

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

**FORM 8-K  
CURRENT REPORT**

PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) April 20, 2023

**PERMA-FIX ENVIRONMENTAL SERVICES, INC.**

(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation)	<u>1-11596</u> (Commission File Number)	<u>58-1954497</u> (IRS Employer Identification No.)
<u>8302 Dunwoody Place, Suite 250, Atlanta, Georgia</u> (Address of principal executive offices)		<u>30350</u> (Zip Code)

Registrant's telephone number, including area code: (770) 587-9898

Not applicable

(Former name or former address, if changed since last report)

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:

- Written communications pursuant to Rule 425 under the Securities Act
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
<u>Common Stock, Par Value, \$0.001 Per Share</u>	<u>PESI</u>	<u>NASDAQ Capital Markets</u>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act

**Item 1.01. Entry into a Definitive Agreement**

The information contained in Items 5.02 (Employment Agreements) is incorporated herein by reference.

**Item 3.03. Material Modification to Rights of Security Holders**

The information disclosed in Item 5.03 is herein incorporated by reference.

**Item 5.02 – Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

**Employment Agreements:**

On April 20, 2023, Perma-Fix Environmental Services, Inc.'s (the "Company") Compensation and Stock Option Committee ("Compensation Committee") and the Board of Directors (the "Board") approved and Company entered into, an employment agreement with each of Mark Duff, President and Chief Executive Officer (the "CEO Employment Agreement"), Ben Naccarato, Executive Vice President ("EVP") and Chief Financial Officer (the "CFO Employment Agreement"), Dr. Louis Centofanti, EVP of Strategic Initiatives (the "EVP of Strategic Initiatives Employment Agreement"), Andrew Lombardo, EVP of Nuclear and Technical Services (the "EVP of Nuclear and Technical Services Employment Agreement"), and Richard Grondin, EVP of Waste Treatment Operations (the "EVP of Waste Treatment Operations Employment Agreement"), collectively with the CEO Employment Agreement, the CFO Employment Agreement, the EVP of Strategic Initiative Employment Agreement, the EVP of Nuclear and Technical Services Employment Agreement and the EVP of Waste Treatment Operations Employment Agreement, the "New Employment Agreements" and each individually the "New Employment Agreement." The Company had previously entered into an employment agreement dated July 22, 2020, with each of Mark Duff, Ben Naccarato, Dr. Louis Centofanti, Andrew Lombardo and Richard Grondin, with each of the five employment agreements due to expire on July 22, 2023. These five employment agreements dated July 22, 2020 were terminated effective April 20, 2023.

The New Employment Agreements, which are substantially identical, except for compensation, are effective April 20, 2023. Pursuant to the New Employment Agreements, each of these executive officers is provided an annual salary, which annual salary may be increased from time to time, but not reduced, as determined by the Compensation Committee. In addition, each of these executive officers is entitled to participate in the Company's broad-based benefits plans and to certain performance compensation payable under separate Management Incentive Plan ("MIP") as approved by the Company's Compensation Committee and the Company's Board. The Company's Compensation Committee and the Board had previously approved individual 2023 MIPs on January 19, 2023 (which are effective January 1, 2023) for each Mark Duff, Dr. Louis Centofanti, Ben Naccarato, Andrew Lombardo and Richard Grondin which remains effective for fiscal year 2023.

Each of the New Employment Agreements is effective for three years from April 20, 2023 (the "Initial Term") unless earlier terminated by the Company or by the executive officer. At the end of the Initial Term of each New Employment Agreement, each New Employment Agreement will automatically be extended for one additional year, unless at least six months prior to the expiration of the Initial Term, the Company or the executive officer provides written notice not to extend the terms of the New Employment Agreement.

Pursuant to the New Employment Agreements, if the executive officer's employment is terminated due to death, disability or for cause (as defined in the agreements), the Company will pay to the executive officer or to his estate an amount equal to the sum of any unpaid base salary and accrued unused vacation time through the date of termination and any benefits due to the executive officer under any employee benefit plan (the "Accrued Amounts") plus any performance compensation payable pursuant to the MIP with respect to the fiscal year immediately preceding the date of termination. In the event that an executive officer's employment is terminated due to death, the Company will also pay a lump-sum payment (the "Cash Medical Continuation Benefit") equal to eighteen times the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") to continue group health coverage for the executive officer's eligible covered dependents in effect on the date of the executive officer's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the executive officer's eligible covered dependents elect COBRA continuation coverage.

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If the executive officer terminates his employment for "good reason" (as defined in the agreements) or is terminated by the Company without cause (including any such termination for "good reason" or without cause within 24 months after a Change in Control (as defined in the agreements), the Company will pay the executive officer Accrued Amounts, (a) two years of full base salary, plus (b) (i) two times the performance compensation (under the executive officer's MIP) earned with respect to the fiscal year immediately preceding the date of termination provided the performance compensation earned with respect to the fiscal year immediately preceding the date of termination has not yet been paid, or (ii) if performance compensation earned with respect to the fiscal year immediately preceding the date of termination has already been paid to the executive officer, the executive officer will be paid an additional year of the performance compensation earned with respect to the fiscal year immediately preceding the date of termination, and (c) the Cash Medical Continuation Benefit. If the executive officer terminates his employment for a reason other than for good reason, the Company will pay to the executive officer an amount equal to the Accrued Amounts plus any performance compensation payable pursuant to the MIP applicable to such executive officer.

Additionally, in the event of a Change in Control (as defined in the agreements), all outstanding stock options to purchase the common stock held by the executive officer will immediately become exercisable in full commencing on the date of termination through the original term of the options. In the event of the death of an executive officer, all outstanding stock options to purchase common stock held by the executive officer will immediately become exercisable in full commencing on the date of death, with such options exercisable for the lesser of the original option term or twelve months from the date of the executive officer's death. In the event an executive officer terminates his employment for "good reason" (as defined in the agreements) or is terminated by the Company without cause, all outstanding stock options to purchase common stock held by the officer will immediately become exercisable in full commencing on the date of termination, with such options exercisable for the lesser of the original option term or within 60 days from the date of the executive officer's date of termination. Severance benefits payable with respect to a termination (other than Accrued Amounts) shall not be payable until the termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h)).

Each New Employment Agreement is briefly described above, and the descriptions contained herein are qualified by reference to the Employment Agreement attached as exhibits 99.1 to 99.5 to this Report.

#### **Newly Appointed Director**

Upon the Company's Amended and Restated By-laws being amended to increase the maximum number of board members from eight to nine members, the Board elected Mark Duff, the Company's President and CEO, to fill the newly created directorship, effective April 20, 2023. Mr. Duff's directorship is subject to being re-elected by the Company's stockholders at the Company's 2023 Annual Meeting of Stockholders to be held on July 20, 2023. As provided above, Mr. Duff, as the Company's President and CEO, was subject to an employment agreement dated July 22, 2020, which was terminated on April 20, 2023, when the Company and Mr. Duff executed the New Employment Agreement dated April 20, 2023, as described above in this Item 5.02 and incorporated herein by reference. In addition, Mr. Duff, in his capacity as President and CEO, is also subject to a broad-based performance compensation plan, defined above as an MIP, that was effective as of January 1, 2023.

Under the New Employment Agreement, Mr. Duff's annual base compensation is \$374,870, subject to being increased by the Board as provided in the New Employment Agreement, as opposed to his annual based compensation of \$344,400 under the July 22, 2020 employment agreement.

Mr. Duff, as the Company's President and CEO, may participate in the Company's 2017 Stock Option Plan (the "2017 Plan"). Under the 2017 Plan, Mr. Duff has been granted options from time to time to purchase up to an aggregate of 245,000 shares of the Company's common stock at an exercise price equal to the fair market value of the Company's common stock on the date of grant.

Mr. Duff has not been appointed to serve on any committees of the Board. As the Company's President and CEO, Mr. Duff does not qualify as an "Independent Director" under NASDAQ rules and is not eligible to receive compensation for his services as a director or to participate in the Company's 2003 Outside Directors Stock Plan.

Mr. Duff has held the position of President and CEO since September 2017. Since joining the Company in 2016, Mr. Duff has developed and implanted strategies to meet growth objectives in both the Company's Treatment and Services Segments. Mr. Duff has over 38 years of management and technical experience in the U.S. Department of Energy and U.S. Department of Defense environmental and construction markets as a corporate officer, senior project manager, co-founder of a consulting firm, and federal employee. Mr. Duff has an MBA from the University of Phoenix and received his B.S. from the University of Alabama.

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#### **Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On April 20, 2023, the Company's Board approved an amendment to the Company's Amended and Restated Bylaws (the "Amendment"), which increased the maximum number of board members from eight members to nine members. The Amendment, which was effective upon its adoption by the Board, was effected by amending "(a)" in "SECTION 2. Qualification; Number; Term" under "ARTICLE III", "Board of Directors," of the Amended and Restated Bylaws of the Company to read as follows: "(a) The Board of Directors shall consist of not less than three (3) nor more than nine (9) members, the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The use of the phrase "entire Board" herein refers to the total number of Directors which the Corporation would have if there were no vacancies in previously authorized directorships."

The text of the new "SECTION 2. Qualifications; Number; Term" is included in the Second Amended and Restated Bylaws attached to this Report as Exhibit 3(ii).

The description of the Amendment contained in this Report is qualified in its entirety by reference to the full text of “SECTION 2. Qualification; Number; Term” under “ARTICLE III”, “Board of Directors” as set forth in Exhibit 3(ii).

**Item 8.01. Other Events.**

On April 20, 2023, the Company’s Board set the Company’s Annual Meeting of Stockholders (the “Meeting”) on July 20, 2023 with the Record Date of June 1, 2023. Accordingly, stockholders of record at the close of business on June 1, 2023, will be entitled to vote at, the Meeting or at any postponement or adjournment thereof.

**Section 9 – Financial Statements and Exhibits**

**Item 9.01 – Financial Statements and Exhibits**

**(d) Exhibits**

<u>Exhibit Number</u>	<u>Description</u>
3(ii)	<a href="#"><u>Second Amended and Restated Bylaws of Perma-Fix Environmental Services, as amended effective April 20, 2023.</u></a>
4(i)	<a href="#"><u>Incorporated by reference to Exhibit 3(ii), above.</u></a>
99.1	<a href="#"><u>Employment Agreement dated April 20, 2023 between Mark Duff, President and Chief Executive Officer, and Perma-Fix Environmental Services, Inc.</u></a>
99.2	<a href="#"><u>Employment Agreement dated April 20, 2023 between Ben Naccarato, EVP and Chief Financial Officer and Perma-Fix Environmental Services, Inc.</u></a>
99.3	<a href="#"><u>Employment Agreement dated April 20, 2023 between Dr. Louis Centofanti, EVP of Strategic Initiatives, and Perma-Fix Environmental Services, Inc.</u></a>
99.4	<a href="#"><u>Employment Agreement dated April 20, 2023, 2023 between Andrew Lombardo, EVP of Nuclear and Technical Services and Perma-Fix Environmental Services, Inc.</u></a>
99.5	<a href="#"><u>Employment Agreement dated April 20, 2023 between Richard Grondin, EVP of Waste Treatment Operations and Perma-Fix Environmental Services, Inc.</u></a>
99.6	<a href="#"><u>2023 Incentive Compensation Plan for Chief Executive Officer, effective January 1, 2023, as incorporated by reference from Exhibit 99.1 to the Company’s Form 8-K filed on January 23, 2023. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.</u></a>
99.7	<a href="#"><u>2023 Incentive Compensation Plan for Chief Financial Officer, effective January 1, 2023, as incorporated by reference from Exhibit 99.2 to the Company’s Form 8-K filed on January 23, 2023. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.</u></a>
99.8	<a href="#"><u>2023 Incentive Compensation Plan for EVP of Strategic Initiatives, effective January 1, 2023, as incorporated by reference from Exhibit 99.3 to the Company’s Form 8-K filed on January 23, 2023. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.</u></a>
99.9	<a href="#"><u>2023 Incentive Compensation Plan for EVP of Nuclear and Technical Services, effective January 1, 2023, as incorporated by reference from Exhibit 99.4 to the Company’s Form 8-K filed on January 23, 2023. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.</u></a>
99.10	<a href="#"><u>2023 Incentive Compensation Plan for EVP of Waste Treatment Operations, effective January 1, 2023, as incorporated by reference from Exhibit 99.5 to the Company’s Form 8-K filed on January 23, 2023. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**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 hereunto duly authorized.

Dated: April 26, 2023

PERMA-FIX ENVIRONMENTAL SERVICES, INC.

By: /s/ Ben Naccarato

Ben Naccarato  
Executive Vice President and  
Chief Financial Officer

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**SECOND AMENDED AND RESTATED  
BYLAWS  
OF  
PERMA-FIX ENVIRONMENTAL SERVICES, INC.**

(a Delaware corporation)

Adopted on, and effective as of, March 29, 2012

As Amended By:

Amendment to Amended and Restated Bylaws, adopted October 4, 2013  
Second Amendment to Amended and Restated Bylaws, adopted July 28, 2016  
Third Amendment to Amended and Restated Bylaws, adopted January 21, 2021  
Fourth Amendment to Amended and Restated Bylaws, adopted April 20, 2023

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**SECOND AMENDED AND RESTATED  
BYLAWS  
OF  
PERMA-FIX ENVIRONMENTAL SERVICES, INC.**

(a Delaware corporation)

These Second Amended and Restated Bylaws (the “Bylaws”) of Perma-Fix Environmental Services, Inc., a Delaware corporation (the “Corporation”), have been adopted by the Corporation’s Board of Directors on, and are effective as of, April 20, 2023, and hereby amend and restate the previous Bylaws of the Corporation which are hereby deleted in their entirety and replaced with the following:

## ARTICLE I

### Offices

SECTION 1. Registered Office. The registered office of the Corporation shall be at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware, 19808, or at such other location within the State of Delaware as determined by the Board of Directors of the Corporation (the “Board of Directors”). The Corporation’s registered agent in Delaware shall be Corporation Service Company, subject to change by the Board of Directors which by resolution may appoint, or change, the Corporation’s registered agent in Delaware in the manner and to the extent permitted by law.

SECTION 2. Other Offices. The Corporation may also have an office or offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

SECTION 3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

## ARTICLE II

### Meetings of Stockholders

SECTION 1. Place of Meetings. Meetings of the stockholders for the election of directors of the Corporation (each, a “*Director*”) or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

SECTION 2. Annual Meeting. An annual meeting of stockholders of the Corporation (the “*Annual Meeting of Stockholders*”) for the election of Directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

SECTION 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation of the Corporation (the “*Certificate of Incorporation*”), special meetings of stockholders of the Corporation (each, a “*Special Meeting of Stockholders*”), for any purpose or purposes, may be called by either the Chairman of the Board, if one has been elected, or the Chief Executive Officer, and shall be called by either such officer or the Secretary at the request in writing of a majority of the Board of Directors, but such special meetings may not be called by any other person or persons. Such request shall state the purpose or purposes of the proposed meeting. Only such business shall be conducted at a Special Meeting as shall have been properly brought before the meeting pursuant to the Corporation’s notice of meeting.

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### SECTION 4. Notice of Meetings; Adjournments

(a) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, written notice of all meetings of the stockholders, stating the place (if any), date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the place within the city or other municipality or community at which the list of stockholders may be examined and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in case of a Special Meeting of Stockholders, the purpose or purposes for which the meeting is called, shall be mailed or delivered to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting not less than ten (10) nor more than sixty (60) days prior to the date of the meeting (except to the extent that such notice is waived or is not required by the General Corporation Law of the State of Delaware (the “*DGCL*”) or these Bylaws). Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Section 222 (or any successor section) of the *DGCL*. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, and directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to such stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the *DGCL*. A written waiver of any notice, signed by a stockholder, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except when the person attends for the express purpose of objecting at the beginning of the meeting because the meeting is not lawfully called or convened.

(b) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the *DGCL*, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

SECTION 5. Stockholder Lists. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose necessary to the meeting, either (i) during ordinary business hours, at the principal place of business of the Corporation, or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 6. Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of common stock of the Corporation entitled to vote at the meeting, present in person or by proxy; *provided, however*, that, in no event shall a quorum consist of less than such number of votes as may be required under the *DGCL*. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there is no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, subject to Section 4(b) of this Article II, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 7. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or if none or in the Chairman of the Board's absence, the Vice Chairman of the Board, or if none or in the Vice Chairman of the Board's absence, the Chief Executive Officer, or, if none of the foregoing is present, by a chairman designated by the Board of Directors, or in the absence of such designation, by a chairman chosen at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the officer of the Corporation presiding at the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 8. Nature of Business at Annual Meetings of Stockholders. No business may be transacted at an Annual Meeting of Stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the Annual Meeting of Stockholders by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (c) otherwise properly brought before the Annual Meeting of Stockholders by any stockholder of the Corporation who (i) has continuously held at least \$2,000 in market value, or 1%, of the Corporation's shares of common stock entitled to vote at the meeting on the proposal for business for at least one year from the date such stockholder gives the notice provided for in Section 9 of this Article II, and continuously holds such shares through and including the time of the Annual Meeting (including any adjournment or postponement thereof), (ii) is a stockholder of record at the time of giving the notice provided for in Section 9 of this Article II through and including the time of the Annual Meeting (including any adjournment or postponement thereof), (iii) is entitled to propose such business and to vote at the meeting on the proposal for such business and (iv) complies with the notice procedures set forth in Section 9 of this Article II as to such business and, to the extent applicable, Section 10 and Section 11 of this Article II. Section 8(c) and Section 9 of this Article II and, to the extent applicable, Sections 10 and 11 of this Article II, shall be the exclusive means for a stockholder to propose business before an Annual Meeting of Stockholders, except (x) to the extent of matters which are required to be presented to stockholders by applicable law which have been properly presented in accordance with the requirements of such law and (y) nominations of individuals for election to the Board of Directors shall be made in accordance with Section 3(b) and Section 4 of Article III (and, to the extent applicable, Section 10 and Section 11 of this Article II). For purposes of determining compliance with the requirement in subclause (i) of this Section 8(c), the market value of the Corporation's shares of common stock held by the applicable stockholder shall be determined by multiplying the number of shares such stockholder continuously held for that one-year period by the highest selling price of the Corporation's shares of common stock as reported on the principal exchange on which shares of the Corporation's common stock are listed during the 60 calendar days before the date such notice was submitted.

