Grantor shall appropriately adjust any Performance Goal to take into account the impact of any of the following events on the Company that occurs during the period to which such Performance Goal is applied: asset write-downs; litigation, claims, judgments, settlements; currency fluctuations and other non-cash charges; changes in applicable law, rule or regulation or

accounting principles; accruals for reorganization and restructuring programs; costs incurred in the pursuit of acquisition opportunities; strikes, delays or similar disruptions by organized labor, guilds or horsemen's organizations; national macroeconomic conditions; terrorism and other international hostilities; significant regional weather events; and any other extraordinary, unusual or non-recurring as described in Accounting Principles Board Opinion No. 30 and/or management's discussion and analysis of financial condition and results of operations appearing in the Company's securities filings. Any Award may be granted subject to the attainment of such Performance Goals as determined by the Grantor.

**Phantom Stock Unit.** A right granted under Article VIII.

**Phantom Stock Unit Award.** An Award of Phantom Stock Units under Article VIII.

**Plan.** Penn National Gaming, Inc. 2008 Long Term Incentive Compensation Plan, as set forth herein and as amended from time to time.

**Reporting Person.** A Grantee who is subject to Section 16 of the Act.

**Restricted Period.** The period of time beginning with the Date of Grant of a Restricted Stock Award or Phantom Stock Unit Award and ending when the Restricted Stock or Phantom Stock Unit is forfeited or when all conditions for vesting are satisfied.

**Restricted Stock.** Shares of Common Stock issued pursuant to a Restricted Stock Award.

**Restricted Stock Award.** An Award of Restricted Stock under Article VII.

**Retirement.** Termination of service by the Grantee on or after the normal retirement date under a plan maintained by the Company or a Subsidiary in which the Grantee is a participant or under an applicable Company policy or procedure or as otherwise agreed to by the Company.

**Rule 16b-3.** Rule 16b-3 of the General Rules and Regulations under the Act, or any law, rule, regulation or other provision that may hereafter replace such Rule.

**SAR Base Amount.** An amount set forth in the Award Agreement for a SAR.

**Stock Appreciation Right or SAR.** A right granted under Article VI.

**Stock Appreciation Right Award.** An Award of Stock Appreciation Rights under Article VI.

**Stock Option Award.** An Award of Options under Article V.

**Subsidiary.** Any corporation, partnership, joint venture or other entity in which the Committee has determined that the Company had made, directly or indirectly through one or more intermediaries, a substantial investment or commitment, including, without limit, through the purchase of equity or debt

or the entering into of a management agreement or joint operating agreement. In the case of Incentive Stock Options, Subsidiary shall mean any entity that qualifies as a "subsidiary corporation" of the Company under Section 424(f) of the Code.

**Ten Percent Shareholder.** A person owning shares possessing more than 10% of the total combined voting power of all classes of shares of the Company, any subsidiary corporation (within the meaning of Section 424(f) of the Code) or parent corporation (within the meaning of Section 424(e) of the Code).

## **Section 2.2 Construction**

Whenever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever any words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply. Headings of Sections and Subsections of the Plan are inserted for convenience of reference, are not a part of the Plan, and are not to be considered in the construction hereof. The words "hereof", "herein", "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan, and not to any particular provision or Section. The words "includes", "including" and other similar compounds of the word "include" shall mean and refer to including without limitation. All references herein to specific Articles, Sections or Subsections shall mean Articles, Sections or Subsections of this document unless otherwise qualified.

## **ARTICLE III STOCK AVAILABLE FOR AWARDS**

### **Section 3.1 Common Stock**

Shares of Common Stock may be delivered under the Plan, such shares to be made available from authorized but unissued shares or from shares reacquired by the Company, including shares purchased in the open market.

### **Section 3.2 Number of Shares Deliverable**

Subject to adjustments as provided in Section 11.2, no more than 9,250,000 shares of Common Stock may be issued under the Plan. Any shares of Common Stock issued under Options or Stock Appreciation Rights shall be counted against this limit as one (1) share of Common Stock. Any shares of Common Stock issued under Awards granted on or after June 9, 2011 (other than Options or Stock Appreciation Rights) shall be counted against this limit as two and forty-four one hundredths (2.44) shares of Common Stock. Any shares of Common Stock issued under Awards granted prior to June 9, 2011 (other than Options or Stock Appreciation Rights) shall be counted as two and sixteen one hundredths (2.16) shares of Common Stock. Any Awards that are not settled in shares of Common Stock shall not count against this limit.

Shares of Common Stock subject to an Award that are forfeited to the Company shall again be available for issuance under the Plan.

**ARTICLE IV  
AWARDS AND AWARD AGREEMENTS**

**Section 4.1 General**

4.1.1 Subject to the provisions of the Plan, the Committee may at any time and from time to time (i) determine and designate those Reporting Persons who are Employees to whom Awards are to be granted; (ii) determine the time or times when Awards to Reporting Persons who are Employees shall be granted; (iii) determine the form or forms of Awards to be granted to any Reporting Person who is an Employee; (iv) determine the number of shares of Common Stock or dollar amounts subject to or denominated by each Award to be granted to any Reporting Person who is an Employee; (v) determine the terms and conditions of each Award to a Reporting Person who is an Employee; (vi) determine the maximum aggregate number of shares or, for purposes of Other Awards payable in cash, the aggregate amount of cash subject to Awards to be granted to Nonreporting Persons, as a group, who are Employees; and (vii) determine the general form or forms of Awards to be granted to Nonreporting Persons who are Employees.

4.1.2 The Committee or the Chairman, subject to the provisions of the Plan and authorization by the Committee, may, at any time and from time to time, (i) determine and designate at any time and from time to time those Nonreporting Persons who are Employees to whom Awards are to be granted; (ii) determine the time or times when Awards to Nonreporting Persons who are Employees shall be granted; (iii) determine the form or forms of Award to be granted to any Nonreporting Person who is an Employee, from among the form or forms approved by the Committee; (iv) determine the number of shares of Common Stock or dollar amounts subject to or denominated by each Award to be granted to any Nonreporting Person who is an Employee; and (v) determine the terms and conditions of each Award to a Nonreporting Person who is an Employee.

4.1.3 Subject to the provisions of the Plan, the Board or Committee may, at any time and from time to time, (i) determine and designate at any time and from time to time those Directors to whom Awards, other than Incentive Stock Options, are to be granted; (ii) determine the time or times when Awards to Directors shall be granted; (iii) determine the form or forms of Awards to be granted to any Director; (iv) determine the number of shares of Common Stock or dollar amounts subject to or denominated by each Award to be granted to a Director; and (v) determine the terms and condition of each Award to a Director.

4.1.4 Awards may be granted singly, in combination or in tandem and may be made in combination or in tandem with or in replacement of, or as alternatives to awards or grants under any other employee plan maintained by the Company or its Subsidiaries. No Awards shall be granted under the Plan after the tenth anniversary of the Effective Date.

**Section 4.2 Eligibility**

Any Director or Employee, including any officer who is an Employee and any director who is an Employee, and, except with respect to Stock Options and SARs, an individual who has accepted the Company's or a Subsidiary's offer of employment but who has not commenced performing services for the Company or a Subsidiary, shall be eligible to receive Awards under the Plan.

**Section 4.3 Terms and Conditions; Award Agreements**

4.3.1 *Terms and Conditions.* Each Award granted pursuant to the Plan shall be subject to all of the terms, conditions and restrictions provided in the Plan and such other terms, conditions and restrictions, if any, as may be specified by the Grantor with respect to the Award at the time of the making of the Award or as may be amended or specified thereafter by the Grantor in the exercise of its or his, as the case may be, powers under the Plan. Without limiting the foregoing, it is understood that the Grantor may, at any time and from time to time after the granting of an Award hereunder, specify such amended or additional terms, conditions and restrictions with respect to such Award as may be deemed necessary or appropriate to ensure compliance with any and all applicable laws, including, but not limited to, compliance with Federal and state securities laws, compliance with Federal and state gaming or racing laws, compliance with Federal and state tax laws that would otherwise result in adverse and unintended tax consequences for a Grantee, the Company or any Subsidiary and methods of withholding or providing for the payment of required taxes. The terms, conditions and restrictions with respect to any Award, Grantee or Award Agreement need not be identical with the terms, conditions and restrictions with respect to any other Award, Grantee or Award Agreement.

4.3.2 *Award Agreements.* Except as otherwise provided in the Plan, each Award granted pursuant to the Plan shall be evidenced by an Award Agreement and shall comply with, and be subject to, the provisions of the Plan.

**ARTICLE V  
OPTIONS**

**Section 5.1 Award of Options**

5.1.1 *Grants.* From time to time, the Committee may grant Stock Option Awards to such Reporting Persons who are Employees as the Committee may select in its sole discretion. From time to time, the Committee or the Chairman may grant Stock Option Awards in such number as the Committee or the Chairman may determine to such Nonreporting Persons who are Employees as the Committee or the Chairman may select in its or his, as the case may be, sole discretion; *provided, however*, each and all such grants shall be subject to any maximum aggregate amount of Awards in general and Options in particular (if any) established by the Committee for grants under the Plan for Nonreporting Persons who are Employees as a group. From time to time, the Board or Committee may grant Options to such Directors as the Board or Committee may select in its sole discretion. The Grantor shall determine the number of shares of Common Stock to which each Option relates. A Stock Option entitles the holder thereof to purchase full shares of Common Stock at a stated price for a specified period of time.



## 5.1.2 *Types of Options*

5.1.2.1 *Employees.* Options granted to Employees pursuant to the Plan may be either in the form of Incentive Stock Options or in the form of Non-Qualified Stock Options.

5.1.2.2 *Directors.* Options granted to Directors pursuant to the Plan will be in the form of Non-Qualified Stock Options.

5.1.3 *Maximum Award To An Individual.* No individual shall be granted in any calendar year Options to purchase more than 1,000,000 shares of Common Stock.

5.1.4 *Internal Revenue Code Limits.* Options designated as Incentive Stock Options shall not be eligible for treatment under the Code as “incentive stock options” (and will be deemed to be Non-

Qualified Stock Options) to the extent that either (1) the aggregate Fair Market Value of Shares (determined as of the time of grant) with respect to which such Options are exercisable for the first time by the Grantee during any calendar year (under all plans of the Company and any Subsidiary) exceeds \$100,000, taking Options into account in the order in which they were granted or (2) such Options otherwise remain exercisable but are not exercised within three (3) months of termination of employment (or such other period of time provided in Section 422 of the Code).

## **Section 5.2 Option Price**

The Option Price of Common Stock covered by each Option shall be determined by the Grantor, but shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant, *provided, however*, in the case of an Incentive Stock Option granted to Ten Percent Shareholder, the Option Price shall be no less than 110% of the Fair Market Value of the of a share of Common Stock on the Date of Grant.

## **Section 5.3 Option Periods**

The Grantor shall, from time to time, determine the term of each Option which shall be reflected in the Award Agreement. No Option may be exercised after the expiration of its term. Subject to earlier termination as provided in the Plan, the term shall not exceed seven (7) years from the Date of Grant; *provided*, that the term of an Incentive Stock Option granted to a Ten Percent Shareholder shall not exceed 5 years.

## **Section 5.4 Exercisability**

5.4.1 Subject to Article X and XIII, each Option shall be exercisable at any time or times during the term of the Option and in such amount or amounts and subject to such conditions, including, without limitation, attainment of one or more Performance Goals, as the Grantor may prescribe in the applicable Award Agreement.

5.4.2 Except as provided in Article X, or as otherwise provided in an Award Agreement, an Option may be exercised only during the Grantee’s employment with the Company or any of its Subsidiaries or service as a Director. No Option may be exercised for a fractional share.

5.4.3 *Method of Exercise.* A Holder may exercise an Option, in whole or from time to time in part, by giving notice of exercise to the Company, in a form and manner acceptable to the Company.

## **Section 5.5 Time and Method of Payment for Options**

5.5.1 *Form of Payment.* The Holder shall pay the Option Price in cash (including a personal check) or, with the Grantor’s permission and according to such rules as it may prescribe, by delivering shares of Common Stock already owned by the Holder having a Fair Market Value on the date of exercise equal to the Option Price, or a combination of cash and such shares. The Grantor may also permit payment in accordance with a cashless exercise program under which, if so instructed by the Holder, shares of Common Stock may be issued directly to the Holder’s broker or dealer who in turn will sell the shares and pay the Option Price in cash to the Company from the sale proceeds. Finally, the Grantor may permit payment by reducing the number of shares of Common Stock delivered upon exercise by an amount equal to the largest number of whole shares of Common Stock with a Fair Market

Value that does not exceed the Option Price, with the remainder of the Option Price being payable in cash.

5.5.2 *Time of Payment.* Except in the case where exercise is conditioned on a simultaneous sale of the Option shares pursuant to a cashless exercise, the Holder shall pay the Option Price before an Option is exercised.