SECTION 9. Advance Notice of Stockholder Proposals. In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting of Stockholders by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and have complied with all applicable provisions of these Bylaws, including, but not limited to, Section 8, Section 10 and Section 11 of this Article II. With respect to nominations for election of Directors by a stockholder (any such nominated individual, a "Proposed Nominee"), only such persons who are nominated in accordance with the procedures set forth in Sections 3 and 4 of Article III and, to the extent applicable, Section 10 and Section 11 of this Article II, and who meet the qualifications set forth in Section 2 of Article III, shall be eligible to be elected at an Annual Meeting of Stockholders or Special Meeting of Stockholders of the Corporation to serve as Directors.

Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any stockholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Directors, shall be deemed not to be a matter upon which the stockholders are entitled to vote. The Board of Directors in its discretion shall be entitled to determine whether a stockholder proposal for business is not a matter upon which the stockholders are entitled to vote pursuant to this Section 9, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

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To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation no later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; provided, however, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which Public Disclosure (as defined in Article XIII) of the date of the Annual Meeting of Stockholders was made. In no event shall the Public Disclosure of an adjournment or postponement of an Annual Meeting of Stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth: (a) as to each matter such stockholder proposes to bring before the Annual Meeting of Stockholders, a brief description of the business desired to be brought before the Annual Meeting of Stockholders, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), the reasons for conducting such business at the Annual Meeting of Stockholders and any material interest in such business of such stockholder and any Stockholder Associated Person (as defined in Article XIII of these Bylaws); (b) as to the stockholder giving the notice and any Stockholder Associated Person (i) the name and record address of such stockholder, and the name and address of the Stockholder Associated Person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder and any Stockholder Associated Person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for the Annual Meeting of Stockholders of the class or series and number of shares of capital stock of the Corporation owned beneficially and/or of record by the stockholder and such Stockholder Associated Person as of the record date for the Annual Meeting of Stockholders, (iii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the Annual Meeting of Stockholders to bring such business before the meeting; (iv) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by each such party, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (v) any short interest in any security of the Corporation held by each such party (for purposes of this clause (v), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (vi) any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by each such party that are separated or separable from the underlying shares of the Corporation, (vii) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which any such party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (viii) any performance-related fees (other than an asset-based fee) that each such party is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of each such party's immediate family sharing the same household (which information set forth in clauses (b)(ii) and (b)(iv)-(viii) of this paragraph shall be supplemented by such stockholder or Stockholder Associated Person, as the case may be, not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting), (ix) a representation as to whether the stockholder or Stockholder Associated Person, if any, intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business, and/or otherwise to solicit proxies or votes from stockholders in support of such business and (x) any other information relating to such stockholder and Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the approval or adoption of the business pursuant to and in accordance with Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder.

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The stockholder shall be deemed to have affirmatively asserted that no person is a Stockholder Associated Person other than the Stockholder Associated Person expressly identified by the stockholder in its notice. Furthermore, if any other item required pursuant to the foregoing requirements is not expressly addressed in such

stockholder's notice with respect to the stockholder or any Stockholder Associated Person identified in such notice, the stockholder shall be deemed to have affirmatively asserted that the answer to such item is "none" or "not applicable", as the case may be, unless such item cannot be reasonably answered with a response of either "none" or "not applicable", in which case such notice shall be deemed incomplete with respect to such response. Not in limitation of the foregoing, any answer of "none" or "not applicable" to clauses (a), (b)(i) or (b)(ix) above shall be deemed incomplete with respect to such response. To the extent that the stockholder's notice is inaccurate in any material respect (including any such deemed affirmative assertions) and/or incomplete in any material respect with respect to requirements that cannot be reasonably answered with an answer of either "none" or "not applicable", as determined by the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 9. Such stockholder shall provide further notice or notices to the Secretary at the principal executive offices of the Corporation to update the foregoing information if such information changes between the date of such stockholder's notice and the date of the Annual Meeting of Stockholders, such notice to be provided within three business days after such information changes but no later than the day prior to such meeting. To the extent the stockholder fails to so update such information on a timely basis in any material respect, as determined by the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 9.

The foregoing notice requirements shall apply to all proposals made by stockholders other (i) than those proposals made in compliance with Rule 14a-8 under the Exchange Act that have been included in a proxy statement prepared by the Corporation to solicit proxies for such Annual Meeting of Stockholders, and (ii) nominations for the election of Directors, which shall be governed by the procedures set forth in Section 3(b) and Section 4 of Article III and, to the extent applicable, Section 10 and Section 11 of this Article II. A stockholder seeking to include a proposal in the Corporation's proxy statement pursuant to Rule 14a-8 must comply with Rule 14a-8 and any other applicable Exchange Act requirements.

No business shall be conducted by a stockholder at the Annual Meeting of Stockholders except business brought before the Annual Meeting of Stockholders by a stockholder meeting the requirements set forth in Section 8 of this Article II and in accordance with the procedures set forth in this Section 9 and, if applicable, Section 10 and Section 11 of this Article II or, in the case of nominations for the election of Directors, in accordance with the procedures set forth in Section 3(b) and Section 4 of Article III and, if applicable, Section 10 and Section 11 of this Article II. If the Chairman of the Board determines that business was not properly brought before the Annual Meeting of Stockholders in accordance with the foregoing procedures, the Chairman of the Annual Meeting of Stockholders shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9, unless otherwise required by law, if the stockholder does not provide the information required under clauses (b)(ii) and (b)(iv)-(viii) of this Section 9 to the Corporation within five (5) business days following the record date for the Annual Meeting of Stockholders or if the stockholder does not appear in person or through a legally qualified representative at the Annual Meeting of Stockholders to present proposed business, such business shall not be transacted, notwithstanding that stockholders may have already submitted proxies to the Corporation in respect of such business in accordance with Section 8 of this Article II.

**SECTION 10. Stockholder Nominations or Other Proposals Causing Covenant Breaches or Defaults.** At the same time as the submission of any stockholder nomination or proposal of other business to be considered at a stockholders meeting that, if approved and implemented by the Corporation, would cause the Corporation or any Subsidiary (as defined in Article XIII) of the Corporation to be in breach of any covenant of the Corporation or any Subsidiary of the Corporation or otherwise cause a default (in any case, with or without notice or lapse of time) in any existing debt instrument or agreement of the Corporation or any Subsidiary of the Corporation or other material contract or agreement of the Corporation or any Subsidiary of the Corporation, in each case as disclosed by the Corporation in its public filings with the Securities and Exchange Commission ("SEC") or as otherwise disclosed to the proponent stockholder or stockholders, such proponent stockholder or stockholders shall submit to the Secretary of the Corporation (or, in the case of a stockholder nomination, to the Corporate Governance and Nominating Committee) at the principal executive offices of the Corporation (a) evidence that the lender or contracting party has waived or is willing to waive the breach of covenant or default or (b) a detailed plan for repayment of the indebtedness to the lender or curing the contractual breach or default and satisfying any resulting damage claim, specifically identifying the actions to be taken or the source of funds.

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**SECTION 11. Stockholder Nominations or Other Proposals Requiring Governmental Action.** If (a) submission of any stockholder nomination or proposal of other business to be considered at a stockholders meeting that could not be considered or, if approved, implemented by the Corporation without the Corporation, any Subsidiary of the Corporation, the proponent stockholder, any Proposed Nominee of such stockholder, any Proposed Nominee Associated Person (as defined in Article XIII) of such Proposed Nominee, any Stockholder Associated Person of such stockholder, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action (a "Governmental Action") of any federal or state governmental or regulatory body, including any stock exchange on which shares of the Corporation's stock are listed (a "Governmental Body"), which, if not so filed, notified or obtained would have a material adverse effect on the Corporation, or (b) the stockholder's ownership of shares of stock of the Corporation or any solicitation of proxies or votes or holding or exercising proxies by any stockholder proposing business or making a nomination, any Proposed Nominee of such stockholder, any Proposed Nominee Associated Person of such Proposed Nominee, any Stockholder Associated Person of such stockholder, or their respective affiliates or associates would require Governmental Action, then, at the same time as the submission of any stockholder nomination or proposal of other business to be considered at a stockholders meeting, the proponent stockholder or stockholders shall submit to the Secretary of the Corporation (or, in the case of a stockholder nomination, to the Corporate Governance and Nominating Committee) at the principal executive offices of the Corporation (x) evidence that any and all Governmental Action has been given or obtained, including, without limitation, evidence that any Proposed Nominee satisfies any suitability or other requirements of the applicable Governmental Body, or (y) if such evidence was not obtainable from a Governmental Body by such time despite the stockholder's diligent and best efforts, a detailed plan for making or obtaining the Governmental Action prior to the election of any such Proposed Nominee or the implementation of such proposal.

**SECTION 12. Voting; Proxies; Required Vote.**

(a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period, and a proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power), and, unless the Certificate of Incorporation provides otherwise, shall have one (1) vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. At every meeting of stockholders duly called and held at which a quorum is present (i) in all matters other than the election of Directors, a majority of the votes that could be cast at the meeting upon a given question and (ii) in the case of the election of Directors, a plurality of the votes that could be cast at the meeting upon the election, by the holders who are present in person or by proxy, shall be necessary, in addition to any vote or other action that may be expressly required by law, the Certificate of Incorporation, these Bylaws or the rules or regulations of any stock exchange applicable to the Corporation, to decide the question or election. Except as otherwise provided by statute, and unless demanded by a stockholder present in person or by proxy at any meeting, and entitled to vote thereat, the vote on any question need not be by ballot.

(b) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having a majority of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

**SECTION 13. Inspectors.**

(a) The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear

and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

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(b) In the event of the delivery, in the manner provided by these Bylaws, to the Corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the Corporation that the consents delivered to the Corporation in accordance with these Bylaws represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

### ARTICLE III

#### Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

SECTION 2. Qualification; Number; Term.

(a) The Board of Directors shall consist of not less than three (3) nor more than nine (9) members, the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The use of the phrase "entire Board" herein refers to the total number of Directors which the Corporation would have if there were no vacancies in previously authorized directorships.

(b) In addition to any other qualifications for director election set forth in these Bylaws, to qualify for nomination or election as a Director, an individual, at the time of nomination and election, shall, without limitation, (i) be an individual at least 21 years of age who is not under legal disability, (ii) have the ability to be present, in person, at all regular and special meetings of the Board of Directors; (iii) not serve on the boards of more than three other publicly held companies; (iv) satisfy the director qualification requirements of all environmental and nuclear commissions, boards or similar regulatory or law enforcement authorities to which the Corporation is subject so as not to cause the Corporation to fail to satisfy any of the licensing requirements imposed by any such authority, except as may be otherwise permitted pursuant to Section 11 of Article II of these Bylaws; (v) not be affiliated with, employed by or a representative of, or have or acquire a material personal involvement with, or material financial interest in, any individual, corporation, association, partnership, firm, business enterprise or other entity, organization or person which is engaged in competition with the Corporation or any of its subsidiaries or affiliates ("Business Competitor"), as determined by the Corporation's Corporate Governance and Nominating Committee of the Board of Directors. Such affiliation, employment or representation shall include, without limitation, service or status as an owner, partner, shareholder, trustee, director, officer, consultant, employee, agent or counsel, or the existence of any relationship which results in such person having an express, legal or fiduciary obligation to act on behalf of or in the interests of a Business Competitor; *provided, however*, that passive ownership of an interest not exceeding 1% of the outstanding securities in any publicly-owned Business Competitor shall not constitute such affiliation, employment or representation; (vi) not have been convicted, including a plea of guilty or nolo contendere, of a felony, or of any misdemeanor involving moral turpitude; and (vii) have been nominated for election to the Board of Directors in accordance with Section 3(b) and Section 4 of this Article III and, to the extent applicable, Sections 10 and 11 of Article II of these Bylaws.

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An individual shall be qualified to serve as a director of the Corporation only for so long as no environment commission, board or similar regulatory or law enforcement authority to which the Corporation is subject has made a final, non-appealable determination that such individual's membership on the Board of Directors of the Corporation would cause the Corporation to fail to meet any of its licensing requirements. In the event such a determination is made, such individual shall cease to be qualified to serve on the Board of Directors.

(c) Directors who are elected at an Annual Meeting of Stockholders, and Directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next Annual Meeting of Stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

SECTION 3. Nomination. Only persons who meet the qualifications set forth in Section 2 of this Article III and who are nominated in accordance with the procedures set forth in this Section 3 and in Section 4 of this Article III shall be eligible for election as Directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting of Stockholders, or at any Special Meeting of Stockholders called for the purpose of electing Directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the Corporation who (i) (A) at the date of the giving of the notice provided for in Section 4 of this Article III, individually or in the aggregate, holds at least 1% of the Corporation's shares of common stock entitled to vote at the meeting on such election and have held such shares continuously for at least one (1) full year, and (B) continuously holds such shares through and including the time of the annual or special meeting (including any adjournment or postponement thereof), (ii) is each a stockholder of record of the Corporation at the time of giving the notice provided for in Section 4 of this Article III through and including the time of the annual or special meeting (including any adjournment or postponement thereof), (iii) is each entitled to make nominations and to vote at the meeting on such election and (iv) complies with the procedures set forth in Section 4 of this Article III as to such nomination, as well as, to the extent applicable, Section 10 and Section 11 of Article II. Section 3(b) and Section 4 of this Article III and, to the extent applicable, Sections 10 and 11 of Article II, shall be the exclusive means for any stockholder to make nominations of individuals meeting the qualifications set forth in Section 2 of this Article III for election to the Board of Directors.

SECTION 4. Stockholder Notice of Nomination.

(a) Timely Notice. In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Corporate Governance and Nominating Committee of the Corporation. To be timely, a stockholder's notice to the Corporate Governance and Nominating Committee must be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an Annual Meeting of Stockholders, no later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; *provided, however*, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which Public Disclosure (as defined in Article XIII) of the date of the Annual Meeting of Stockholders was made; and (ii) in the case of a Special Meeting of Stockholders called for the purpose of electing Directors, not later than the close of business on the tenth (10th) day following the day on which Public Disclosure of the date of the Special Meeting of Stockholders was made. Notwithstanding anything in the previous sentence to the contrary, in the event that the number of Directors to be elected to the Board of Directors of the Corporation is increased effective at the Annual Meeting of Stockholders and there is no Public Disclosure by the Corporation naming the nominees for the additional directorships at least 100 days prior to the first anniversary date of the immediately preceding Annual Meeting of Stockholders, a stockholder's notice required by this Section 4 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10<sup>th</sup>) day following the day on which such Public Disclosure is first made by the Corporation. In no event shall the Public Disclosure of an adjournment or postponement of an Annual or Special Meeting

(b) Contents of Notice. To be in proper written form, a stockholder's notice to the Corporate Governance and Nominating Committee must set forth:

(i) separately, as to each Proposed Nominee and each Proposed Nominee Associated Person (A) the name, age, business address and residence address of the Proposed Nominee, and the name and address of such Proposed Nominee Associated Person, (B) the principal occupation or employment of the Proposed Nominee, (C) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by the Proposed Nominee or by such Proposed Nominee Associated Person, (D) information necessary for the Board of Directors to determine that the Proposed Nominee complies with all of the requirements of Section 2 of this Article III and, if applicable, Section 10 and Section 11 of Article II, (E) to the extent not otherwise required by this subsection (b)(i), the information required in subsection (b)(ii) of this Section 4 by the stockholder giving the notice and any Stockholder Associated Person, but with respect to the Proposed Nominee and the Proposed Nominee Associated Person, (F) any other information relating to the Proposed Nominee that would be required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (G) such Proposed Nominee's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; and (H) such other information as the Corporation may reasonably require to determine the eligibility of such Proposed Nominee to serve as a Director of the Corporation, including, but not limited to, the additional information and statements required by Section 4(c) of this Article III;

If any of the foregoing requirements is not expressly responded to in such stockholder's notice, the stockholder shall be deemed to have affirmatively asserted that the answer to such item is "none" or "not applicable", as the case may be, unless such item cannot be reasonably answered with a response of either "none" or "not applicable", in which case such notice shall be deemed incomplete with respect to such requirement. Not in limitation of the foregoing, any answer of "none" or "not applicable" to clauses (A), (B) or (D) above shall be deemed incomplete with respect to such response. To the extent that the notice is inaccurate in any material respect (including any such deemed affirmative assertions) and/or incomplete in any material respect with respect to requirements that cannot be reasonably answered with a response of either "none" or "not applicable," as determined by the Corporate Governance and Nominating Committee or the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 4(b)(i). Such stockholder shall provide further notice or notices to the Corporate Governance and Nominating Committee at the principal executive offices of the Corporation to update the foregoing information if such information changes between the date of such stockholder's notice and the date of the stockholders' meeting to which it relates, such notice to be provided within three business days after such information changes but no later than the day prior to such stockholders' meeting. To the extent the stockholder fails to so update such information on a timely basis in any material respect, as determined by the Corporate Governance and Nominating Committee or the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 4(b)(i).