5.5.3 *Methods for Tendering Shares.* The Grantor shall determine acceptable methods for tendering shares of Common Stock as payment upon exercise of an Option and may impose such limitations and restrictions on the use of shares of Common stock to exercise an Option as it or he, as the case may be, deems appropriate.

## **Section 5.6 Delivery of Shares Pursuant to Exercise of Option**

No shares of Common Stock shall be delivered pursuant to the exercise, in whole or in part, of any Option, unless and until (i) payment in full of the Option Price for such shares is received by the Company and (ii) compliance with all applicable requirements and conditions of the Plan, the Award Agreement and such rules and regulations as may be established by the Grantor, that are preconditions to delivery. Following exercise of the Option and payment in full of the Option Price and compliance with the conditions described in the preceding sentence, the Company shall promptly effect the issuance to the Grantee of such number of shares of Common Stock as are subject to the Option exercise.

**ARTICLE VI  
STOCK APPRECIATION RIGHTS**

**Section 6.1 Award of SARs**

6.1.1 *Grants.* From time to time the Committee may grant Stock Appreciation Rights Awards to such Reporting Persons who are Employees as the Committee may select in its sole discretion. From time to time, the Committee or the Chairman may grant Stock Appreciation Rights Awards in such number as the Committee or the Chairman may determine to such Nonreporting Persons who are Employees as the Committee or the Chairman may select in its or his, as the case may be, sole discretion; *provided, however,* each and all such grants shall be subject to any maximum aggregate amount of Awards in general and SARs in particular (if any) established by the Committee for grants under the Plan for Nonreporting Persons who are Employees as a group. From time to time, the Board or Committee may grant Stock Appreciation Rights to such Directors as the Board or Committee may select in its sole discretion. The Grantor shall determine the number of shares of Common Stock to which each SAR relates.

6.1.2 *Maximum Award To An Individual.* No individual shall be granted in any calendar year SARs to purchase more than 1,000,000 shares of Common Stock.

6.1.3 *SAR Base Amount.* The SAR Base Amount with respect to each SAR shall be determined by the Grantor, but shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant.

10

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**Section 6.2 SAR Periods**

The Grantor shall, from time to time, determine the term of each SAR. No SAR may be exercised after the expiration of its term. Subject to earlier termination as provided in the Plan, the term shall not exceed seven (7) years from the Date of Grant.

**Section 6.3 Exercisability**

6.3.1 Subject to Articles X and XIII, each SAR shall be exercisable at any time or times during the term of the SAR and in such amount or amounts and subject to such conditions, including, without limitation, attainment of one or more Performance Goals, as the Grantor may, from time to time, prescribe in the applicable Award Agreement.

6.3.2 Except as provided in Article X, or as otherwise provided in an Award Agreement, a SAR may be exercised only during the Grantee's employment with the Company or any of its Subsidiaries or service as a Director.

**Section 6.4 Method of Exercise**

A Holder may exercise a SAR, in whole or from time to time in part, by giving notice of exercise to the Company, in a form and manner acceptable to the Company.

**Section 6.5 Payment Amount, Time and Method of Payment With Respect to SARs**

6.5.1 A SAR entitles the Holder thereof, upon the Holder's exercise of the SAR, to receive an amount equal to the product of (i) the amount by which the Fair Market Value on the exercise date of one share of Common Stock exceeds the SAR Base Amount for such SAR, and (ii) the number of shares covered by the SAR, or portion thereof, that is exercised.

6.5.2 Any payment which may become due from the Company by reason of a Grantee's exercise of a SAR may be paid to the Grantee all in cash, all in shares of Common Stock or partly in shares and partly in cash, as determined by the Grantor and as provided in the Award Agreement.

6.5.3 In the event that all or a portion of the payment is made in shares of Common Stock, the number of shares of Common Stock received shall be determined by dividing the amount of the payment by the Fair Market Value of a share of Common Stock on the exercise date of the SAR. Cash will be paid in lieu of any fractional share of Common Stock.

6.5.4 Amounts payable in connection with a SAR shall be paid to the Holder, as determined by the Grantor and as set forth in the applicable Award Agreement or in accordance with such rules, regulations and procedures as may be adopted by the Committee or Grantor.

**Section 6.6 Nature of SARs**

SARs shall be used solely as a device for the measurement and determination of the amount to be paid on behalf of Grantees as provided in the Plan. SARs shall not constitute or be treated as property or as a trust fund of any kind. All amounts at any time attributable to the SARs shall be and remain the sole property of the Company and all Grantees' rights hereunder are limited to the rights to receive cash and shares of Common Stock as provided in the Plan.

11

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**ARTICLE VII  
RESTRICTED STOCK AWARDS**

**Section 7.1 Grants**

From time to time, the Committee may grant Restricted Stock Awards in such number as it may determine to such Reporting Persons who are Employees as the Committee may select in its sole discretion. From time to time, the Committee or the Chairman may grant in such number as the Committee

or the Chairman may determine Restricted Stock Awards to such Nonreporting Persons who are Employees as the Committee or the Chairman may select in its or his, as the case may be, sole discretion; *provided, however*, each and all such grants shall be subject to any maximum aggregate number of Awards in general and shares of Restricted Stock in particular established by the Committee for grants under the Plan for Nonreporting Persons who are Employees as a group. From time to time, the Board or Committee may grant Restricted Stock Awards to such Directors as the Board or Committee may select in its sole discretion. A Restricted Stock Award is a grant of shares of Common Stock subject to those conditions, if any, set forth in the Plan and the Award Agreement.

#### **Section 7.2 Maximum Award to An Individual**

No individual shall be granted or receive in any calendar year a Restricted Stock Award of more than 1,000,000 shares of Common Stock.

#### **Section 7.3 Restricted Period**

The Grantor may, from time to time, establish any condition or conditions on which the Restricted Stock Award will vest and no longer be subject to forfeiture. Such conditions may include, without limitation, continued employment by the Grantee or service as a Director, as the case may be, for a period of time specified in the Award Agreement or the attainment of one or more Performance Goals within a time period specified in the Award Agreement. A Restricted Stock Award may, if the Grantor in its sole discretion decides, provide for an unconditioned grant.

#### **Section 7.4 Restrictions and Forfeiture**

Except as otherwise provided in the Plan or the applicable Award Agreement, the Restricted Stock shall be subject to the following restrictions until the expiration or termination of the Restricted Period: (i) a Holder shall not be entitled to delivery of a certificate evidencing the shares of Restricted Stock until the end of the Restricted Period and the satisfaction of any and all other conditions specified in the Award Agreement applicable to such Restricted Stock and (ii) none of the Restricted Stock may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the Restricted Period, and until the satisfaction of any and all other conditions specified in the Award Agreement applicable to such Restricted Stock. Upon the forfeiture of any Restricted Stock, such forfeited shares shall be transferred to the Company without further acts by the Holder.

#### **Section 7.5 Issuance of Stock and Stock Certificate(s)**

7.5.1 *Issuance.* As soon as practicable after the Date of Grant of a Restricted Stock Award, the Company shall cause to be issued in the name of the Grantee (and held by the Company, if applicable, under Section 7.4) such number of shares of Common Stock as constitutes the Restricted Stock awarded

12

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under the Restricted Stock Award. Each such issuance shall be subject throughout the Restricted Period to the terms, conditions and restrictions contained in the Plan and/or the Award Agreement.

7.5.2 *Custody and Registration.* Any issuance of Restricted Stock may be evidenced in such manner as the Grantor may deem appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates. In the event any stock certificate is issued in respect of Restricted Stock, such certificate shall be registered in the name of the Grantee and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

#### **Section 7.6 Shareholder Rights**

Following registration in the Grantee's name, during the Restricted Period, the Grantee shall have the entire beneficial interest in, and all rights and privileges of a shareholder as to, such shares of Common Stock covered by the Restricted Stock Award, including, but not limited to, the right to vote such shares and the right to receive dividends, subject to the restrictions and forfeitures set forth herein. Any shares of Common Stock distributed as a dividend or otherwise with respect to any shares of Restricted Stock as to which the restrictions have not yet lapsed shall be subject to the same restrictions as such Restricted Stock shares.

#### **Section 7.7 Delivery of Shares**

Upon the expiration (without a forfeiture) or earlier termination of the Restricted Period or at such earlier time as provided under the Plan, all shares of Restricted Stock shall be released from all restrictions and forfeiture provisions hereunder, any similar restrictions and forfeiture provisions under the Award Agreement applicable to such shares and all other restrictions and forfeiture provisions of the Plan or such Award Agreement. No payment will be required from the Holder upon the delivery of any shares of Restricted Stock, except that any amount necessary to satisfy applicable Federal, state or local tax requirements shall be paid by the Holder in accordance with the requirements of the Plan.

### **ARTICLE VIII PHANTOM STOCK UNIT AWARDS**

#### **Section 8.1 Grants**

From time to time, the Committee may grant Phantom Stock Unit Awards to such Reporting Persons who are Employees as the Committee may select in its sole discretion. From time to time, the Committee or the Chairman may grant Phantom Stock Unit Awards in such number as the Committee or the Chairman may determine to such Nonreporting Persons as the Committee or the Chairman may select in its or his, as the case may be, sole discretion who are Employees; *provided, however*, each and all such grants shall be subject to any maximum aggregate number of Awards in general and Phantom Stock Unit Awards in particular established by the Committee for grants under the Plan for Nonreporting Persons who are Employees as a group. From time to time, the Board or Committee may grant Phantom Stock Unit Awards to such Directors as the Board or Committee may select in its sole discretion. A Phantom Stock Unit represents the right to receive, without payment to the Company, shares of Common Stock, an amount of cash equal to the value of a share of Common Stock on a future date or any combination thereof, as determined by the Grantor.

13

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## **Section 8.2 Maximum Award to An Individual**

No individual shall be granted or receive in any calendar year a combination of Phantom Stock Unit Awards representing more than 1,000,000 shares of Common Stock.

## **Section 8.3 Vesting of Phantom Stock Unit Awards**

Phantom Stock Units shall become vested as determined by the Grantor, from time to time, and as set forth in the applicable Award Agreement, unless otherwise described in the Plan.

## **Section 8.4 Cash Value of Phantom Stock Unit Payments**

The amount payable with respect to each vested Phantom Stock Unit payable in cash shall be an amount determined by multiplying the number of Phantom Stock Units by the Fair Market Value of one share of Common Stock as of the vesting date.

## **Section 8.5 Time of Payment**

Amounts payable in connection with a Phantom Stock Unit shall be paid to the Holder, as determined by the Grantor and as set forth in the applicable Award Agreement or in accordance with such rules, regulations and procedures as may be adopted by the Grantor but in no event later than two and one-half months following the end of the calendar year in which a restriction lapses or a vesting condition is met.

## **Section 8.6 Nature of Phantom Stock Units**

Phantom Stock Units shall be used solely as a device for the measurement and determination of the amount to be paid on behalf of Grantees as provided in the Plan. Phantom Stock Units shall not constitute or be treated as property or as a trust fund of any kind. All amounts at any time attributable to the Phantom Stock Units shall be and remain the sole property of the Company and all Grantees' rights hereunder are limited to the rights to receive cash or shares of Common Stock as provided in the Plan.

# **ARTICLE IX OTHER AWARDS**

## **Section 9.1 Grants**

From time to time, the Committee may grant Other Awards to such Reporting Persons who are Employees as the Committee may select in its sole discretion. From time to time, the Committee or the Chairman may grant Other Awards to such Nonreporting Persons who are Employees as the Committee or the Chairman may select in its or his, as the case may be, sole discretion; *provided, however*, each and all such grants shall be subject to any maximum aggregate amount of Awards in general and Other Awards in particular (if any) established by the Committee for grants under the Plan for Nonreporting Persons who are Employees as a group. From time to time, the Board or Committee may grant Other Awards to such Directors as the Board or Committee may select in its sole discretion. An Other Award may or may not be evidenced by an Award Agreement.

14

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## **Section 9.2 Maximum Award to An Individual**

9.2.1 *Awards Denominated or Payable with Reference to Common Stock.* No individual shall be granted or receive in any calendar year Other Awards denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to shares of Common Stock (including, without limitation, securities convertible into shares of Common Stock) representing more than 1,000,000 shares of Common Stock.

9.2.2 *Awards Denominated or Payable with Reference to Cash.* No individual shall be granted or receive in any calendar year Other Awards denominated by or payable in cash representing more than \$6,000,000.

## **Section 9.3 Description of Other Awards**

An Other Award may be a grant of a type of equity-based, equity-related, or cash based Award not otherwise described by the terms of the Plan in such amounts and subject to such terms and conditions as determined by the Grantor, from time to time, under the Plan, including but not limited to being subject to Performance Goals. Such Awards may provide for the payment of shares of Common Stock or cash or any combination thereof to a Grantee. The value of a cash-based Other Award shall be determined by the Grantor.