(ii) as to the stockholder giving the notice and any Stockholder Associated Person (A) the name and record address of such stockholder, and the name and address of the Stockholder Associated Person, (B) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder and any Stockholder Associated Person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for the Annual Meeting of Stockholders of the class or series and number of shares of capital stock of the Corporation owned beneficially and/or of record by the stockholder and such Stockholder Associated Person as of the record date for the Annual Meeting of Stockholders, (C) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the Annual Meeting of Stockholders to bring such business before the meeting; (D) any Derivative Instrument directly or indirectly owned beneficially by each such party, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (E) any short interest in any security of the Corporation held by each such party (for purposes of this clause (E), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (F) any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by each such party that are separated or separable from the underlying shares of the Corporation, (G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which any such party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (H) any performance-related fees (other than an asset-based fee) that each such party is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of each such party's immediate family sharing the same household (which information set forth in clauses (ii)(B) and (ii)(D)-(H) of this paragraph shall be supplemented by such stockholder or Stockholder Associated Person, as the case may be, not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting), (I) a representation as to whether the stockholder or Stockholder Associated Person, if any, intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business, and/or otherwise to solicit proxies or votes from stockholders in support of such business and (J) any other information relating to such stockholder and Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the approval or adoption of the business pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

The stockholder shall be deemed to have affirmatively asserted that no person is a Stockholder Associated Person other than the Stockholder Associated Person expressly identified by the stockholder in its notice. Furthermore, if any other item required pursuant to the foregoing requirements is not expressly addressed in such stockholder's notice with respect to the stockholder or any Stockholder Associated Person identified in such notice, the stockholder shall be deemed to have affirmatively asserted that the answer to such item is "none" or "not applicable", as the case may be, unless such item cannot be reasonably answered with a response of either "none" or "not applicable", in which case such notice shall be deemed incomplete with respect to such response. Not in limitation of the foregoing, any answer of "none" or "not applicable" to clauses (A), (B), (C) or (F) above shall be deemed incomplete with respect to such response. To the extent that the notice is inaccurate in any material respect (including any such deemed affirmative assertions) and/or incomplete in any material respect with respect to requirements that cannot be reasonably answered with an answer of either "none" or "not applicable", as determined by the Corporate Governance and Nominating Committee or the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 4(b)(ii). Such stockholder shall provide further notice or notices to the Corporate Governance and Nominating Committee at the principal executive offices of the Corporation to update the foregoing information if such information changes between the date of such stockholder's notice and the date of the stockholders' meeting to which it relates, such notice to be provided within three business days after such information changes but no later than the day prior to such stockholders' meeting. To the extent the stockholder fails to so update such information on a timely basis in any material respect, as determined by the Corporate Governance and Nominating Committee or the Board of Directors, the stockholder shall be deemed not to have complied with the requirements of this Section 4(b)(ii).

(c) Additional Requirements For Valid Nomination of Proposed Nominees and, If Elected, to Be Seated as Directors

(i) In order for any Proposed Nominee to be eligible to be a candidate for election or reelection as a Director of the Corporation at an annual or special meeting, such candidate must meet the qualifications set forth in Section 2 of this Article III, be nominated in the manner prescribed in Section 4(a) and Section 4(b) of this Article III and the Proposed Nominee must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board of Directors), to the Corporate Governance and Nominating Committee of the Corporation at the principal executive offices of the Corporation, (A) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, (B) the information required by Section 4(b) and (C) a written representation and agreement (in form provided by the Corporation) that such Proposed Nominee (1) is not and, if elected as a Director during his or her term of office, will not become a party to any agreement, arrangement or understanding with,

and has not given and will not give any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a Director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”), specifically including any Voting Commitment that could limit or interfere with such Proposed Nominee’s ability to comply, if elected as a Director of the Corporation, with such Proposed Nominee’s fiduciary duties under applicable law, (2) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director and (3) if elected as a Director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to Directors and in effect during such person’s term in office as a Director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

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If such questionnaire is returned on a timely basis but any question in such questionnaire is not expressly responded to, the person returning such questionnaire shall be deemed to have affirmatively asserted that the answer to such question is “none” or “not applicable”, as the case may be, unless such question cannot be reasonably answered with an answer of either “none” or “not applicable”, in which case such questionnaire shall be deemed incomplete with respect to such question. To the extent that the responses to the questionnaire are inaccurate in any material respect as determined by the Corporate Governance and Nominating Committee or the Board of Directors (including any such deemed affirmative assertions) and/or incomplete in any material respect with respect to questions that cannot be answered with an answer of either “none” or “not applicable”, the person returning the questionnaire shall be deemed not to have complied with the requirements of this Section 4(c). If any answer changes between the date that such questionnaire is originally completed and the date of the stockholders’ meeting to which it relates, such person shall update such answers in writing to the Secretary at the principal executive offices of the Corporation, such update to be provided within three business days after such information changes but no later than the day prior to such stockholders’ meeting. Any failure to so update the answers in any material respect shall result in such person being deemed not to have complied with the qualification requirements of this Section 4(c).

(ii) In addition to the notice requirements set forth above in this Section 4 and, to the extent applicable, Section 10 and Section 11 of Article II, a notice of one or more stockholders making a nomination pursuant to this Section 4 shall be accompanied by (A) a signed and notarized statement of each stockholder giving the notice certifying that such stockholder will continue to hold all shares referenced in Section 3(b)(i)(A) of this Article III through and including the time of the Annual Meeting of Stockholders (including any adjournment or postponement thereof), and (B) a signed and notarized certificate of each Proposed Nominee (1) consenting to being named in the stockholder’s proxy statement as a nominee and to serving as a Director if elected; and (2) attesting as to any representations contained in any other agreement referenced in Section 4(c) of this Article III.

(iii) The Board of Directors may also require any Proposed Nominee to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of stockholders at which such candidate’s nomination is to be acted upon in order for the Board of Directors to determine the eligibility of such Proposed Nominee to be an independent director of the Corporation in accordance with the Corporation’s Corporate Governance Guidelines.

(d) Investigation and Background Check. Each Proposed Nominee shall be deemed to have consented to an investigation and background check of such person by the Corporation or its agents of the type typically obtained by the Corporation with respect to the initial nomination of persons as directors. The scope of the background check may include information relating to character, general reputation and similar information. The types of reports which may be requested from reporting agencies and other sources may include, but not be limited to, credit reports, criminal record checks, public court records checks, driving records, summaries and verifications of education and histories/summaries and verification of employment positions held and related duties, last pay rate or salary, work performance, experience, skills, qualifications, compliance with employer or institutional policies, licensing, certification, training, honesty and other personal characteristics. The information may be obtained from any and all lawful private or public records or sources.

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(e) Procedures for Stockholder Nominations Exclusive.

(i) Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible to be seated as a Director of the Corporation unless such candidate meets the qualifications set forth in Section 2 of this Article III and is nominated and elected in accordance with the procedures set forth in Section 3 and Section 4 of this Article III and, to the extent applicable, Sections 10 and 11 of Article II. If the Board of Directors, upon the recommendation of the Corporate Governance and Nominating Committee (or such other committee of the Board of Directors as shall be delegated the task of recommending to the Board of Directors candidates to fill vacancies on the Board and the nominees for election as the directors at each Annual Meeting of Stockholders), determines that a nomination was not made in accordance with the foregoing procedures, the chairman of the meeting shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder does not provide the information required under clauses (ii)(B), (D) and (E) of Section 4(b) of this Article III to the Corporation within five (5) business days following the record date for the meeting or if the stockholder does not appear in person or by proxy at the meeting to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(ii) Notwithstanding the foregoing provisions of this Section 4, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 4; provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations to be considered pursuant to this Section 4, and compliance with Section 3 and Section 4 of this Article III and, to the extent applicable, Section 10 and Section 11 of Article II, shall be the exclusive means for a stockholder to make nominations of candidates for election as Directors; *provided, however*, any such Proposed Nominee meets the qualifications set for in Section 2 of this Article III. Nothing in this Section 4 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or of the holders of any series of preferred stock, if any, to elect Directors pursuant to any applicable provisions of the Certificate of Incorporation.

(f) Review of Stockholder Nominations. Except as otherwise provided by law, the Board of Directors, upon the recommendation of the Corporate Governance and Nominating Committee, shall have the power and duty:

(i) to determine whether a Proposed Nominee to be brought before the Annual Meeting of Stockholders meets the qualifications set forth in Section 2 of this Article III, and whether such nomination was made in accordance with the procedures set forth in Section 3 and Section 4 of this Article III and, to the extent applicable, Section 10 and Section 11 of Article II (including whether the stockholder or Stockholder Associated Person, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder’s nominee in compliance with such stockholder’s representation as required by this Section 4); and

(ii) if any Proposed Nominee does not meet the qualifications set forth in Section 2 of this Article III, or if the proposed nomination is not made in compliance with Section 3 and Section 4 of this Article III, and, to the extent applicable, Section 10 and Section 11 of Article II, to declare that such nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting of Stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission,

SECTION 5. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board shall constitute a quorum or, if there are fewer Directors then in office than, solely for the purpose of electing one or more Directors to fill any vacancies in accordance with Section 15 of this Article III, the number of Directors required to constitute such a quorum, a majority of the members of the Board of Directors then in office shall constitute a quorum. A majority of the Directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. Except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 6. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 7. Annual Meeting. Following the Annual Meeting of Stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the Annual Meeting of Stockholders at the same place at which such stockholders' meeting is held.

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 9. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer or by a majority of the Directors then in office.

SECTION 10. Notice of Special Meetings. Written notice of the time and place of each special meeting of the Board of Directors shall be given to each Director at least twenty-four (24) hours before the start of the meeting, or if sent by first class mail, at least five (5) days before the start of the meeting. A written waiver of notice signed by the Director entitled to notice, or electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors need be specified in any written waiver of notice. Notice of any adjourned meeting of the Board of Directors shall not be required to be given, except where required by law or under the Certificate of Incorporation or these Bylaws.

SECTION 11. Meetings by Means of Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 11 shall constitute presence in person at such meeting.

SECTION 12. Organization. At all meetings of the Board of Directors, the Chairman of the Board, if any, or in the Chairman of the Board's absence or inability to act, the Vice Chairman of the Board, or in the Vice Chairman of the Board's absence or inability to act, a chairman chosen by the Directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the officer of the Corporation presiding at such meeting may appoint any person to act as secretary.

SECTION 13. Resignation. Any Director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation.

SECTION 14. Removal. Subject to Section 15 below, any or all of the Directors may be removed, with or without cause, by the holders of a majority of the shares of capital stock outstanding and entitled to vote for the election of Directors.

SECTION 15. Vacancies. Unless otherwise provided in these Bylaws, the Certificate of Incorporation or by law, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of Directors or otherwise, may be filled only by the majority vote of the remaining Directors, although such majority is less than quorum, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of Directors, and each Director so elected shall hold office until the expiration of the term of office of the Director whom he or she has replaced or until his or her successor is elected and qualified.

SECTION 16. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the Directors consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

SECTION 17. Compensation. Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director. Members of special or standing committees may be allowed like compensation for attending Committee meetings.

## ARTICLE IV

### Committees

SECTION 1. How Constituted, Powers, Name. The Board of Directors may, by resolution or resolutions, designate one or more Committees, each Committee to consist of one or more of the Directors of the Corporation, which, to the extent permitted by law and provided in said resolution or resolutions or in these Bylaws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such Committee or Committees shall have such name or names as may be stated in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors. The term "Committee" as used in this Article IV means any committee constituted pursuant to the Certificate of Incorporation and these Bylaws. The Board of Directors shall, by resolution, designate or create any Committee required by the rules of any securities exchange on which shares of the capital stock of the Corporation are listed.

SECTION 2. Term of Office and Vacancies. Each member of a Committee shall continue in office until (a) the next meeting of the Board of Directors following the next Annual Meeting of Stockholders held by the Board of Directors next succeeding his or her election and until a Director to succeed him or her shall have been elected and shall have qualified, or (b) his or her death, or (c) he or she shall have resigned or shall have been removed in the manner hereinafter provided, or (d) such Committee is discontinued or terminated by the Board of Directors. Any vacancy in a Committee shall be filled by the Board of Directors at any regular or special meeting thereof.

SECTION 3. Resignation. Any member of a Committee may resign from membership on that Committee by giving notice in writing or by electronic transmission to the Chairman of the Board of Directors, to the Chief Executive Officer, or to the Secretary of the Corporation. Such resignation shall take effect at the time of the receipt of such

notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4. Removal. Any member of a Committee may be removed with or without cause at any time by the affirmative vote of the Board of Directors given at any regular meeting or at any special meeting thereof.

SECTION 5. Procedures, Quorum and Manner of Acting. Each Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a Committee shall constitute a quorum for the transaction of business by that Committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the Committee present shall be the act of the Committee. Each Committee shall keep minutes of proceedings, and actions taken by a Committee shall be reported to the Board of Directors.

SECTION 6. Action by Written Consent. Any action required or permitted to be taken at any meeting of any Committee of the Board of Directors may be taken without a meeting if all the members of the Committee consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Committee.

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SECTION 7. Term; Termination. In the event any person shall cease to be a Director of the Corporation, such person shall simultaneously therewith cease to be a member of any Committee appointed by the Board of Directors.

## ARTICLE V

### Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary, and may include, by election or appointment, one or more Vice Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Any two or more offices may be held by the same person. Only the Board of Directors may fill any vacancy occurring in any office of the Corporation. Notwithstanding the foregoing sentence, the Chief Executive Officer may appoint, or fill a vacancy created by the death, resignation or removal of, such Assistant Treasurers and such Assistant Secretaries as the Chief Executive Officer may from time to time deem proper.

SECTION 2. Term of Office and Remuneration. Each officer shall hold office for such term as may be prescribed by the Board of Directors and until such person's respective successor has been chosen and qualified or until such person's earlier death, disqualification, resignation or removal, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board.

SECTION 4. Chairman of the Board. The Chairman of the Board shall be a Director and shall preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board shall, subject to the overall supervision of the Board of Directors, perform all duties incident to the office of the Chairman of the Board, and such other duties as may be assigned to him or her from time to time by the Board of Directors. In case of the absence or disability of the Chairman, the Board of Directors may designate the Vice Chairman, Chief Executive Officer, a Senior Vice President, Vice President or other person to act in place of the Chairman of the Board during his or her absence or disability, and when so acting such Vice Chairman, Chief Executive Officer, Senior Vice President, Vice President or other person shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board, except as may otherwise be provided in the resolution of the Board of Directors making such designation.

SECTION 5. The Vice Chairman of the Board. The Vice Chairman of the Board shall be a Director and shall perform all duties incident to the office of the Vice Chairman of the Board and such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chairman of the Board. In the absence of the Chairman of the Board, he or she shall preside at all meetings of the Board of Directors and of the stockholders.

SECTION 6. President and Chief Executive Officer. The President and Chief Executive Officer shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President and Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees, other than officers referred to in Section 1 of this Article V; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

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SECTION 7. Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties the Chief Executive Officer or as the Board of Directors may from time to time determine.

SECTION 8. Vice President. A Vice President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 9. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 10. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 11. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

## ARTICLE VI

### Limitation of Liability

SECTION 1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, administrative or legislative hearing, investigation or any other actual, threatened or completed proceeding, including any and all appeals, whether civil,

criminal, administrative or investigative (hereinafter a “*proceeding*”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or is or was serving at the request of the Corporation as a Director (including elected or appointed positions that are equivalent to Director) of another corporation, partnership, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a Director (or equivalent) or in any other capacity while serving as a Director (or equivalent), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such claimant in connection therewith. Notwithstanding the preceding sentence, the Corporation shall indemnify any such claimant in connection with a proceeding (or part thereof) initiated by such claimant only if the commencement of such proceeding (or part thereof) by such claimant was authorized or ratified by the Board of Directors.

SECTION 2. Advancement of Expenses. Each Director, in accordance with Section 16a1-f of the Exchange Act, shall, to the fullest extent not prohibited by law, have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition. However, if the DGCL requires, an advancement of expenses incurred by a claimant in his or her capacity as a Director shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such claimant, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such claimant is not entitled to be indemnified for such expenses.

SECTION 3. Indemnification of Officers, Employees and Agents of the Corporation. In addition to those claimants entitled to indemnification under Section 1 of this Article VI, the Corporation may, to the extent authorized by the Board of Directors, grant rights to indemnification and the advancement of expenses (including attorneys’ fees) to any officer, employee or agent of the Corporation.

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SECTION 4. Right of Claimant to Bring Suit. If a claim for indemnification or payment of expenses is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be thirty (30) days, the claimant may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the claimant shall also be entitled to be paid the expense of prosecuting or defending such suit. In any such action, the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

SECTION 5. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or Directors, provisions of the Certificate of Incorporation or these Bylaws, or otherwise.