# **ARTICLE X TERMINATION OF EMPLOYMENT OR CESSATION OF BOARD SERVICE**

## **Section 10.1 Stock Options and SARs**

If a Grantee who was an Employee or Director, as the case may be, when the Grantee received the Options or SARs ceases to be an Employee or Director of the Company and all Subsidiaries for any reason, then the Grantee's Options and SARs that are exercisable as of the termination or cessation date shall be cancelled and forfeited at the end of the 120<sup>th</sup> day after such date and all Options and SARs that are not exercisable as of the termination or cessation date shall be forfeited and cancelled as of such date except in cases of where such termination of employment or cessation of service is a result of (i) the Grantee's death or Disability, in which case the Grantee's Options or SARs that are not then exercisable shall thereupon become exercisable and all Options and SARs shall remain exercisable for the balance of their respective terms, (ii) resignation (other than for Retirement) by the Employee or Director, in which case the Grantee's Options or SARs that are exercisable as of such termination or cessation date shall be cancelled and forfeited at the end of the 30th day after such date and (iii) termination for Cause by the Company, a Subsidiary, or the Board, in which case all of the Grantee's Options and SARs, whether or not then exercisable, shall be cancelled and forfeited as of such termination date.

## **Section 10.2 Restricted Stock and Phantom Stock Units**

If a Grantee who was an Employee or Director, as the case may be, when the Grantee received the Restricted Stock or Phantom Stock Units ceases to (i) be employed by the Company and all Subsidiaries or (ii) serve as a Director, then all of the Grantee's Restricted Stock and Phantom Stock Units that remain subject to restriction or vesting at such time shall be cancelled and forfeited except in

15

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cases of such Grantee's death or Disability, in which case any remaining restriction or vesting shall thereupon lapse.

## **Section 10.3 Date of Termination of Employment**

Termination of employment of a Grantee for any of the reasons enumerated in this Article X shall, for purposes of the Plan, be deemed to have occurred as of the date which is recorded in the ordinary course in the Company's or a Subsidiary's books and records in accordance with the then-prevailing procedures and practices of the Company or the Subsidiary or, if earlier with respect to Awards that are "deferred compensation" under Section 409A of the Code, when a Grantee has a "separation from service" as defined in the regulations promulgated under Section 409A of the Code.

## **Section 10.4 Specified Employee Restriction**

Notwithstanding anything in this Plan to the contrary, with respect to any Award that constitutes "nonqualified deferred compensation" subject to Section 409A of the Code, any payments (whether in cash, shares of Common Stock or other property) to be made with respect to such Award upon the Holder's termination of employment or service shall be delayed until the first day of the seventh month following his "separation from service" as defined under Section 409A of the Code, if the Holder is a "specified employee" within the meaning of Section 409A of the Code (as determined in accordance with the uniform policy adopted by the Committee with respect to all of the arrangements subject to Section 409A of the Code maintained by the Company and its Subsidiaries).

## **Section 10.5 Immediate Forfeiture; Acceleration**

Except as otherwise provided in this Article X or in an Award Agreement or as otherwise determined by the Grantor, once a Grantee's employment terminates or Board service ceases, as the case may be, any Award that is not then exercisable or vested or as to which any restrictions have not lapsed shall be cancelled and forfeited to the Company; provided, however, that the Grantor may, subject to the provisions of Sections 5.3 and 6.2, extend the periods during which Awards may be exercised or provide for acceleration or continuation of the exercise or vesting date or the lapse of restrictions of such Awards to such extent and under such terms and conditions as such Grantor deems appropriate.

## **Section 10.6 Terms of Award Agreement**

The terms of any Award Agreement may address any of the issues provided for in this Article. In the event of a discrepancy between such terms and the terms of this Article, the terms of the Award Agreement shall apply.

# **ARTICLE XI CERTAIN TERMS APPLICABLE TO ALL AWARDS**

## **Section 11.1 Withholding Taxes**

The Company and any Subsidiary shall be authorized to withhold from any Award granted or any payment due or transfer made under any Award or under the Plan the amount (in cash, shares of Common Stock, other securities, or other Awards) of withholding taxes due in respect of an Award, its exercise, or any payment or transfer under such Award or under the Plan and to take such other action as

16

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may be necessary in the opinion of the Company or a Subsidiary to satisfy statutory withholding obligations for the payment of such taxes.

## **Section 11.2 Adjustments to Reflect Capital Changes**

11.2.1 *Recapitalization, etc.* In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, shares of Common Stock or other securities), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Common Stock, other securities of the Company, issuance of warrants or other rights to purchase shares of Common Stock or other securities of the Company, or other similar corporate transaction or event constitutes an equity restructuring transaction, as that term is defined in Statement of Financial Accounting Standards No. 123 (revised), or otherwise affects the shares of Common Stock, then the Committee shall adjust the following in a manner that is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan:

11.2.1.1 the number and type of shares of Common Stock or other securities which thereafter may be made the subject of Awards, including the aggregate and individual limits specified in the Plan (other than the individual limits set forth in Sections 5.1.3, 6.1.2, 7.2, 8.2 and 9.2.1, which shall not be subject to adjustment unless such adjustment can be made in a manner that satisfies the requirements of Section 162(m) of the Code);

11.2.1.2 the number and type of shares of Common Stock or other securities subject to outstanding Awards;

11.2.1.3 the grant, purchase, SAR Base Amount or Option Price with respect to any Award, or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award; and

11.2.1.4 other value determinations applicable to outstanding Awards.

11.2.2 *Sale or Reorganization.* After any reorganization, merger or consolidation whether or not the Company is the surviving corporation and unless there is a provision in the sale or reorganization agreement to the contrary, each Grantee shall, at no additional cost, be entitled upon any exercise of an Option or receipt of other Award to receive (subject to any required action by shareholders), in lieu of the number of shares of Common Stock receivable or exercisable pursuant to such Award, the number and class of shares of stock or other securities to which such Grantee would have been entitled pursuant to the terms of the reorganization, merger or consolidation if, at the time of such reorganization, merger or consolidation, such Grantee had been the holder of record of a number of shares of stock equal to the number of shares receivable or exercisable pursuant to such Award. Comparable rights shall accrue to each Grantee in the event of successive reorganizations, mergers or consolidations of the character described above.

11.2.3 *Options to Purchase Stock of Acquired Companies.* After any reorganization, merger or consolidation in which the Company or a Subsidiary shall be a surviving corporation, the Committee may grant substituted options under the provisions of the Plan, pursuant to Section 424 of the Code, replacing old options granted under a plan of another party to the reorganization, merger or consolidation whose stock subject to the old options may no longer be issued following such merger or consolidation. The foregoing adjustments and manner of application of the foregoing provisions shall be

determined by the Committee in its sole discretion. Any such adjustments may provide for the elimination of any fractional shares which might otherwise become subject to any Options.

### **Section 11.3 Failure to Comply with Terms and Conditions**

Notwithstanding any other provision of the Plan, any outstanding Awards, including, without limit, any rights of payment or delivery or any other rights of a Holder with respect to any Award shall, unless otherwise determined by the Grantor, be immediately forfeited and cancelled if the Holder:

- (i) breaches any term, restriction and/or condition of the Plan, any Award Agreement or any employment, separation or other agreement between the Holder and the Company or its Subsidiaries; or
- (ii) while serving as a Director or an Employee, is employed by or serves as a director of a competitor of the Company or its Subsidiaries, or shall be engaged in any activity in competition with the Company or its Subsidiaries; or
- (iii) within one (1) year of the Grantee's termination of employment or cessation of Board service with the Company and its Subsidiaries, solicits or assists in soliciting, directly or in any manner, any person employed by the Company or a Subsidiary to leave such employment or recruit, make an offer of employment to, or hire any such person; or
- (iv) divulges at any time any confidential information belonging to the Company or any Subsidiary.

The determination of the Grantor as to the occurrence of any of the events specified in this Section 11.3 shall be conclusive and binding upon all persons for all purposes.

### **Section 11.4 Regulatory Approvals and Listing**

The Company shall not be required to issue any certificate or certificates for shares of Common Stock under the Plan prior to (i) obtaining any approval from any governmental agency which the Company shall, in its discretion, determine to be necessary or advisable, (ii) the admission of such shares to listing on any national securities exchange on which the Company's Common Stock may be listed, and (iii) the completion of any registration or other qualification of such shares of Common Stock under any state or Federal law or ruling or regulations of any governmental body which the Company shall, in its discretion, determine to be necessary or advisable.

### **Section 11.5 Restrictions Upon Resale of Stock**

If the shares of Common Stock that have been issued to a Holder pursuant to the terms of the Plan are not registered under the Securities Act of 1933, as amended ("Securities Act"), pursuant to an effective registration statement, such Holder, if the Committee shall deem it advisable, may be required to represent and agree in writing (i) that any such shares acquired by such Holder pursuant to the Plan will not be sold except pursuant to an effective registration statement under the Securities Act, or pursuant to an exemption from registration under the Securities Act and, (ii) that such Holder is acquiring such shares for his own account and not with a view to the distribution thereof.

### **Section 11.6 Reporting Person Limitation**

Notwithstanding any other provision of the Plan, to the extent required to qualify for the exemption provided by Rule 16b-3 under the Act and any successor provision, any Common Stock or other equity security offered under the Plan to a Reporting Person may not be sold for at least six (6) months after the earlier of acquisition of the security or the date of grant of the derivative security, if any, pursuant to which the Common Stock or other equity security was acquired.

## **ARTICLE XII ADMINISTRATION OF THE PLAN**

### **Section 12.1 Committee**

The Plan shall be administered by or under the direction of the Committee.

### **Section 12.2 Committee Actions**

Except for matters required by the terms of the Plan to be decided by the Board or the Chairman, the Committee shall have full power and authority to interpret and construe the Plan, to prescribe, amend and rescind rules, regulations, policies and practices, to impose such conditions and restrictions on Awards as it deems appropriate and to make all other determinations necessary or desirable in connection with the administration of, or the performance of its responsibilities under, the Plan.

### **Section 12.3 Designation of Beneficiary**

Each Holder may file with the Company a written designation of one or more persons as the Beneficiary who shall be entitled to receive the Award, if any, payable under the Plan upon his death. A Holder may from time to time revoke or change his Beneficiary designation without the consent of any prior Beneficiary by filing a new designation with the Company. The last such designation received by the Company shall be controlling; *provided, however*, that no designation, or change or revocation thereof, shall be effective unless received by the Company prior to the Holder's death, and in no event shall it be effective as of a date prior to such receipt. If no such Beneficiary designation is in effect at the time of a Holder's death, or if no designated Beneficiary survives the Holder or if such designation conflicts with law, the Holder's estate shall be entitled to receive the Award, if any, payable under the Plan upon his death. If the Committee is in doubt as to the right of any person to receive such Award, the Company may retain such Award, without liability for any interest thereon, until the Committee determines the rights thereto, or the Company may pay such Award into any court of appropriate jurisdiction and such payment shall be a complete discharge of the liability of the Company therefore.

### **Section 12.4 No Right to an Award or to Continued Employment**

No Grantee or other person shall have any claim or right to be granted an Award under the Plan. Neither the action of the Company in establishing the Plan, nor any provisions hereof, nor any action taken by the Company, any Subsidiary, the Board, the Committee or the Chairman pursuant to such provisions shall be construed as creating in any employee or class of employees any right with respect to continuation of employment by the Company or any of its Subsidiaries, and they shall not be deemed to interfere in any way with the Company's or any Subsidiary's right to employ, discipline, discharge, terminate, lay off or retire any Grantee, with or without cause, to discipline any employee, or to

19

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otherwise affect the Company's or a Subsidiary's right to make employment decisions with respect to any Grantee.

### **Section 12.5 Discretion of the Grantor**

Whenever the terms of the Plan provide for or permit a decision to be made or an action to be taken by a Grantor, such decision may be made or such action taken in the sole and absolute discretion of such Grantor and shall be final, conclusive and binding on all persons for all purposes; *provided, however*, that the Board may review any decision or action of the Grantor and it may reverse or modify such Award, decision or act as it deems appropriate. The Grantor's determinations under the Plan, including, without limitation the determination of any person to receive awards and the amount of such awards, need not be uniform.