SECTION 6. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another company, partnership, joint venture, trust, non-profit entity or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 7. Nature of Rights. The rights conferred upon claimants in this Article VI shall be contract rights. Such rights shall vest at the time a claimant becomes a Director and shall continue as to a claimant who has ceased to be a Director and shall inure to the benefit of the claimant’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI, any other provision of these Bylaws or the Certificate of Incorporation that adversely affects any right of any claimant or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

SECTION 8. Settlement of Claims. The Corporation shall not be liable to indemnify any claimant under this Article VI for any amounts paid in settlement of any action or claim effected without the Corporation’s written consent, or for any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

SECTION 9. Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the claimant, who shall do everything that may be necessary to secure such rights, including the execution of documents necessary to enable the Corporation to effectively bring suit to enforce such rights.

SECTION 10. Other Sources. The Corporation’s obligation, if any, to indemnify or to advance expenses to any person who was or is serving at its request as a director of another company, partnership, joint venture, trust, non-profit entity or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, non-profit entity or other enterprise.

## ARTICLE VII

### Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in these Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder’s address as it appears on the records of the Corporation or may be given by electronic submission in the manner provided in Section 232 of the DGCL.

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### SECTION 3. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall request the Board of Directors to fix a record date, which request shall be in proper form and delivered

to the Secretary at the principal executive offices of the Corporation. To be in proper form, such request must be in writing and shall state the purpose or purposes of the action or actions proposed to be taken by written consent. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated written consent received in accordance with this Section, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner prescribed in this Section. Notwithstanding anything in these bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 3. If the board of directors shall determine that any request to fix a record date or to take stockholder action by written consent was not properly made in accordance with this Section 3, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Section 3, then the board of directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 3 with respect to stockholders seeking to take an action by written consent, each such stockholder shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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## ARTICLE VIII

### Certificates Representing Stock

SECTION 1. Certificates; Signatures. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman of the Board or Vice Chairman of the Board, or the Chief Executive Officer or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. Transfers of Stock. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the holder thereof, or by his or her attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation, or a transfer agent of the Corporation, if any, and on surrender of the certificate or certificates for such shares properly endorsed. A person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof as regards to the Corporation, provided that whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact if known to the Secretary or to said transfer agent, shall be so expressed in the entry of transfer.

SECTION 3. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of any lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

SECTION 4. Power of the Board of Directors. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

## ARTICLE IX

### Dividends

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

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## ARTICLE X

### Waiver of Notice

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

## ARTICLE XI

### Bank Accounts, Checks and Drafts, Contracts, Etc.

SECTION 1. Bank Accounts. The Board of Directors or any Committee constituted pursuant to Article IV with power for the purpose, may from time to time authorize the opening and keeping with such banks, trust companies or other depositories as it may designate of general and special bank accounts, may make such special rules and

regulations with respect thereto, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

SECTION 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, employees or agents of the Corporation as shall from time to time be determined by resolution of the Board of Directors or by any Committee constituted pursuant to Article IV with power for the purpose. Such authority may be general or confined to specific instances and the granting of such authority may be expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV with power for the purpose, to one or more officers of the Corporation.

SECTION 3. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. The power to grant such authority also may be expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV of these Bylaws with power for the purpose, to one or more officers of the Corporation.

## ARTICLE XII

### Regulatory Compliance and Disclosure

SECTION 1. Actions Requiring Regulatory Compliance Implicating the Corporation. If any stockholder (whether individually or constituting a group), by virtue of such stockholder's ownership interest in the Corporation or actions taken by the stockholder affecting the Corporation, triggers the application of any requirement or regulation of any Governmental Body on the Corporation or any Subsidiary of the Corporation or any of their respective businesses, assets or operations, including, without limitation, any obligations to make or obtain a Governmental Action (as defined in Section 11 of Article II), such stockholder shall promptly take all actions necessary and fully cooperate with the Corporation to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting the business, assets, operations or prospects of the Corporation or any Subsidiary of the Corporation. To the fullest extent permitted by law, if the stockholder who triggers the application of any regulation or requirement fails promptly to satisfy such requirements or regulations or to take curative actions, the Corporation may take all other actions which the Board of Directors deems appropriate to require compliance or to preserve the value of the Corporation's assets; and the Corporation may charge the offending stockholder for the Corporation's costs and expenses as well as any damages which may result to the Corporation.

SECTION 2. Compliance With Law. Stockholders shall comply with all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, in connection with such stockholder's ownership interest in the Corporation and all other laws which apply to the Corporation or any Subsidiary of the Corporation or their respective businesses, assets or operations and which require action or inaction on the part of the stockholder.

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SECTION 3. Representations, Warranties and Covenants Made to Governmental or Regulatory Bodies. To the fullest extent permitted by law, any representation, warranty or covenant made by a stockholder with any governmental or regulatory body in connection with such stockholder's interest in the Corporation or any Subsidiary of the Corporation shall be deemed to be simultaneously made to, for the benefit of and enforceable by, the Corporation and any applicable Subsidiary of the Corporation.

SECTION 4. Board of Directors' Determinations. The Board of Directors shall be empowered to make all determinations regarding the interpretation, application, enforcement and compliance with any matters referred to or contemplated by this Article XII.

## ARTICLE XIII

### Certain Definitions

In addition to the capitalized terms defined elsewhere in these Bylaws, the following capitalized terms, as used in these Bylaws, shall have the meanings set forth below:

"Proposed Nominee Associated Person" of any Proposed Nominee shall mean (A) any person acting in concert with such Proposed Nominee, (B) any direct or indirect beneficial owner of shares of capital stock of the Corporation owned of record or beneficially by such Proposed Nominee and (C) any person controlling, controlled by or under common control with such Proposed Nominee or a Proposed Nominee Associated Person;

"Public Disclosure" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the U.S. SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

"Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with, such stockholder, (ii) any direct or indirect beneficial owner of shares of capital stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such stockholder or a Stockholder Associated Person;

"Subsidiary" shall include, with respect to a person, any corporation, partnership, joint venture or other entity of which such person (A) owns, directly or indirectly, 10% or more of the outstanding voting securities or other interests or (B) has a person designated by such person serving on, or a right, contractual or otherwise, to designate a person, so to serve on, the board of directors (or analogous governing body).

## ARTICLE XIV

### Emergency Bylaws

SECTION 1. Emergencies. This Article XIV shall be operative during an emergency. An emergency exists for purposes of this section if a quorum of the Corporation's directors cannot be readily assembled within the time period determined by the Chairman of the Board or Chief Executive Officer because of an emergency as determined by the Chairman of the Board or Chief Executive Officer. Such emergency is intended to include events of extraordinary magnitude and may include the declaration of a civil defense emergency, war, enemy attack, other warlike acts, a catastrophic event, disaster or other similar emergency condition, which prevents the conduct and management of the affairs and business of the Corporation by the Board of Directors and officers in the ordinary course as contemplated by the other Articles of these Bylaws. An emergency, once declared by the Chairman of the Board or Chief Executive Officer, shall be deemed to continue until terminated by resolutions adopted for that purpose by the Board of Directors.

SECTION 2. Special Meetings During an Emergency. During an emergency, special meetings of the Board of Directors and of any committee thereof may be called by the Chairman of the Board or the Chief Executive Officer. Notice of any special or regular meetings of the Board of Directors or any committee need be given only to those directors whom it is practical to reach, may be given in any practical manner and may call a meeting at any time following the notice, including immediately after the notice.

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SECTION 3. Quorum and Voting. The directors or sole director in attendance or otherwise participating at a meeting during an emergency shall constitute a quorum of

the Board of Directors. Such directors or sole director may temporarily reassign duties and responsibilities of officers, relocate offices, and authorize officers to take emergency actions. Any action taken at a meeting by majority vote of the directors or the sole director in attendance or otherwise participating, shall be the action of the Board of Directors.

SECTION 4. Committees. If a quorum of any committee is not in attendance or otherwise participating at a meeting of such committee called during an emergency, any action of such committee may be taken by a majority of the directors or the sole director in attendance or participating in a meeting during such emergency. Alternatively, a majority of such directors or the sole director may temporarily redesignate the membership of committees to serve during the emergency.

SECTION 5. Action Taken During an Emergency. Corporate action taken in good faith during an emergency under this Article XIV to further the business affairs of the Corporation shall bind the Corporation and may not be used to impose liability on a director, officer, employee or agent.

## ARTICLE XV

### Forum to Adjudicate Certain Disputes

#### SECTION 1. Delaware Forum.

(a) Absent written Corporation consent to an alternative forum, to the fullest extent permitted by law, the only forum for any stockholder (including any beneficial owner, within the meaning of Section 13(d) of the Exchange Act) to bring (a) any derivative action purportedly brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former Corporation director, officer, or employee to the Corporation or to Corporation stockholders, (c) any action asserting a claim arising pursuant to the DGCL or the Certificate of Incorporation or these Bylaws, (d) any action asserting a claim governed by the internal affairs doctrine, including, but not limited to, interpretation of agreements to issue stock voting agreements; proxies; holding of meetings; dividends; and treatment, liabilities and rights of directors, officers and shareholders, or (e) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, shall be in a Delaware state court (or, if no Delaware state court has jurisdiction, in a Delaware federal district court), subject to such court having personal jurisdiction over indispensable parties named as defendants.

(b) For any shareholder or other action filed by a beneficial owner as defined by Section 13(d) of the Exchange Act to enforce Bylaws Section 1(a) of Article XV, if not filed in a Delaware state or federal court (a "Foreign Action"), such stockholder or beneficial owner shall be deemed to have consented to (a) the personal jurisdiction of Delaware's state and federal courts, and (b) service of process upon such stockholder's or beneficial owner's counsel in the Foreign Action.

SECTION 2. Federal Forum. Absent written Corporation consent to an alternative forum (which consent may be given at any time, including during the pendency of litigation), the U.S. federal district courts shall be the sole and exclusive forum for resolution of any cause of action arising under the Securities Act of 1933, as amended.

SECTION 3. Deemed Consent of Stockholders to Article XV. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article XV.

## ARTICLE XVI

### Miscellaneous

SECTION 1. Amendments. The power to amend, alter, and repeal these Bylaws and to adopt new Bylaws, except a Bylaw classifying directors for election for staggered terms, shall be vested in the Board of Directors as well as in the stockholders of the Corporation.

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SECTION 2. Severability. If any provision or provisions of these Bylaws shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of these Bylaws (including, without limitation, each portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 3. Electronic Transmission. When used in these Bylaws, the terms "written" and "in writing" shall include any "electronic transmission," as defined in Section 232(c) of the DGCL, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail.

SECTION 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

SECTION 5. Costs and Expenses. To the fullest extent permitted by law, each stockholder will be liable to the Corporation (and any subsidiaries or affiliates thereof) for, and indemnify and hold harmless the Corporation (and any subsidiaries or affiliates thereof) from and against, all costs, expenses, penalties, fines or other amounts, including without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such stockholder's breach of or failure to fully comply with any covenant, condition or provision of these Bylaws or the charter of the Corporation (including, without limitation, Sections 9, 10 and 11 of Article II and Section 3 and Section 4 of Article III of these Bylaws) or any action by or against the Corporation (or any subsidiaries or affiliates thereof) in which such stockholder is not the prevailing party, and shall pay such amounts to such indemnitee on demand, together with interest on such amounts, which interest will accrue at the lesser of the Corporation's highest marginal borrowing rate, per annum compounded, and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

SECTION 6. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of a Director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the **20th day of April, 2023**, by and between PERMA-FIX ENVIRONMENTAL SERVICES, INC., a Delaware corporation (the “Company”), and **Mark Duff (the “Executive”)**.

WITNESSETH:

WHEREAS, the Company believes that the services, knowledge, and contributions of the Executive to the Company are of critical importance to the Company;

WHEREAS, the Company wishes to ensure that the Executive will continue to provide his services, knowledge and contributions to the Company; and

WHEREAS, the Executive is currently a “specified employee” as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (collectively, “Section 409A”);

WHEREAS, the Company and the Executive have previously entered into, or may from time to time enter into a separate arrangement, to provide certain management incentive compensation bonuses to the Executive based on the Company’s performance during a particular year or other period or periods.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth in this Agreement, the Company and the Executive agree as follows:

1. Term. Unless sooner terminated pursuant to the terms hereof, the term of this Agreement shall commence on the date hereof and terminate three (3) years from the date hereof unless earlier terminated as provided in this Agreement (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically be extended for one (1) additional year unless at least six (6) months prior to expiration of the Initial Term, the Company or the Executive shall have given written notice to the other not to extend the term of this Agreement. The Initial Term, as may be extended, is hereafter referred to as the “Term”.

2. Position and Duties.

2.1. Position. The Company agrees to employ the Executive, and the Executive agrees to such employment, as Chief Executive Officer and President of the Company, or such other position as the Executive and the Company agrees in writing as being acceptable to both of them. The Executive’s authority and duties, including, but not limited to, hierarchical standing in the Company and reporting requirements within the Company, shall be substantially similar in all material respects with the most significant of those exercised by the Executive during the 90 day period immediately preceding the date of this Agreement, except as otherwise agreed to in writing executed by both the Executive and the Company.

2.2. Location. The Executive’s duties and services shall be performed in Knoxville, Tennessee, except for travel responsibilities required in the performance of the Executive’s duties.

2.3. Duties. Excluding any periods of vacation and sick leave to which the Executive is entitled, and except as otherwise provided in Section 2.4 below, the Executive agrees to faithfully perform the duties of his office, and to devote substantially all of the Executive’s business time and attention to the business and affairs of the Company, as directed by the Board of Directors of the Company from time to time (the “Board”), and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

2.4. Other Activities. Notwithstanding Section 2.3, it shall not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, as long as such activities are disclosed in writing to the Board and not otherwise disapproved for being in violation of the Company’s Code of Business Conduct and Ethics Policy, (ii) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as any such investment represents a passive investment and the Executive is not a controlling person of, or a member of a group that controls, the entity in which the Executive is invested, and provided further, that any such entity in which the Executive is invested is not engaged in activities that are competitive with those of the Company, as determined by the Board in its discretion. Any such activities described in this Section 2.4 may not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

3. Compensation and Benefits.

3.1. Annual Base Salary. The Compensation and Stock Option Committee of the Board (the “Compensation Committee”) has set the annual base salary of the Executive at **\$374,870** Dollars per year (“Base Salary”), which Base Salary is payable by the Company to the Executive in equal bi-weekly installments, less appropriate withholdings and deductions in accordance with the Company’s customary payroll practices, with the amount of the Base Salary payable each year subject to adjustment as provided in Section 3.2 below.

3.2. Adjustment to Base Salary. The Base Salary may be increased, but not be reduced, from time to time as determined by and in the sole discretion of the Compensation Committee.

3.3. Incentive Compensation Bonus. In addition to the Base Salary, each year during the Term the Company will pay to the Executive the incentive compensation bonus, if any, that is payable pursuant to a Management Incentive Plan (“Incentive Plan”) in effect for such year that may be adopted by the Board of the Company or the Compensation Committee and agreed to by the Executive with respect to the particular fiscal year of the Company, (an “Incentive Bonus”) in accordance with and pursuant to the terms of the Incentive Plan. The Incentive Bonus, if any, may be modified, changed or terminated at any time or for any reason by the Compensation Committee in its sole discretion in accordance with the terms of the particular Incentive Plan.

3.4. Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans that are generally made available to other employees of the Company, subject to the terms and conditions of such benefits and plans and, as such benefits and plans may be changed by the Company from time to time. Such benefits include, but not limited to, (i) group medical insurance coverage, (ii) group life insurance coverage and (iii) certain stock option plans. The Company reserves the right to amend or terminate any employee benefit plans at any time in its sole discretion, subject to the terms of such employee benefit plan and applicable law.

- 3.5. Expenses. During the Term, the Company shall pay directly, or reimburse the Executive, for any reasonable and necessary expenses and costs incurred by the Executive in connection with, or arising out of, the performance of the Executive's duties hereunder, provided that such expenses and costs shall be paid or reimbursed subject to such rules, regulations, and policies of the Company as established from time to time by the Company and the applicable laws to which the Company is subject, and provided further that the Executive is not otherwise in breach of this Agreement with respect to the activity for which the Executive is seeking reimbursement.

In the event the Executive incurs legal fees and expenses to enforce this Agreement, the Company shall promptly reimburse the Executive the reasonable and necessary legal fees and expenses of the Executive in enforcing this Agreement, but only upon the adjudication by a court of competent jurisdiction that the Executive is not otherwise in breach of this Agreement.

- 3.6. Fringe Benefits. During the Term, the Executive shall be entitled to all fringe benefits, including, but not limited to, vacation in accordance with Section 3.7 or, if more favorable to the Executive, the most favorable plans, practices, programs and policies of the Company during 12-month period immediately preceding the date of this Agreement, or, if more favorable to the Executive, as in effect at any time thereafter with respect to other senior executives of the Company.
- 3.7. Vacation. The Executive shall be entitled to three (3) weeks of paid vacation per year except that after five (5) years of employment with the Company the Executive shall be entitled to four (4) weeks of paid vacation per year and except that after fifteen (15) years of employment with the Company the Executive shall be entitled to five (5) weeks of paid vacation per year or such longer period as provided in Section 3.6 above.

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#### 4. Termination.