### **Section 12.6 Indemnification and Exculpation**

12.6.1 *Indemnification.* Each person who is or shall have been a member of the Board or the Committee and each director, officer or employee of the Company or any Subsidiary to whom any duty or power related to the administration or interpretation of the Plan may be delegated (each, an "Indemnified Person"), shall be indemnified and held harmless by the Company against and from any and all loss, cost, liability or expense that may be imposed upon or reasonably incurred by him in connection with or resulting from any claim, action, suit or proceeding to which he may be or become a party or in which he may be or become involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him in settlement thereof (with the Company's written approval) or paid by him in satisfaction of a judgment in any such action, suit or proceeding, except a judgment in favor of the Company based upon a finding of his bad faith; subject, however, to the condition that upon the institution of any claim, action, suit or proceeding against him, he shall in writing give the Company an opportunity, at its own expense, to handle and defend the same before he undertakes to handle and defend it on his own behalf. The foregoing right of indemnification shall not be exclusive of, and shall be in addition to, any other right to which such person may be entitled under the Company's charter or bylaws, as a matter of law or otherwise, or any power that the Company may have to indemnify him or hold him harmless.

12.6.2 *Exculpation.* No Indemnified Person shall be personally liable by reason of any contract or other instrument executed by him or on his behalf in his capacity as an Indemnified Person hereunder, nor for any mistake of judgment made in good faith, unless otherwise provided by law. Each Indemnified Person shall be fully justified in relying or acting upon in good faith any information furnished in connection with the administration of the Plan by any appropriate person or persons other than himself. In no event shall any Indemnified Person be liable for any determination made or other action taken or any omission to act in reliance upon such report or information, for any action (including the furnishing of information) taken or any failure to act, if in good faith.

### **Section 12.7 Unfunded Plan**

The Plan is intended to constitute an unfunded, long-term incentive compensation plan for certain selected employees. No special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts. The Company may, but shall not be obligated to, acquire shares of its Common Stock from time to time in anticipation of its obligations under the Plan, but no Grantee shall have any right in or against any shares of stock so acquired. All such stock shall constitute general assets of the Company and may be disposed of by the Company at such time and for

20

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such purposes as it may deem appropriate. No obligation or liability of the Company to any Grantee with respect to any right to receive a distribution or payment under the Plan shall be deemed to be secured by any pledge or other encumbrance on any property of the Company.

### **Section 12.8 Inalienability of Rights and Interests**

The rights and interests of a Holder under the Plan are personal to the Holder and to any person or persons who may become entitled to distribution or payments under the Plan by reason of death of the Holder, and the rights and interests of the Holder or any such person (including, without limitation, any Award distributable or payable under the Plan) shall not be subject in any manner to alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any such attempted action shall be void and no such benefit or interest shall be in any manner liable for or subject to debts, contracts, liabilities, engagements or torts of any Holder, provided that transfers pursuant to a qualified domestic relations order shall be allowable. If any Holder shall attempt to alienate, sell, transfer, assign, pledge, encumber or charge any of his rights or interests under the Plan, (including without limitation, any Award payable under the Plan) then the Committee may hold or apply such benefit or any part thereof to or for the benefit of such Holder in such manner and in such proportions as the Committee may consider proper. Notwithstanding the foregoing, the Holder, subject to the approval of the Company may elect to irrevocably transfer some or all of an Award to a family member. For this purpose, a family member shall refer to one or more of the Holder's spouse, children or grandchildren, or to a trust established solely for the benefit of, or to a partnership whose partners are, the Holder's spouse, children and grandchildren; provided, however, that:

(i) the Award, once transferred, may not again be transferred except by will or by the laws of descent and distribution;

(ii) the Award, once transferred, shall remain subject to the same terms and conditions of the Award in effect before the transfer and the transferee of the Award (the "Transferee") must comply with all other provisions of the Award; and

(iii) the Holder receives no consideration for such transfer. No transferred Award shall be exercisable following a transfer, as provided for herein, unless the Committee receives written notice from the Holder in a form and manner satisfactory to the Committee, in its sole discretion, to the effect that a transfer of the Award has occurred and the notice identifies the Award transferred, the identity of the Transferee and his relationship to the Holder.

#### **Section 12.9 Awards Not Includable for Benefit Purposes**

Except as otherwise set forth in any applicable 401(k) plan, payments received by a Grantee pursuant to the provisions of the Plan shall not be included in the determination of benefits under any pension, group insurance or other benefit plan applicable to the Grantee which are maintained by the Company or any of its Subsidiaries, except as may be determined by the Committee.

#### **Section 12.10 No Issuance of Fractional Shares**

The Company shall not be required to deliver any fractional share of Common Stock but, as determined by the Committee, may pay a cash amount to the Holder in lieu thereof, except as otherwise provided in the Plan, equal to the Fair Market Value (determined as of an appropriate date determined by the Committee) of such fractional share.

21

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#### **Section 12.11 Modification for International Grantees**

Notwithstanding any provision to the contrary, the Committee may incorporate such provisions, or make such modifications or amendments in Award Agreements of Grantees who reside or are employed outside of the United States of America, or who are citizens of a country other than the United States of America, as the Committee deems necessary or appropriate to accomplish the purposes of the Plan with respect to such Grantee in light of differences in applicable law, tax policies or customs, and to ascertain compliance with all applicable laws.

#### **Section 12.12 Leaves of Absence**

The Committee shall be entitled to make such rules, regulations and determinations as it deems appropriate under the Plan in respect of any leave of absence taken by the recipient of any Award. Without limiting the generality of the foregoing, the Grantor shall be entitled to determine (a) whether or not any such leave of absence shall constitute a termination of employment within the meaning of the Plan and, (b) the impact, if any, of any such leave of absence on awards under the Plan theretofore made to any recipient who takes such leave of absence. Notwithstanding the foregoing, with respect to Awards that are "deferred compensation" under Section 409A of the Code, any leave of absence taken by the recipient shall constitute a termination of employment within the meaning of the Plan when the recipient has a "separation from service" as defined in the regulations promulgated under Section 409A of the Code.

#### **Section 12.13 Communications**

12.13.1 *Communications by the Grantor.* All notices, statements, reports and other communications made, delivered or transmitted to a Holder or other person under the Plan shall be deemed to have been duly given, made or transmitted, when sent electronically to a Company or Subsidiary e-mail address, when delivered to, or when mailed by first-class mail, postage prepaid and addressed to, such Holder or other person at his address last appearing on the records of the Company.

12.13.2 *Communications by the Directors, Employees, and Others.* All elections, designations, requests, notices, instructions and other communications made, delivered or transmitted by the Company, a Subsidiary, Grantee, Beneficiary or other person to the Committee required or permitted under the Plan shall be transmitted by any means authorized by the Committee or shall be mailed by first-class mail or delivered to the Company's principal office to the attention of the Company's Secretary or such other location as may be specified by the Committee, and shall be deemed to have been given and delivered only upon actual receipt thereof by the Committee at such location.