- 4.1. Termination by the Company as a Result of Death or Disability; Termination by the Company for Cause; Termination by the Executive for Good Reason. At any time during the Term, the Executive's employment with the Company may be terminated for the following reasons:

4.1.1 Death. The Executive's employment with the Company shall terminate automatically upon the Executive's death.

4.1.2 Disability.

4.1.2.1 Definition. "Disability" of the Executive is defined for the purposes of this Agreement as the Executive being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

4.1.2.2 Application. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company after establishing the Executive's Disability as set forth in this Section 4.1.2, and giving written notice of its intention to terminate the Executive's employment with the Company ("Disability Termination Notice"). In such a case, the Executive's employment with the Company shall terminate effective on the earlier of the otherwise scheduled expiration of the Term pursuant to Section 4.1.2 or on the thirtieth (30<sup>th</sup>) day after receipt of the Disability Termination Notice, provided that the Executive has not resumed full-time performance of his duties under this Agreement. Notwithstanding the foregoing, if the Executive has recovered from a Disability and returned to full-time service prior to the date of termination set forth in the Disability Termination Notice relating thereto, the Company may not thereafter terminate the Executive's employment under this Agreement due to such Disability.

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4.1.3 Cause. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company at any time for "Cause". For the purposes of this Agreement, "Cause" is defined as (i) the ultimate conviction (after all appeals have been decided) of the Executive by a court of competent jurisdiction of, or a plea of nolo contendere or a plea of guilty by the Executive to, a felony involving moral turpitude; or (ii) willful or gross misconduct or gross neglect of duties by the Executive, which has a material adverse effect on the Company, provided that, (a) no action or failure to act by the Executive will constitute a reason for termination if the Executive believed in good faith that such action or failure to act was in the Company's best interests, as determined in good faith by the Board in its sole discretion, and (b) failure of the Executive to perform his duties hereunder due to a Disability shall not be considered gross misconduct or willful, gross neglect of duties for any purpose; (iii) the commission by the Executive of an act of fraud or embezzlement against the Company or a subsidiary of the Company; (iv) the Executive's willful failure to comply with any valid and legal directive of the Board; (v) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (vi) the Executive's willful unauthorized disclosure of Confidential Information (as defined in Section 8.7.1 of this Agreement); or (vii) the Executive's breach of any material provision of this Agreement or any other written agreement between the Executive and the Company, provided however, that failure of the Executive to perform his duties hereunder due to Disability shall not be considered a breach of this Agreement. For the purposes of this Section 4.1.3, no act or failure to act shall be considered "willful" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company.

4.1.4 Good Reason. Subject to the terms of this Agreement, the Executive may terminate the Executive's employment under this Agreement for Good Reason (defined below) at any time on or prior to the 60<sup>th</sup> day after the occurrence of any of the Good Reason events set forth in the following sentence; provided, however, that, within 30 days after the occurrence of any such event, the Executive shall have provided the Company with a Notice of Termination with respect to such event and afforded the Company a period of 30 days after its receipt of such Notice of Termination to cure the default that constitutes the Good Reason event relied upon by the Executive for such termination. For purposes of this Agreement, "Good Reason" shall mean the occurrence, during the Term of this Agreement, of any of the following events without the Executive's prior written consent:

4.1.4.1 the failure by the Company to timely comply with its material obligations and agreements contained in this Agreement; or

4.1.4.2 the removal of the Executive from the position of, or the loss by the Executive of the title of, CEO and President of the Company (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

4.1.4.3 a material diminution of the authorities, duties or responsibilities of the Executive set forth in Section 2 of this Agreement (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

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4.1.4.4 the relocation of the Executive to an office outside of the Knoxville, Tennessee metropolitan area; or

- 4.1.4.5 the Executive being required to report to someone other than the Board (the "Board"); or
- 4.1.4.6 any other action by the Company which results in a material reduction in compensation payable to the Executive (other than a general reduction in base salary that affects all similarly situated executives in substantially the same proportions) or in the position, authority, duties, other responsibilities, other than insubstantial and inadvertent action which is promptly remedied by the Company after receipt of notice thereof from the Executive.
- 4.1.5 Without Good Reason. Subject to the terms of this Agreement, the Executive may voluntarily terminate his employment under this Agreement without Good Reason upon written Notice of Termination to the Company at least 30 days prior to the effective date of termination (which termination the Company may, in its sole discretion, make effective earlier than the date set forth in the Executive's Notice of Termination).
- 4.1.6 Death. Upon the Executive's separation from service as a result of the termination of Executive's employment with the Company due to the Executive's Death, the Company shall pay to the Executive's estate and/or beneficiary, in a single lump sum payment, in current funds, within thirty (30) days of the Executive's Death, the following:
  - 4.1.6.1 any earned but unpaid Base Salary through the date of termination;
  - 4.1.6.2 reimbursement for any unreimbursed expenses properly incurred and paid in accordance with the terms of this Agreement, above, through the date of the Executive's Death;
  - 4.1.6.3 payment for any accrued but unused vacation time in accordance with the terms of this Agreement and the Company policy;
  - 4.1.6.4 such vested accrued benefits and other payments, if any, as to which the Executive (and his eligible dependents) may be entitled under, and in accordance with the terms and conditions of, the Company's employee benefit arrangements, other than any severance pay plan (4.1.6.1 through 4.1.6.4 collectively, the "Amounts and Benefits");
  - 4.1.6.5 any bonuses earned by the Executive but remaining unpaid for any year prior to the year in which the date of termination occurs (the "Prior Year Bonuses");

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- 4.1.6.6 a "Pro-Rata Bonus", which for purposes of this Agreement means (A) in the event the Company has established an Incentive Plan one or more executive bonus programs with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the aggregate bonuses payable under such bonus programs for the year in which the date of termination occurs (determined by multiplying the amount of the Executive's bonus which would be due for the full year by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365), provided that the performance goals established with respect to the entire such year are met, and provided, further, that in the event the date of termination occurs prior to the determination of performance goals applicable to the performance period for the year of the Executive's termination of employment, the performance criteria applicable to the Executive in respect of the Pro-Rata Bonus shall be at least as favorable to the Executive as the most favorable performance criteria applicable for that year to any award to a named executive officer of the Company, within the meaning of Section 402(a)(3) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"); or (B) in the event the Company has not established an Incentive Plan providing an incentive bonus plan with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs (determined by multiplying the amount of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365). If payable under (A), the Pro-Rata Bonus shall be payable in due course pursuant to the terms of the applicable bonus programs which shall be paid on or about 90 days after year-end or sooner, based on the Company's audited financial statements included in its Form 10-K filed with the SEC, subject to Section 4.5 of this Agreement. If payable under (B), the Pro-Rata Bonus shall be payable within thirty (30) days following the date of termination;
- 4.1.6.7 a lump-sum payment (the "Cash Medical Continuation Benefit") equal to (x) 18 multiplied by (y) the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), to continue group health coverage for the Executive's eligible covered dependents in effect on the date of the Executive's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the Executive's eligible covered dependents actually elect COBRA continuation coverage. ; and

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- 4.1.6.8 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, with such options and awards remaining exercisable for the lesser of the original option term or twelve (12) months from the date of the Executive's death.
- 4.1.7 Upon the Executive's separation from service as a result of the termination of Executive's employment by the Company for Cause, the Company shall pay to the Executive in a single lump sum payment, in current funds, on the date of such termination of employment the following:
  - 4.1.7.1 any earned but unpaid Base Salary through the date of termination; and
  - 4.1.7.2 any amounts payable to the Executive pursuant to the Prior Year Bonuses under the Company's prior year Incentive Plan.

#### 4.2. Termination by the Company without Cause or Termination by the Executive for Good Reason.

- 4.2.1 Subject to the terms of this Agreement, the Company may terminate the Executive's employment at any time during the Term without Cause and the Executive may terminate his employment with the Company at any time during the Term for Good Reason. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of Death or Disability) during the Term, and the Executive has not received and is not entitled to any payment under Sections 4.3.1 hereof, then the Company shall pay or provide the Executive on the date of such termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.1) the following:

- 4.2.1.1 a lump sum cash payment in the total amount equal to the sum of (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid the Incentive Bonus for the immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, the "Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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- 4.2.1.2 the Amounts and Benefits;
- 4.2.1.3 the Prior Year Bonuses;
- 4.2.1.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;
- 4.2.1.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and
- 4.2.1.6 in the event a Change in Control shall not have theretofore occurred, and the Company has terminated the Executive's employment under this Agreement without Cause or the Executive has terminated his employment under this Agreement for Good Reason, notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, and the Executive shall be entitled to exercise such options within the sixty (60) consecutive day period immediately following the date of termination (but not after the original option term).

- 4.3. Termination Following a Change in Control. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of death or Disability) within 24 months after a Change in Control (defined below), then the Company shall pay or provide the Executive on the date of termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.2):

- 4.3.1 a lump sum cash payment in the total amount equal to the sum of: (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid his Incentive Bonus for such immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, "Change in Control Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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- 4.3.2 the Amounts and Benefits;
- 4.3.3 the Prior Year Bonuses;
- 4.3.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;
- 4.3.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and
- 4.3.6 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, in the event of a Change in Control, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination through the original term of such option or equity award.

- 4.4. Change in Control. For purposes of this Agreement, a "Change in Control" means any of the following events, within the meaning of Code Section 409A(a)(2)(A)(v), occurring during the Term:

- 4.4.1 individuals who, as of the date of this Agreement, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the date of this Agreement, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, or other actual or threatened solicitation of proxies by or on behalf of an individual, entity or group other than the Board relating to the election of the directors of the Company) shall be deemed to be, for purposes of this Agreement, a member of the Incumbent Board; or

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- 4.4.2 the date that any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; or
- 4.4.3 the date any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent (30%) or more of the total voting power of the stock of the Company, other than the acquisition by any person or group, which as of the date hereof has such ownership; or

4.4.4 the Company's execution of an agreement for a merger or consolidation or other business combination involving the Company in which the Company is not the surviving corporation, or, if immediately following such merger or consolidation or other business combination, less than fifty percent (50%) of the surviving corporation's outstanding voting stock is held by persons who are stockholders of the Company immediately prior to such merger or consolidation or other business combination; or

4.4.5 the Company's adoption of a plan of dissolution or liquidation, other than if the Company is in bankruptcy at the time such plan of dissolution or liquidation is adopted.

For purposes of this Agreement, the term "person" shall mean any individual, firm, corporation or other entity and shall include any successor (by merger, consolidation or otherwise) of such entity.

4.5. Payments of Compensation Upon Termination. Notwithstanding any provision to the contrary contained in this Agreement, if calculation of the amount of any bonus payment, if any, under an Incentive Plan is not administratively practicable due to events beyond the control of the Executive (or the Executive's beneficiary), the payment will be treated as made upon the date specified under the Incentive Plan if the payment is made during the first taxable year of the Executive in which the calculation of the amount of the payment is administratively practicable.

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4.6. Release. The Company's obligation to pay Executive the Severance Payment (Section 4.2.1.1) and the Change in Control Severance Payment (Section 4.3.1), shall be subject to the Executive executing a release of claims against the Company before the end of the Release Expiration Date (defined below) and provided further that nothing contained in such release shall constitute a release of the Company from any obligations it may have to the Executive (a) under this Agreement or any other written agreement between the Executive and the Company in effect as of the date of termination; (b) relating to any employee benefit plan, stock option plan, stock option agreement or ownership of the Company's stock or debt securities; or (c) relating to any rights of indemnification and/or defense under the Company's certificate of incorporation, bylaws, under any other written agreement between the Executive and the Company or coverage under officers and directors insurance. The Company will deliver such release to Executive pursuant to and in accordance with the terms of this Section 4.6 within ten (10) calendar days following the date on which such termination of employment constitutes a separation of service under the terms of this Agreement, and the Company's failure to deliver such release prior to the expiration of such date of termination shall constitute a waiver of any requirement to execute such release. Assuming timely delivery of the release by the Company, if the release is pursuant to and in accordance with this Section 4.6, and Executive fails to execute such release on or prior to the Release Expiration Date, Executive will not be entitled to Severance Payments or the Change in Control Severance Payment. In any case where the date of the separation from service and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are subject to the release condition and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. The term "Release Expiration Date" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers to Executive the release meeting the requirements as provided above, or in the event that Executive's separation from service is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery.

4.7. No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Section 4 be reduced by any compensation earned by the Executive as the result of the Executive's employment by another person, employer or business or by profits earned by the Executive from any other source at any time before and after the Executive's date of termination.

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4.8. Termination by the Executive for Any Reasons Other Than Good Reason. Upon Executive's separation from service as a result of the Executive terminating his employment with the Company for any reason other than for Good Reason during the Term, the Company shall pay to the Executive in a single lump sum payment on the date of such separation from service an amount equal to the Amounts and Benefits.

4.9. Resignation of All Other Positions. On termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

#### 5. Notice of Termination.

5.1. By Company. The Company shall not be deemed to have terminated this Agreement for "Cause" pursuant to the terms of Sections 4.1.3 and 4.2.1 hereof, unless and until there shall have been delivered to the Executive a copy of a resolution ("Notice of Termination for Cause") duly adopted by the affirmative vote of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together, with the Executive's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive should be terminated for "Cause" pursuant to Section 4.1.3 and 4.2.1, and specifying the particulars thereof in detail.

5.2. By Executive. The Executive shall not be deemed to have terminated this Agreement pursuant to the terms of Section 4.2 hereof, unless and until there shall have been delivered by the Executive to the Company a "Notice of Termination for Good Reason" which shall state the specific termination provision relied upon, and specifying the particulars thereof in detail.

#### 6. Indemnification.

- 6.1. The Company shall indemnify, defend and hold harmless the Executive against any and all expenses reasonably incurred by him in connection with or arising out of (a) the defense of any action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), in which he is a party, or (b) any claim asserted or threatened against him, in either case by reason of or relating to his being or having been an employee, officer, director or agent of the Company or a subsidiary of the Company or another company partnership, joint venture, trust or other enterprise for which he was serving in such capacity at the request of the Company, whether or not he continues to be such an employee, officer, director or agent at the time of incurring such expenses, provided, however, no such indemnification shall be made (i) if such indemnification is prohibited by law, (ii) with respect to any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, or (iii) if it is determined by a court of competent jurisdiction that the Executive did not (A) act in good faith, (B) act in a manner he reasonably believed to be in or not opposed to the best interest of the Company or (C) have reasonable cause to believe his conduct was not unlawful. Such expenses shall include, without limitation, the fees and disbursements of attorneys, amounts of judgments and amounts of any settlements. The foregoing indemnification obligation is independent of any similar obligation provided in the Company's certificate of incorporation or bylaws, and shall apply with respect to any matters attributable to periods prior to or after the date of this Agreement, and to matters attributable to the Executive's employment hereunder, without regard to when asserted. In no event shall the Company be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel, and the Company will not indemnify the Executive for the fees or expenses of the Executive's counsel in connection with any claim which is being defended by counsel appointed by the Company or the Company's insurance carrier; provided, however, that if the Executive shall have reasonably concluded (based on the advice of counsel) that there is a conflict of interest between the Company and the Executive for counsel appointed by the Company or the Company's insurance carrier that would prohibit the counsel retained by the Company or its insurance carrier from representing the Executive, the Company shall reimburse the Executive for the reasonable fees and expenses of one (1) separate counsel in addition to any local counsel for the Executive in connection with such claims, subject to the limitations set forth above in this Section 6.

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- 6.2. Costs and expenses incurred by the Executive in defense of any such Proceeding described in Section 6.1 above for which indemnification is to be made by the Company (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

#### 7. Section 409A and Section 280G of the Code

- 7.1. Compliance with Section 409A. It is intended that the provisions of this Agreement comply with or be excepted from Section 409A, as applicable, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to, in good faith, reform such provision to comply with Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained, but the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A to the extent such compliance is required. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A so long as it has acted in good faith with regard to compliance therewith.

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- 7.2. Separation From Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment" or like terms shall mean Separation from Service. If the Executive is deemed on the date of termination of his employment to be a "specified employee", within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology, then with regard to any payment, the providing of any benefit or any distribution of equity made subject to this Section to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, and any other payment, the provision of any other benefit or any other distribution of equity that is required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment, benefit or distribution shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of the Executive's Separation from Service or (ii) the date of the Executive's death. On the first day of the seventh month following the date of the Executive's Separation from Service or, if earlier, on the date of his death, (x) all payments delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein and (y) all distributions of equity delayed pursuant to this Section 7.2 shall be made to the Executive. In addition to the foregoing, to the extent required by Section 409A(a)(2)(B) of the Code, prior to the occurrence of a Disability termination as provided in this Agreement, the payment of any compensation to the Executive under this Agreement shall be suspended for a period of six months commencing at such time that the Executive shall be deemed to have had a Separation from Service because either (A) a sick leave ceases to be a bona fide sick leave of absence, or (B) the permitted time period for a sick leave of absence expires (an "SFS Disability"), without regard to whether such SFS Disability actually results in a Disability termination. Promptly following the expiration of such six-month period, all compensation suspended pursuant to the foregoing sentence (whether it would have otherwise been payable in a single sum or in installments in the absence of such suspension) shall be paid or reimbursed to the Executive in a lump sum. On any delayed payment date under this Section there shall be paid to the Executive or, if the Executive has died, to his estate, in a single cash lump sum together with the payment of such delayed payment, interest on the aggregate amount of such delayed payment at the Delayed Payment Interest Rate (defined below in this Section 7.2) computed from the date on which such delayed payment otherwise would have been made to the Executive until the date paid. For purposes of the foregoing, the "Delayed Payment Interest Rate" shall mean the short term applicable federal rate provided for in Section 1274(d) of the Code as of the business day immediately preceding the payment date for the applicable delayed payment. To the extent that this Agreement provides for any payments of nonqualified deferred compensation (within the meaning of Section 409A) to be made in installments (including, without limitation, any severance payments), each such installment shall be deemed to be a separate and distinct payment for purposes of Section 409A.

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- 7.3. Reimbursement Provisions. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred.

- 7.4. 280G Parachute Payments. In the event that any payments or benefits (whether made or provided pursuant to this Agreement or otherwise) provided to Executive constitute “parachute payments” within the meaning of Section 280G of the Code (“Parachute Payments”), and will be subject to an excise tax imposed pursuant to Section 4999 of the Code, the Executive’s Parachute Payments will be reduced to an amount determined by the Company in good faith to be the maximum amount that may be provided to the Executive without resulting in any portion of such Parachute Payments being subject to such excise tax (the amount of such reduction, “Cutback Benefits”). The Parachute Payment reduction contemplated by the preceding sentence, if applicable, shall be implemented by determining the “Parachute Payment Ratio” (as defined below) for each Parachute Payment and then reducing the Parachute Payment in order beginning with the Parachute Payment with the highest Parachute Payment Ratio. For Parachute Payments with the same Parachute Payment Ratio, such Parachute Payments shall be reduced based on the time of payment of such Parachute Payments, with amounts having later payment dates being reduced first. For Parachute Payments with the same Parachute Payment Ratio and the same time of payment, such Parachute Payments shall be reduced on a pro rata basis (but not below zero) prior to reducing Parachute Payments with a lower Parachute Payment Ratio. For purposes hereof, the term “Parachute Payment Ratio” shall mean a fraction the numerator of which is the value of the applicable Parachute Payment for purposes of Section 280G of the Code and the denominator of which is the intrinsic value of such Parachute Payment.

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- 7.5. Clawback Provisions. Notwithstanding any provision of this Agreement to the contrary, Executive acknowledges that any incentive-based compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government, regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement),

#### 8. Miscellaneous.

- 8.1. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with those laws, without reference to principles of conflict of laws. The Company and the Executive unconditionally consent to submit to the exclusive jurisdiction of any state or federal court located in Atlanta, Georgia, for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by registered mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against the Company or the Executive, as the case may be, in any such court.
- 8.2. No Assignment. The Executive may not delegate his duties or assign his rights hereunder. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company other than pursuant to a merger or consolidation in which the Company is not the continuing entity, or a sale, liquidation or other disposition of all or substantially all of the assets of the Company. For the purposes of this Agreement, the term “Company” shall include the Company and, subject to the foregoing, any of its successors and assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 8.3. Severable. The invalidity or unenforceability of any provision hereof shall not in any way affect the validity or enforceability of any other provision.

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- 8.4. Entire Understanding; Modification and Waiver. Unless specifically provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or termination of this Agreement will be effective only if it is in writing signed by the parties hereto. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- 8.5. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto.
- 8.6. Mutual Non-Disparagement. Subject to applicable law, the Executive covenants and agrees that the Executive shall not in any way publicly disparage, call into disrepute, or otherwise defame or slander the Company or any of its subsidiaries, in any manner that would materially damage the business or reputation of the Company or its subsidiaries. The Company covenants and agrees, on behalf of itself and its subsidiaries, that neither the Company, any of its subsidiaries nor any of the officers, directors or key employees of the Company or any of its subsidiaries shall in any way publicly disparage, call into disrepute, or otherwise defame or slander the Executive. Nothing in this paragraph 8.6 shall preclude or restrict the Executive or the Company, any of the subsidiaries of the Company or any of the Company’s officers, directors or key employees from making truthful statements, including, without limitation, those that are required by applicable law, regulation or in connection with a legal process or proceeding, and the making of such statements shall not be a violation of this subsection.
- 8.7. Confidential Information and Restrictive Covenants
- 8.7.1 No Disclosure. Subject to the terms of this Section 8.7, during the Restricted Period (as defined below), the Executive agrees to hold in confidence and not disclose any and all proprietary, secret or confidential information (“Confidential Information”) relating to the Company or the Company’s subsidiaries, which shall have been obtained by the Executive during the Executive’s employment by the Company. Confidential Information is defined as the proprietary, client or business information of the Company, written or in a physical embodiment, including, but not limited to, customer lists, employee lists, financial information, pricing data, sales data, marketing data, or business plans or proposals.

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- 8.7.2 Exception. Notwithstanding the provisions of Section 8.7.1 above, the Executive shall not be held liable for disclosure of information which was in the public domain, or is readily available to the public at the time of its disclosure by the Executive through means unrelated to the Executive’s disclosure, or is required to be disclosed in, or in connection with, a legal proceeding or process or is required to be disclosed by law, rule or regulation.
- 8.7.3 Permitted Communications. Nothing herein prohibits or restricts the Executive (or the Executive’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the SEC, the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding a possible securities law violation.

- 8.7.4 Other Restrictive Covenant. Subject to the terms hereof, the Executive agrees that during the Restricted Period he will not, by or for himself, or as an agent, representative or employee of another, do or attempt to solicit, entice, persuade or induce any individual who is employed by the Company or its subsidiaries (or was so employed within 90 days prior to the Executive's action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Company or its subsidiaries.
- 8.7.5 Restricted Period. "Restricted Period" is the 12-month period after the date of termination of the Executive's employment with the Company.
- 8.7.6 Other Agreements. If any of the restrictions provided in Section 8.7 are contrary to the requirements or limitations contained in any other agreement between the Executive and the Company, the terms of this Section 8.7 of this Agreement shall be controlling.
- 8.8. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

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9. Notices.

All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by telecopy (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one business day after being sent by telecopy or five days after being mailed.

If to the Company:           Penna-Fix Environmental Services, Inc.  
8302 Dunwoody Place, Suite 250  
Atlanta, Georgia 30350 Attn: President

If to the Executive:       Mark Duff  
11919 Farmhouse Drive  
Knoxville, TN 37934

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 25th day of April, 2023.

The "Company"

PERMA-FIX ENVIRONMENTAL SERVICES,  
INC., a Delaware corporation

By: /s/ Larry Shelton  
Larry Shelton, Chairman of the Board

The "Executive"

/s/ Mark Duff  
MARK DUFF

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the **20th day of April, 2023**, by and between PERMA-FIX ENVIRONMENTAL SERVICES, INC., a Delaware corporation (the “Company”), and Ben Naccarato (**the “Executive”**).

WITNESSETH:

WHEREAS, the Company believes that the services, knowledge, and contributions of the Executive to the Company are of critical importance to the Company;

WHEREAS, the Company wishes to ensure that the Executive will continue to provide his services, knowledge and contributions to the Company; and

WHEREAS, the Executive is currently a “specified employee” as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (collectively, “Section 409A”);

WHEREAS, the Company and the Executive have previously entered into, or may from time to time enter into a separate arrangement, to provide certain management incentive compensation bonuses to the Executive based on the Company’s performance during a particular year or other period or periods.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth in this Agreement, the Company and the Executive agree as follows:

1. Term. Unless sooner terminated pursuant to the terms hereof, the term of this Agreement shall commence on the date hereof and terminate three (3) years from the date hereof unless earlier terminated as provided in this Agreement (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically be extended for one (1) additional year unless at least six (6) months prior to expiration of the Initial Term, the Company or the Executive shall have given written notice to the other not to extend the term of this Agreement. The Initial Term, as may be extended, is hereafter referred to as the “Term”.

2. Position and Duties.

2.1. Position. The Company agrees to employ the Executive, and the Executive agrees to such employment, as Executive Vice President and Chief Financial Officer of the Company, or such other position as the Executive and the Company agrees in writing as being acceptable to both of them. The Executive’s authority and duties, including, but not limited to, hierarchical standing in the Company and reporting requirements within the Company, shall be substantially similar in all material respects with the most significant of those exercised by the Executive during the 90 day period immediately preceding the date of this Agreement, except as otherwise agreed to in writing executed by both the Executive and the Company.

2.2. Location. The Executive’s duties and services shall be performed in Atlanta, Georgia, except for travel responsibilities required in the performance of the Executive’s duties.

2.3. Duties. Excluding any periods of vacation and sick leave to which the Executive is entitled, and except as otherwise provided in Section 2.4 below, the Executive agrees to faithfully perform the duties of his office, and to devote substantially all of the Executive’s business time and attention to the business and affairs of the Company, as directed by the Board of Directors of the Company from time to time (the “Board”) and the Chief Executive Officer, and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

2.4. Other Activities. Notwithstanding Section 2.3, it shall not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, as long as such activities are disclosed in writing to the Board and not otherwise disapproved for being in violation of the Company’s Code of Business Conduct and Ethics Policy, (ii) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as any such investment represents a passive investment and the Executive is not a controlling person of, or a member of a group that controls, the entity in which the Executive is invested, and provided further, that any such entity in which the Executive is invested is not engaged in activities that are competitive with those of the Company, as determined by the Board in its discretion. Any such activities described in this Section 2.4 may not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

3. Compensation and Benefits.

3.1. Annual Base Salary. The Compensation and Stock Option Committee of the Board (the “Compensation Committee”) has set the annual base salary of the Executive at **\$304,772** Dollars per year (“Base Salary”), which Base Salary is payable by the Company to the Executive in equal bi-weekly installments, less appropriate withholdings and deductions in accordance with the Company’s customary payroll practices, with the amount of the Base Salary payable each year subject to adjustment as provided in Section 3.2 below.

3.2. Adjustment to Base Salary. The Base Salary may be increased, but not be reduced, from time to time as determined by and in the sole discretion of the Compensation Committee.

3.3. Incentive Compensation Bonus. In addition to the Base Salary, each year during the Term the Company will pay to the Executive the incentive compensation bonus, if any, that is payable pursuant to a Management Incentive Plan (“Incentive Plan”) in effect for such year that may be adopted by the Board of the Company or the Compensation Committee and agreed to by the Executive with respect to the particular fiscal year of the Company, (an “Incentive Bonus”) in accordance with and pursuant to the terms of the Incentive Plan. The Incentive Bonus, if any, may be modified, changed or terminated at any time or for any reason by the Compensation Committee in its sole discretion in accordance with the terms of the particular Incentive Plan.

3.4. Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans that are generally made available to other employees of the Company, subject to the terms and conditions of such benefits and plans and, as such benefits and plans may be changed by the Company from time to time. Such benefits include, but not limited to, (i) group medical insurance coverage, (ii) group life insurance coverage and (iii) certain stock option plans. The Company reserves the right to amend or terminate any employee benefit plans at any time in its sole discretion, subject to the terms of such employee benefit plan and applicable law.

- 3.5. Expenses. During the Term, the Company shall pay directly, or reimburse the Executive, for any reasonable and necessary expenses and costs incurred by the Executive in connection with, or arising out of, the performance of the Executive's duties hereunder, provided that such expenses and costs shall be paid or reimbursed subject to such rules, regulations, and policies of the Company as established from time to time by the Company and the applicable laws to which the Company is subject, and provided further that the Executive is not otherwise in breach of this Agreement with respect to the activity for which the Executive is seeking reimbursement.

In the event the Executive incurs legal fees and expenses to enforce this Agreement, the Company shall promptly reimburse the Executive the reasonable and necessary legal fees and expenses of the Executive in enforcing this Agreement, but only upon the adjudication by a court of competent jurisdiction that the Executive is not otherwise in breach of this Agreement.

- 3.6. Fringe Benefits. During the Term, the Executive shall be entitled to all fringe benefits, including, but not limited to, vacation in accordance with Section 3.7 or, if more favorable to the Executive, the most favorable plans, practices, programs and policies of the Company during 12-month period immediately preceding the date of this Agreement, or, if more favorable to the Executive, as in effect at any time thereafter with respect to other senior executives of the Company.
- 3.7. Vacation. The Executive shall be entitled to three (3) weeks of paid vacation per year except that after five (5) years of employment with the Company the Executive shall be entitled to four (4) weeks of paid vacation per year and except that after fifteen (15) years of employment with the Company the Executive shall be entitled to five (5) weeks of paid vacation per year or such longer period as provided in Section 3.6 above.

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#### 4. Termination.

- 4.1. Termination by the Company as a Result of Death or Disability; Termination by the Company for Cause; Termination by the Executive for Good Reason. At any time during the Term, the Executive's employment with the Company may be terminated for the following reasons:

4.1.1 Death. The Executive's employment with the Company shall terminate automatically upon the Executive's death.

4.1.2 Disability.

4.1.2.1 Definition. "Disability" of the Executive is defined for the purposes of this Agreement as the Executive being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

4.1.2.2 Application. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company after establishing the Executive's Disability as set forth in this Section 4.1.2, and giving written notice of its intention to terminate the Executive's employment with the Company ("Disability Termination Notice"). In such a case, the Executive's employment with the Company shall terminate effective on the earlier of the otherwise scheduled expiration of the Term pursuant to Section 4.1.2 or on the thirtieth (30<sup>th</sup>) day after receipt of the Disability Termination Notice, provided that the Executive has not resumed full-time performance of his duties under this Agreement. Notwithstanding the foregoing, if the Executive has recovered from a Disability and returned to full-time service prior to the date of termination set forth in the Disability Termination Notice relating thereto, the Company may not thereafter terminate the Executive's employment under this Agreement due to such Disability.

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4.1.3 Cause. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company at any time for "Cause". For the purposes of this Agreement, "Cause" is defined as (i) the ultimate conviction (after all appeals have been decided) of the Executive by a court of competent jurisdiction of, or a plea of nolo contendere or a plea of guilty by the Executive to, a felony involving moral turpitude; or (ii) willful or gross misconduct or gross neglect of duties by the Executive, which has a material adverse effect on the Company, provided that, (a) no action or failure to act by the Executive will constitute a reason for termination if the Executive believed in good faith that such action or failure to act was in the Company's best interests, as determined in good faith by the Board in its sole discretion, and (b) failure of the Executive to perform his duties hereunder due to a Disability shall not be considered gross misconduct or willful, gross neglect of duties for any purpose; (iii) the commission by the Executive of an act of fraud or embezzlement against the Company or a subsidiary of the Company; (iv) the Executive's willful failure to comply with any valid and legal directive of the Board; (v) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (vi) the Executive's willful unauthorized disclosure of Confidential Information (as defined in Section 8.7.1 of this Agreement); or (vii) the Executive's breach of any material provision of this Agreement or any other written agreement between the Executive and the Company, provided however, that failure of the Executive to perform his duties hereunder due to Disability shall not be considered a breach of this Agreement. For the purposes of this Section 4.1.3, no act or failure to act shall be considered "willful" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company.

4.1.4 Good Reason. Subject to the terms of this Agreement, the Executive may terminate the Executive's employment under this Agreement for Good Reason (defined below) at any time on or prior to the 60<sup>th</sup> day after the occurrence of any of the Good Reason events set forth in the following sentence; provided, however, that, within 30 days after the occurrence of any such event, the Executive shall have provided the Company with a Notice of Termination with respect to such event and afforded the Company a period of 30 days after its receipt of such Notice of Termination to cure the default that constitutes the Good Reason event relied upon by the Executive for such termination. For purposes of this Agreement, "Good Reason" shall mean the occurrence, during the Term of this Agreement, of any of the following events without the Executive's prior written consent:

4.1.4.1 the failure by the Company to timely comply with its material obligations and agreements contained in this Agreement; or

4.1.4.2 the removal of the Executive from the position of, or the loss by the Executive of the title of, Executive Vice President and Chief Financial Officer of the Company (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

4.1.4.3 a material diminution of the authorities, duties or responsibilities of the Executive set forth in Section 2 of this Agreement (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

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- 4.1.4.4 the relocation of the Executive to an office outside of the Atlanta, Georgia metropolitan area; or
- 4.1.4.5 the Executive being required to report to someone other than the Board (the "Board"); or
- 4.1.4.6 any other action by the Company which results in a material reduction in compensation payable to the Executive (other than a general reduction in base salary that affects all similarly situated executives in substantially the same proportions) or in the position, authority, duties, other responsibilities, other than insubstantial and inadvertent action which is promptly remedied by the Company after receipt of notice thereof from the Executive.
- 4.1.5 Without Good Reason. Subject to the terms of this Agreement, the Executive may voluntarily terminate his employment under this Agreement without Good Reason upon written Notice of Termination to the Company at least 30 days prior to the effective date of termination (which termination the Company may, in its sole discretion, make effective earlier than the date set forth in the Executive's Notice of Termination).
- 4.1.6 Death. Upon the Executive's separation from service as a result of the termination of Executive's employment with the Company due to the Executive's Death, the Company shall pay to the Executive's estate and/or beneficiary, in a single lump sum payment, in current funds, within thirty (30) days of the Executive's Death, the following:
  - 4.1.6.1 any earned but unpaid Base Salary through the date of termination;
  - 4.1.6.2 reimbursement for any unreimbursed expenses properly incurred and paid in accordance with the terms of this Agreement, above, through the date of the Executive's Death;
  - 4.1.6.3 payment for any accrued but unused vacation time in accordance with the terms of this Agreement and the Company policy;
  - 4.1.6.4 such vested accrued benefits and other payments, if any, as to which the Executive (and his eligible dependents) may be entitled under, and in accordance with the terms and conditions of, the Company's employee benefit arrangements, other than any severance pay plan (4.1.6.1 through 4.1.6.4 collectively, the "Amounts and Benefits");
  - 4.1.6.5 any bonuses earned by the Executive but remaining unpaid for any year prior to the year in which the date of termination occurs (the "Prior Year Bonuses");

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- 4.1.6.6 a "Pro-Rata Bonus", which for purposes of this Agreement means (A) in the event the Company has established an Incentive Plan one or more executive bonus programs with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the aggregate bonuses payable under such bonus programs for the year in which the date of termination occurs (determined by multiplying the amount of the Executive's bonus which would be due for the full year by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365), provided that the performance goals established with respect to the entire such year are met, and provided, further, that in the event the date of termination occurs prior to the determination of performance goals applicable to the performance period for the year of the Executive's termination of employment, the performance criteria applicable to the Executive in respect of the Pro-Rata Bonus shall be at least as favorable to the Executive as the most favorable performance criteria applicable for that year to any award to a named executive officer of the Company, within the meaning of Section 402(a)(3) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"); or (B) in the event the Company has not established an Incentive Plan providing an incentive bonus plan with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs (determined by multiplying the amount of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365). If payable under (A), the Pro-Rata Bonus shall be payable in due course pursuant to the terms of the applicable bonus programs which shall be paid on or about 90 days after year-end or sooner, based on the Company's audited financial statements included in its Form 10-K filed with the SEC, subject to Section 4.5 of this Agreement. If payable under (B), the Pro-Rata Bonus shall be payable within thirty (30) days following the date of termination;
- 4.1.6.7 a lump-sum payment (the "Cash Medical Continuation Benefit") equal to (x) 18 multiplied by (y) the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), to continue group health coverage for the Executive's eligible covered dependents in effect on the date of the Executive's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the Executive's eligible covered dependents actually elect COBRA continuation coverage. ; and

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- 4.1.6.8 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, with such options and awards remaining exercisable for the lesser of the original option term or twelve (12) months from the date of the Executive's death.
- 4.1.7 Upon the Executive's separation from service as a result of the termination of Executive's employment by the Company for Cause, the Company shall pay to the Executive in a single lump sum payment, in current funds, on the date of such termination of employment the following:
  - 4.1.7.1 any earned but unpaid Base Salary through the date of termination; and
  - 4.1.7.2 any amounts payable to the Executive pursuant to the Prior Year Bonuses under the Company's prior year Incentive Plan.