#### **Section 12.14 Parties in Interest**

The provisions of the Plan and the terms and conditions of any Award shall, in accordance with their terms, be binding upon, and inure to the benefit of, all successors of each Grantee, including, without limitation, such Grantee's estate and the executors, administrators, or trustees thereof, heirs and legatees, and any receiver, trustee in bankruptcy or representative of creditors of such Grantee. The obligations of the Company under the Plan shall be binding upon the Company and its successors and assigns.

22

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### **Section 12.15 Severability**

Whenever possible, each provision in the Plan and every Award at any time granted under the Plan shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Plan or any Award at any time granted under the Plan shall be held to be prohibited by or invalid under applicable law, then (a) such provision shall be deemed amended to accomplish the objectives of the provision as originally written to the fullest extent permitted by law, and (b) all other provisions of the Plan and every other Award at any time granted under the Plan shall remain in full force and effect.

### **Section 12.16 Compliance with Laws**

The Plan and the grant of Awards shall be subject to all applicable Federal and state laws, rules and regulations and to such approvals by any government or regulatory agency as may be required. It is intended that the Plan be applied and administered in compliance with Rule 16b-3. If any provision of the Plan would be in violation of Rule 16b-3 if applied as written, such provision shall not have effect as written and shall be given effect so as to comply with Rule 16b-3, as determined by the Committee. The Board is authorized to amend the Plan and to make any such modifications to Award Agreements to comply with Rule 16b-3, and to make any such other amendments or modifications as it deems necessary or appropriate to better accomplish the purposes of the Plan in light of any amendments made to Rule 16b-3.

### **Section 12.17 No Strict Construction**

No rule of strict construction shall be implied against the Company, the Committee, the Chairman or any other person in the interpretation of any of the terms of the Plan, any Award granted under the Plan or any rule or procedure established by the Committee or the Board.

### **Section 12.18 Modification**

This document contains all of the provisions of the Plan and no provisions may be waived, modified or otherwise altered except in a writing adopted by the Board.

### **Section 12.19 Governing Law**

All questions pertaining to validity, construction and administration of the Plan and the rights of all persons hereunder shall be determined with reference to, and the provisions of the Plan shall be governed by and shall be construed in conformity with, the internal laws of the Commonwealth of Pennsylvania without regard to any of its conflict of laws principles.

## **ARTICLE XIII CHANGE OF CONTROL**

### **Section 13.1 Options and SARS**

In the event of a Change of Control, all Options and SARs outstanding on the date of such Change of Control shall become immediately and fully exercisable, provided that in the case of any outstanding Options or SARs subject to a performance-based vesting schedule, performance shall be deemed to have been achieved at the target level or, if greater, the actual level of achievement as of the

date of the Change of Control, annualized for the entire performance period, if appropriate, and, in the case of SARs, if payable in cash, shall be paid within thirty (30) days after a Change of Control to all Grantees who have been granted such Award. In all other respects not inconsistent with such acceleration, the Options and SARs shall continue to be governed by the terms of their Award Agreements and the Plan.

### **Section 13.2 Restricted Stock Awards and Phantom Stock Unit Awards**

In the event of a Change of Control, all restrictions with respect to Restricted Stock Awards and Phantom Stock Unit Awards shall immediately lapse, provided that in the case of any outstanding Restricted Stock Awards or Phantom Stock Unit Awards with restrictions subject to the achievement of certain performance-based goals, performance shall be deemed to have been achieved at the target level or, if greater, the actual level of achievement as of the date of the Change of Control, annualized for the entire performance period, if appropriate, and, if payable in cash, shall be paid within thirty (30) days after a Change of Control to all Grantees who have been granted such Award.

## **ARTICLE XIV AMENDMENT AND TERMINATION**

### **Section 14.1 Amendment; No Repricing**

The Board with respect to the Plan, and the Grantor with respect to any Award Agreement, reserve the right at any time or times to modify, alter or amend, in whole or in part, any or all of the provisions of the Plan or any Award Agreement to any extent and in any manner that it or he, as the case may be, may deem advisable, and no consent or approval by the shareholders of the Company, by any Grantee or Beneficiary, or by any other person, committee or entity of any kind shall be required to make any modification, alteration or amendment; *provided, however*, that the Board shall not, without the requisite affirmative approval of the shareholders of the Company, make any modification, alteration or amendment that requires shareholders' approval under any applicable law, the Code or stock exchange requirements. No modification, alteration or amendment of the Plan or any Award Agreement may, without the consent of the Grantee (or the Grantee's Beneficiaries in case of the Grantee's death) to whom any Award shall theretofore have been granted under the Plan, adversely affect any right of such Grantee under such Award, except in accordance with the provisions of the Plan and/or any Award Agreement applicable to any such Award. Subject to the provisions of this Section 14.1, any modification, alteration or amendment of any provisions of the Plan may be made retroactively. Except as otherwise provided in Section 11.2 hereof, neither the Committee nor the Board shall reduce the SAR Base Amount or Option Price, as applicable, of Stock Options or SARS previously awarded to any Grantee, whether through amendment, cancellation or replacement grant, or any other means, without the requisite prior affirmative approval of the shareholders of the Company.

**Section 14.2 Suspension or Termination**

The Board reserves the right at any time to suspend or terminate, in whole or in part, any or all of the provisions of the Plan for any reason and without the consent of or approval by the shareholders of the Company, any Holder or any other person, committee or entity of any kind; *provided, however*, that no such suspension or termination shall adversely affect any right or obligation with respect to any Award theretofore made except as herein otherwise provided.

**ARTICLE XV  
SECTION 409A**

It is the intention of the Company that no Award shall constitute a “nonqualified deferred compensation plan” subject to Section 409A of the Code, unless and to the extent that the Grantor specifically determines otherwise as provided in the immediately following sentence, and the Plan and the terms and conditions of all Awards shall be interpreted accordingly. The terms and conditions governing any Awards that the Grantor determines will be subject to Section 409A of the Code, including any rules for elective or mandatory deferral of the delivery of cash or shares pursuant thereto and any rules regarding treatment of such Awards in the event of a Change of Control, shall be set forth in the applicable Award Agreement, and shall comply in all respects with Section 409A of the Code.

**ARTICLE XVI  
EFFECTIVE DATE AND TERM OF THE PLAN**

The Plan shall become effective on the Effective Date if it is approved by the shareholders of the Company. No Award shall be granted under the Plan after the date specified in Section 4.1.4. The Plan will continue in effect for existing Awards as long as any such Awards are outstanding.