4.2. Termination by the Company without Cause or Termination by the Executive for Good Reason.

4.2.1 Subject to the terms of this Agreement, the Company may terminate the Executive's employment at any time during the Term without Cause and the Executive may terminate his employment with the Company at any time during the Term for Good Reason. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of Death or Disability) during the Term, and the Executive has not received and is not entitled to any payment under Sections 4.3.1 hereof, then the Company shall pay or provide the Executive on the date of such termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.1) the following:

4.2.1.1 a lump sum cash payment in the total amount equal to the sum of (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid the Incentive Bonus for the immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, the "Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.2.1.2 the Amounts and Benefits;

4.2.1.3 the Prior Year Bonuses;

4.2.1.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.2.1.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.2.1.6 in the event a Change in Control shall not have theretofore occurred, and the Company has terminated the Executive's employment under this Agreement without Cause or the Executive has terminated his employment under this Agreement for Good Reason, notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, and the Executive shall be entitled to exercise such options within the sixty (60) consecutive day period immediately following the date of termination (but not after the original option term).

4.3. Termination Following a Change in Control. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of death or Disability) within 24 months after a Change in Control (defined below), then the Company shall pay or provide the Executive on the date of termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.2):

4.3.1 a lump sum cash payment in the total amount equal to the sum of: (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid his Incentive Bonus for such immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, "Change in Control Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.3.2 the Amounts and Benefits;

4.3.3 the Prior Year Bonuses;

4.3.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.3.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.3.6 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, in the event of a Change in Control, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination through the original term of such option or equity award.

4.4. Change in Control. For purposes of this Agreement, a "Change in Control" means any of the following events, within the meaning of Code Section 409A(a)(2)(A)(v), occurring during the Term:

4.4.1 individuals who, as of the date of this Agreement, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the date of this Agreement, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, or other actual or threatened solicitation of proxies by or on behalf of an individual, entity or group other than the Board relating to the election of the directors of the Company) shall be deemed to be, for purposes of this Agreement, a member of the Incumbent Board; or

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- 4.4.2 the date that any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; or
- 4.4.3 the date any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent (30%) or more of the total voting power of the stock of the Company, other than the acquisition by any person or group, which as of the date hereof has such ownership; or
- 4.4.4 the Company's execution of an agreement for a merger or consolidation or other business combination involving the Company in which the Company is not the surviving corporation, or, if immediately following such merger or consolidation or other business combination, less than fifty percent (50%) of the surviving corporation's outstanding voting stock is held by persons who are stockholders of the Company immediately prior to such merger or consolidation or other business combination; or
- 4.4.5 the Company's adoption of a plan of dissolution or liquidation, other than if the Company is in bankruptcy at the time such plan of dissolution or liquidation is adopted.

For purposes of this Agreement, the term "person" shall mean any individual, firm, corporation or other entity and shall include any successor (by merger, consolidation or otherwise) of such entity.

- 4.5. Payments of Compensation Upon Termination. Notwithstanding any provision to the contrary contained in this Agreement, if calculation of the amount of any bonus payment, if any, under an Incentive Plan is not administratively practicable due to events beyond the control of the Executive (or the Executive's beneficiary), the payment will be treated as made upon the date specified under the Incentive Plan if the payment is made during the first taxable year of the Executive in which the calculation of the amount of the payment is administratively practicable.

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- 4.6. Release. The Company's obligation to pay Executive the Severance Payment (Section 4.2.1.1) and the Change in Control Severance Payment (Section 4.3.1), shall be subject to the Executive executing a release of claims against the Company before the end of the Release Expiration Date (defined below) and provided further that nothing contained in such release shall constitute a release of the Company from any obligations it may have to the Executive (a) under this Agreement or any other written agreement between the Executive and the Company in effect as of the date of termination; (b) relating to any employee benefit plan, stock option plan, stock option agreement or ownership of the Company's stock or debt securities; or (c) relating to any rights of indemnification and/or defense under the Company's certificate of incorporation, bylaws, under any other written agreement between the Executive and the Company or coverage under officers and directors insurance. The Company will deliver such release to Executive pursuant to and in accordance with the terms of this Section 4.6 within ten (10) calendar days following the date on which such termination of employment constitutes a separation of service under the terms of this Agreement, and the Company's failure to deliver such release prior to the expiration of such date of termination shall constitute a waiver of any requirement to execute such release. Assuming timely delivery of the release by the Company, if the release is pursuant to and in accordance with this Section 4.6, and Executive fails to execute such release on or prior to the Release Expiration Date, Executive will not be entitled to Severance Payments or the Change in Control Severance Payment. In any case where the date of the separation from service and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are subject to the release condition and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. The term "Release Expiration Date" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers to Executive the release meeting the requirements as provided above, or in the event that Executive's separation from service is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery.
- 4.7. No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Section 4 be reduced by any compensation earned by the Executive as the result of the Executive's employment by another person, employer or business or by profits earned by the Executive from any other source at any time before and after the Executive's date of termination.

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- 4.8. Termination by the Executive for Any Reasons Other Than Good Reason. Upon Executive's separation from service as a result of the Executive terminates his employment with the Company for any reason other than for Good Reason during the Term, the Company shall pay to the Executive in a single lump sum payment on the date of such separation from service an amount equal to the Amounts and Benefits.
- 4.9. Resignation of All Other Positions. On termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

## 5. Notice of Termination.

- 5.1. By Company. The Company shall not be deemed to have terminated this Agreement for "Cause" pursuant to the terms of Sections 4.1.3 and 4.2.1 hereof, unless and until there shall have been delivered to the Executive a copy of a resolution ("Notice of Termination for Cause") duly adopted by the affirmative vote of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together, with the Executive's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive should be terminated for "Cause" pursuant to Section 4.1.3 and 4.2.1, and specifying the particulars thereof in detail.
- 5.2. By Executive. The Executive shall not be deemed to have terminated this Agreement pursuant to the terms of Section 4.2 hereof, unless and until there shall have been delivered by the Executive to the Company a "Notice of Termination for Good Reason" which shall state the specific termination provision relied upon, and specifying the particulars thereof in detail.

## 6. Indemnification.

- 6.1. The Company shall indemnify, defend and hold harmless the Executive against any and all expenses reasonably incurred by him in connection with or arising out of (a) the defense of any action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), in which he is a party, or (b) any claim asserted or threatened against him, in either case by reason of or relating to his being or having been an employee, officer, director or agent of the Company or a subsidiary of the Company or another company partnership, joint venture, trust or other enterprise for which he was serving in such capacity at the request of the Company, whether or not he continues to be such an employee, officer, director or agent at the time of incurring such expenses, provided, however, no such indemnification shall be made (i) if such indemnification is prohibited by law, (ii) with respect to any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, or (iii) if it is determined by a court of competent jurisdiction that the Executive did not (A) act in good faith, (B) act in a manner he reasonably believed to be in or not opposed to the best interest of the Company or (C) have reasonable cause to believe his conduct was not unlawful. Such expenses shall include, without limitation, the fees and disbursements of attorneys, amounts of judgments and amounts of any settlements. The foregoing indemnification obligation is independent of any similar obligation provided in the Company's certificate of incorporation or bylaws, and shall apply with respect to any matters attributable to periods prior to or after the date of this Agreement, and to matters attributable to the Executive's employment hereunder, without regard to when asserted. In no event shall the Company be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel, and the Company will not indemnify the Executive for the fees or expenses of the Executive's counsel in connection with any claim which is being defended by counsel appointed by the Company or the Company's insurance carrier; provided, however, that if the Executive shall have reasonably concluded (based on the advice of counsel) that there is a conflict of interest between the Company and the Executive for counsel appointed by the Company or the Company's insurance carrier that would prohibit the counsel retained by the Company or its insurance carrier from representing the Executive, the Company shall reimburse the Executive for the reasonable fees and expenses of one (1) separate counsel in addition to any local counsel for the Executive in connection with such claims, subject to the limitations set forth above in this Section 6.

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- 6.2. Costs and expenses incurred by the Executive in defense of any such Proceeding described in Section 6.1 above for which indemnification is to be made by the Company (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

#### 7. Section 409A and Section 280G of the Code

- 7.1. Compliance with Section 409A. It is intended that the provisions of this Agreement comply with or be excepted from Section 409A, as applicable, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to, in good faith, reform such provision to comply with Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained, but the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A to the extent such compliance is required. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A so long as it has acted in good faith with regard to compliance therewith.

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- 7.2. Separation From Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment" or like terms shall mean Separation from Service. If the Executive is deemed on the date of termination of his employment to be a "specified employee", within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology, then with regard to any payment, the providing of any benefit or any distribution of equity made subject to this Section to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, and any other payment, the provision of any other benefit or any other distribution of equity that is required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment, benefit or distribution shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of the Executive's Separation from Service or (ii) the date of the Executive's death. On the first day of the seventh month following the date of the Executive's Separation from Service or, if earlier, on the date of his death, (x) all payments delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein and (y) all distributions of equity delayed pursuant to this Section 7.2 shall be made to the Executive. In addition to the foregoing, to the extent required by Section 409A(a)(2)(B) of the Code, prior to the occurrence of a Disability termination as provided in this Agreement, the payment of any compensation to the Executive under this Agreement shall be suspended for a period of six months commencing at such time that the Executive shall be deemed to have had a Separation from Service because either (A) a sick leave ceases to be a bona fide sick leave of absence, or (B) the permitted time period for a sick leave of absence expires (an "SFS Disability"), without regard to whether such SFS Disability actually results in a Disability termination. Promptly following the expiration of such six-month period, all compensation suspended pursuant to the foregoing sentence (whether it would have otherwise been payable in a single sum or in installments in the absence of such suspension) shall be paid or reimbursed to the Executive in a lump sum. On any delayed payment date under this Section there shall be paid to the Executive or, if the Executive has died, to his estate, in a single cash lump sum together with the payment of such delayed payment, interest on the aggregate amount of such delayed payment at the Delayed Payment Interest Rate (defined below in this Section 7.2) computed from the date on which such delayed payment otherwise would have been made to the Executive until the date paid. For purposes of the foregoing, the "Delayed Payment Interest Rate" shall mean the short term applicable federal rate provided for in Section 1274(d) of the Code as of the business day immediately preceding the payment date for the applicable delayed payment. To the extent that this Agreement provides for any payments of nonqualified deferred compensation (within the meaning of Section 409A) to be made in installments (including, without limitation, any severance payments), each such installment shall be deemed to be a separate and distinct payment for purposes of Section 409A.

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- 7.3. Reimbursement Provisions. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred.

- 7.4. 280G Parachute Payments. In the event that any payments or benefits (whether made or provided pursuant to this Agreement or otherwise) provided to Executive constitute “parachute payments” within the meaning of Section 280G of the Code (“Parachute Payments”), and will be subject to an excise tax imposed pursuant to Section 4999 of the Code, the Executive’s Parachute Payments will be reduced to an amount determined by the Company in good faith to be the maximum amount that may be provided to the Executive without resulting in any portion of such Parachute Payments being subject to such excise tax (the amount of such reduction, “Cutback Benefits”). The Parachute Payment reduction contemplated by the preceding sentence, if applicable, shall be implemented by determining the “Parachute Payment Ratio” (as defined below) for each Parachute Payment and then reducing the Parachute Payment in order beginning with the Parachute Payment with the highest Parachute Payment Ratio. For Parachute Payments with the same Parachute Payment Ratio, such Parachute Payments shall be reduced based on the time of payment of such Parachute Payments, with amounts having later payment dates being reduced first. For Parachute Payments with the same Parachute Payment Ratio and the same time of payment, such Parachute Payments shall be reduced on a pro rata basis (but not below zero) prior to reducing Parachute Payments with a lower Parachute Payment Ratio. For purposes hereof, the term “Parachute Payment Ratio” shall mean a fraction the numerator of which is the value of the applicable Parachute Payment for purposes of Section 280G of the Code and the denominator of which is the intrinsic value of such Parachute Payment.

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- 7.5. Clawback Provisions. Notwithstanding any provision of this Agreement to the contrary, Executive acknowledges that any incentive-based compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government, regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement),

#### 8. Miscellaneous.

- 8.1. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with those laws, without reference to principles of conflict of laws. The Company and the Executive unconditionally consent to submit to the exclusive jurisdiction of any state or federal court located in Atlanta, Georgia, for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by registered mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against the Company or the Executive, as the case may be, in any such court.
- 8.2. No Assignment. The Executive may not delegate his duties or assign his rights hereunder. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company other than pursuant to a merger or consolidation in which the Company is not the continuing entity, or a sale, liquidation or other disposition of all or substantially all of the assets of the Company. For the purposes of this Agreement, the term “Company” shall include the Company and, subject to the foregoing, any of its successors and assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 8.3. Severable. The invalidity or unenforceability of any provision hereof shall not in any way affect the validity or enforceability of any other provision.

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- 8.4. Entire Understanding; Modification and Waiver. Unless specifically provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or termination of this Agreement will be effective only if it is in writing signed by the parties hereto. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- 8.5. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto.
- 8.6. Mutual Non-Disparagement. Subject to applicable law, the Executive covenants and agrees that the Executive shall not in any way publicly disparage, call into disrepute, or otherwise defame or slander the Company or any of its subsidiaries, in any manner that would materially damage the business or reputation of the Company or its subsidiaries. The Company covenants and agrees, on behalf of itself and its subsidiaries, that neither the Company, any of its subsidiaries nor any of the officers, directors or key employees of the Company or any of its subsidiaries shall in any way publicly disparage, call into disrepute, or otherwise defame or slander the Executive. Nothing in this paragraph 8.6 shall preclude or restrict the Executive or the Company, any of the subsidiaries of the Company or any of the Company’s officers, directors or key employees from making truthful statements, including, without limitation, those that are required by applicable law, regulation or in connection with a legal process or proceeding, and the making of such statements shall not be a violation of this subsection.
- 8.7. Confidential Information and Restrictive Covenants
- 8.7.1 No Disclosure. Subject to the terms of this Section 8.7, during the Restricted Period (as defined below), the Executive agrees to hold in confidence and not disclose any and all proprietary, secret or confidential information (“Confidential Information”) relating to the Company or the Company’s subsidiaries, which shall have been obtained by the Executive during the Executive’s employment by the Company. Confidential Information is defined as the proprietary, client or business information of the Company, written or in a physical embodiment, including, but not limited to, customer lists, employee lists, financial information, pricing data, sales data, marketing data, or business plans or proposals.

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- 8.7.2 Exception. Notwithstanding the provisions of Section 8.7.1 above, the Executive shall not be held liable for disclosure of information which was in the public domain, or is readily available to the public at the time of its disclosure by the Executive through means unrelated to the Executive’s disclosure, or is required to be disclosed in, or in connection with, a legal proceeding or process or is required to be disclosed by law, rule or regulation.
- 8.7.3 Permitted Communications. Nothing herein prohibits or restricts the Executive (or the Executive’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the SEC, the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding a possible securities law violation.

- 8.7.4 Other Restrictive Covenant. Subject to the terms hereof, the Executive agrees that during the Restricted Period he will not, by or for himself, or as an agent, representative or employee of another, do or attempt to solicit, entice, persuade or induce any individual who is employed by the Company or its subsidiaries (or was so employed within 90 days prior to the Executive's action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Company or its subsidiaries.
- 8.7.5 Restricted Period. "Restricted Period" is the 12-month period after the date of termination of the Executive's employment with the Company.
- 8.7.6 Other Agreements. If any of the restrictions provided in Section 8.7 are contrary to the requirements or limitations contained in any other agreement between the Executive and the Company, the terms of this Section 8.7 of this Agreement shall be controlling.
- 8.8. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

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9. Notices.

All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by telecopy (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one business day after being sent by telecopy or five days after being mailed.

If to the Company:           Penna-Fix Environmental Services, Inc.  
8302 Dunwoody Place, Suite 250  
Atlanta, Georgia 30350 Attn: President

If to the Executive:       Ben Naccarato  
1875 Hadfield Blvd.  
Roswell, GA 30075

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 25th day of April, 2023.

The "Company"

PERMA-FIX ENVIRONMENTAL SERVICES,  
INC., a Delaware corporation

By: /s/ Larry Shelton  
Larry Shelton, Chairman of the Board

The "Executive"

/s/ Ben Naccarato  
BEN NACCARATO

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the **20th day of April, 2023**, by and between PERMA-FIX ENVIRONMENTAL SERVICES, INC., a Delaware corporation (the “Company”), and Louis F. Centofanti (the “Executive”).

WITNESSETH:

WHEREAS, the Company believes that the services, knowledge, and contributions of the Executive to the Company are of critical importance to the Company;

WHEREAS, the Company wishes to ensure that the Executive will continue to provide his services, knowledge and contributions to the Company; and

WHEREAS, the Executive is currently a “specified employee” as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (collectively, “Section 409A”);

WHEREAS, the Company and the Executive have previously entered into, or may from time to time enter into a separate arrangement, to provide certain management incentive compensation bonuses to the Executive based on the Company’s performance during a particular year or other period or periods.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth in this Agreement, the Company and the Executive agree as follows:

1. Term. Unless sooner terminated pursuant to the terms hereof, the term of this Agreement shall commence on the date hereof and terminate three (3) years from the date hereof unless earlier terminated as provided in this Agreement (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically be extended for one (1) additional year unless at least six (6) months prior to expiration of the Initial Term, the Company or the Executive shall have given written notice to the other not to extend the term of this Agreement. The Initial Term, as may be extended, is hereafter referred to as the “Term”.

2. Position and Duties.

2.1. Position. The Company agrees to employ the Executive, and the Executive agrees to such employment, as Executive Vice President of Strategic Initiatives of the Company, or such other position as the Executive and the Company agrees in writing as being acceptable to both of them. The Executive’s authority and duties, including, but not limited to, hierarchical standing in the Company and reporting requirements within the Company, shall be substantially similar in all material respects with the most significant of those exercised by the Executive during the 90 day period immediately preceding the date of this Agreement, except as otherwise agreed to in writing executed by both the Executive and the Company.

2.2. Location. The Executive’s duties and services shall be performed in Atlanta, Georgia, except for travel responsibilities required in the performance of the Executive’s duties.

2.3. Duties. Excluding any periods of vacation and sick leave to which the Executive is entitled, and except as otherwise provided in Section 2.4 below, the Executive agrees to faithfully perform the duties of his office, and to devote substantially all of the Executive’s business time and attention to the business and affairs of the Company, as directed by the Board of Directors of the Company from time to time (the “Board”) and the Chief Executive Officer, and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

2.4. Other Activities. Notwithstanding Section 2.3, it shall not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, as long as such activities are disclosed in writing to the Board and not otherwise disapproved for being in violation of the Company’s Code of Business Conduct and Ethics Policy, (ii) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as any such investment represents a passive investment and the Executive is not a controlling person of, or a member of a group that controls, the entity in which the Executive is invested, and provided further, that any such entity in which the Executive is invested is not engaged in activities that are competitive with those of the Company, as determined by the Board in its discretion. Any such activities described in this Section 2.4 may not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

3. Compensation and Benefits.

3.1. Annual Base Salary. The Compensation and Stock Option Committee of the Board (the “Compensation Committee”) has set the annual base salary of the Executive at **\$253,980** Dollars per year (“Base Salary”), which Base Salary is payable by the Company to the Executive in equal bi-weekly installments, less appropriate withholdings and deductions in accordance with the Company’s customary payroll practices, with the amount of the Base Salary payable each year subject to adjustment as provided in Section 3.2 below.

3.2. Adjustment to Base Salary. The Base Salary may be increased, but not be reduced, from time to time as determined by and in the sole discretion of the Compensation Committee.

3.3. Incentive Compensation Bonus. In addition to the Base Salary, each year during the Term the Company will pay to the Executive the incentive compensation bonus, if any, that is payable pursuant to a Management Incentive Plan (“Incentive Plan”) in effect for such year that may be adopted by the Board of the Company or the Compensation Committee and agreed to by the Executive with respect to the particular fiscal year of the Company, (an “Incentive Bonus”) in accordance with and pursuant to the terms of the Incentive Plan. The Incentive Bonus, if any, may be modified, changed or terminated at any time or for any reason by the Compensation Committee in its sole discretion in accordance with the terms of the particular Incentive Plan.

3.4. Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans that are generally made available to other employees of the Company, subject to the terms and conditions of such benefits and plans and, as such benefits and plans may be changed by the Company from time to time. Such benefits include, but not limited to, (i) group medical insurance coverage, (ii) group life insurance coverage and (iii) certain stock option plans. The Company reserves the right to amend or terminate any employee benefit plans at any time in its sole discretion, subject to the terms of such employee benefit plan and applicable law.

- 3.5. Expenses. During the Term, the Company shall pay directly, or reimburse the Executive, for any reasonable and necessary expenses and costs incurred by the Executive in connection with, or arising out of, the performance of the Executive's duties hereunder, provided that such expenses and costs shall be paid or reimbursed subject to such rules, regulations, and policies of the Company as established from time to time by the Company and the applicable laws to which the Company is subject, and provided further that the Executive is not otherwise in breach of this Agreement with respect to the activity for which the Executive is seeking reimbursement.

In the event the Executive incurs legal fees and expenses to enforce this Agreement, the Company shall promptly reimburse the Executive the reasonable and necessary legal fees and expenses of the Executive in enforcing this Agreement, but only upon the adjudication by a court of competent jurisdiction that the Executive is not otherwise in breach of this Agreement.

- 3.6. Fringe Benefits. During the Term, the Executive shall be entitled to all fringe benefits, including, but not limited to, vacation in accordance with Section 3.7 or, if more favorable to the Executive, the most favorable plans, practices, programs and policies of the Company during 12-month period immediately preceding the date of this Agreement, or, if more favorable to the Executive, as in effect at any time thereafter with respect to other senior executives of the Company.
- 3.7. Vacation. The Executive shall be entitled to three (3) weeks of paid vacation per year except that after five (5) years of employment with the Company the Executive shall be entitled to four (4) weeks of paid vacation per year and except that after fifteen (15) years of employment with the Company the Executive shall be entitled to five (5) weeks of paid vacation per year or such longer period as provided in Section 3.6 above.

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#### 4. Termination.

- 4.1. Termination by the Company as a Result of Death or Disability; Termination by the Company for Cause; Termination by the Executive for Good Reason. At any time during the Term, the Executive's employment with the Company may be terminated for the following reasons:

4.1.1 Death. The Executive's employment with the Company shall terminate automatically upon the Executive's death.

4.1.2 Disability.

4.1.2.1 Definition. "Disability" of the Executive is defined for the purposes of this Agreement as the Executive being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

4.1.2.2 Application. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company after establishing the Executive's Disability as set forth in this Section 4.1.2, and giving written notice of its intention to terminate the Executive's employment with the Company ("Disability Termination Notice"). In such a case, the Executive's employment with the Company shall terminate effective on the earlier of the otherwise scheduled expiration of the Term pursuant to Section 4.1.2 or on the thirtieth (30<sup>th</sup>) day after receipt of the Disability Termination Notice, provided that the Executive has not resumed full-time performance of his duties under this Agreement. Notwithstanding the foregoing, if the Executive has recovered from a Disability and returned to full-time service prior to the date of termination set forth in the Disability Termination Notice relating thereto, the Company may not thereafter terminate the Executive's employment under this Agreement due to such Disability.

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4.1.3 Cause. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company at any time for "Cause". For the purposes of this Agreement, "Cause" is defined as (i) the ultimate conviction (after all appeals have been decided) of the Executive by a court of competent jurisdiction of, or a plea of nolo contendere or a plea of guilty by the Executive to, a felony involving moral turpitude; or (ii) willful or gross misconduct or gross neglect of duties by the Executive, which has a material adverse effect on the Company, provided that, (a) no action or failure to act by the Executive will constitute a reason for termination if the Executive believed in good faith that such action or failure to act was in the Company's best interests, as determined in good faith by the Board in its sole discretion, and (b) failure of the Executive to perform his duties hereunder due to a Disability shall not be considered gross misconduct or willful, gross neglect of duties for any purpose; (iii) the commission by the Executive of an act of fraud or embezzlement against the Company or a subsidiary of the Company; (iv) the Executive's willful failure to comply with any valid and legal directive of the Board; (v) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (vi) the Executive's willful unauthorized disclosure of Confidential Information (as defined in Section 8.7.1 of this Agreement); or (vii) the Executive's breach of any material provision of this Agreement or any other written agreement between the Executive and the Company, provided however, that failure of the Executive to perform his duties hereunder due to Disability shall not be considered a breach of this Agreement. For the purposes of this Section 4.1.3, no act or failure to act shall be considered "willful" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company.

4.1.4 Good Reason. Subject to the terms of this Agreement, the Executive may terminate the Executive's employment under this Agreement for Good Reason (defined below) at any time on or prior to the 60<sup>th</sup> day after the occurrence of any of the Good Reason events set forth in the following sentence; provided, however, that, within 30 days after the occurrence of any such event, the Executive shall have provided the Company with a Notice of Termination with respect to such event and afforded the Company a period of 30 days after its receipt of such Notice of Termination to cure the default that constitutes the Good Reason event relied upon by the Executive for such termination. For purposes of this Agreement, "Good Reason" shall mean the occurrence, during the Term of this Agreement, of any of the following events without the Executive's prior written consent:

4.1.4.1 the failure by the Company to timely comply with its material obligations and agreements contained in this Agreement; or

4.1.4.2 the removal of the Executive from the position of, or the loss by the Executive of the title of, Executive Vice President of Strategic Initiatives of the Company (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

4.1.4.3 a material diminution of the authorities, duties or responsibilities of the Executive set forth in Section 2 of this Agreement (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

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4.1.4.4 the relocation of the Executive to an office outside of the Atlanta, Georgia metropolitan area; or

- 4.1.4.5 the Executive being required to report to someone other than the Board (the "Board"); or
- 4.1.4.6 any other action by the Company which results in a material reduction in compensation payable to the Executive (other than a general reduction in base salary that affects all similarly situated executives in substantially the same proportions) or in the position, authority, duties, other responsibilities, other than insubstantial and inadvertent action which is promptly remedied by the Company after receipt of notice thereof from the Executive.
- 4.1.5 Without Good Reason. Subject to the terms of this Agreement, the Executive may voluntarily terminate his employment under this Agreement without Good Reason upon written Notice of Termination to the Company at least 30 days prior to the effective date of termination (which termination the Company may, in its sole discretion, make effective earlier than the date set forth in the Executive's Notice of Termination).
- 4.1.6 Death. Upon the Executive's separation from service as a result of the termination of Executive's employment with the Company due to the Executive's Death, the Company shall pay to the Executive's estate and/or beneficiary, in a single lump sum payment, in current funds, within thirty (30) days of the Executive's Death, the following:
  - 4.1.6.1 any earned but unpaid Base Salary through the date of termination;
  - 4.1.6.2 reimbursement for any unreimbursed expenses properly incurred and paid in accordance with the terms of this Agreement, above, through the date of the Executive's Death;
  - 4.1.6.3 payment for any accrued but unused vacation time in accordance with the terms of this Agreement and the Company policy;
  - 4.1.6.4 such vested accrued benefits and other payments, if any, as to which the Executive (and his eligible dependents) may be entitled under, and in accordance with the terms and conditions of, the Company's employee benefit arrangements, other than any severance pay plan (4.1.6.1 through 4.1.6.4 collectively, the "Amounts and Benefits");
  - 4.1.6.5 any bonuses earned by the Executive but remaining unpaid for any year prior to the year in which the date of termination occurs (the "Prior Year Bonuses");

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- 4.1.6.6 a "Pro-Rata Bonus", which for purposes of this Agreement means (A) in the event the Company has established an Incentive Plan one or more executive bonus programs with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the aggregate bonuses payable under such bonus programs for the year in which the date of termination occurs (determined by multiplying the amount of the Executive's bonus which would be due for the full year by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365), provided that the performance goals established with respect to the entire such year are met, and provided, further, that in the event the date of termination occurs prior to the determination of performance goals applicable to the performance period for the year of the Executive's termination of employment, the performance criteria applicable to the Executive in respect of the Pro-Rata Bonus shall be at least as favorable to the Executive as the most favorable performance criteria applicable for that year to any award to a named executive officer of the Company, within the meaning of Section 402(a)(3) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"); or (B) in the event the Company has not established an Incentive Plan providing an incentive bonus plan with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs (determined by multiplying the amount of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365). If payable under (A), the Pro-Rata Bonus shall be payable in due course pursuant to the terms of the applicable bonus programs which shall be paid on or about 90 days after year-end or sooner, based on the Company's audited financial statements included in its Form 10-K filed with the SEC, subject to Section 4.5 of this Agreement. If payable under (B), the Pro-Rata Bonus shall be payable within thirty (30) days following the date of termination;
- 4.1.6.7 a lump-sum payment (the "Cash Medical Continuation Benefit") equal to (x) 18 multiplied by (y) the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), to continue group health coverage for the Executive's eligible covered dependents in effect on the date of the Executive's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the Executive's eligible covered dependents actually elect COBRA continuation coverage. ; and

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- 4.1.6.8 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, with such options and awards remaining exercisable for the lesser of the original option term or twelve (12) months from the date of the Executive's death.
- 4.1.7 Upon the Executive's separation from service as a result of the termination of Executive's employment by the Company for Cause, the Company shall pay to the Executive in a single lump sum payment, in current funds, on the date of such termination of employment the following:
  - 4.1.7.1 any earned but unpaid Base Salary through the date of termination; and
  - 4.1.7.2 any amounts payable to the Executive pursuant to the Prior Year Bonuses under the Company's prior year Incentive Plan.
- 4.2. Termination by the Company without Cause or Termination by the Executive for Good Reason.
  - 4.2.1 Subject to the terms of this Agreement, the Company may terminate the Executive's employment at any time during the Term without Cause and the Executive may terminate his employment with the Company at any time during the Term for Good Reason. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of Death or Disability) during the Term, and the Executive has not received and is not entitled to any payment under Sections 4.3.1 hereof, then the Company shall pay or provide the Executive on the date of such termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.1) the following:

4.2.1.1 a lump sum cash payment in the total amount equal to the sum of (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid the Incentive Bonus for the immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, the "Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.2.1.2 the Amounts and Benefits;

4.2.1.3 the Prior Year Bonuses;

4.2.1.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.2.1.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.2.1.6 in the event a Change in Control shall not have theretofore occurred, and the Company has terminated the Executive's employment under this Agreement without Cause or the Executive has terminated his employment under this Agreement for Good Reason, notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, and the Executive shall be entitled to exercise such options within the sixty (60) consecutive day period immediately following the date of termination (but not after the original option term).

4.3. Termination Following a Change in Control. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of death or Disability) within 24 months after a Change in Control (defined below), then the Company shall pay or provide the Executive on the date of termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.2):

4.3.1 a lump sum cash payment in the total amount equal to the sum of: (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid his Incentive Bonus for such immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, "Change in Control Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.3.2 the Amounts and Benefits;

4.3.3 the Prior Year Bonuses;

4.3.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.3.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.3.6 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, in the event of a Change in Control, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination through the original term of such option or equity award.

4.4. Change in Control. For purposes of this Agreement, a "Change in Control" means any of the following events, within the meaning of Code Section 409A(a)(2)(A)(v), occurring during the Term:

4.4.1 individuals who, as of the date of this Agreement, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the date of this Agreement, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, or other actual or threatened solicitation of proxies by or on behalf of an individual, entity or group other than the Board relating to the election of the directors of the Company) shall be deemed to be, for purposes of this Agreement, a member of the Incumbent Board; or

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4.4.2 the date that any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; or

4.4.3 the date any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent (30%) or more of the total voting power of the stock of the Company, other than the acquisition by any person or group, which as of the date hereof has such ownership; or

4.4.4 the Company's execution of an agreement for a merger or consolidation or other business combination involving the Company in which the Company is not the surviving corporation, or, if immediately following such merger or consolidation or other business combination, less than fifty percent (50%) of the surviving corporation's outstanding voting stock is held by persons who are stockholders of the Company immediately prior to such merger or consolidation or other business combination; or

4.4.5 the Company's adoption of a plan of dissolution or liquidation, other than if the Company is in bankruptcy at the time such plan of dissolution or liquidation is adopted.

For purposes of this Agreement, the term "person" shall mean any individual, firm, corporation or other entity and shall include any successor (by merger, consolidation or otherwise) of such entity.

4.5. Payments of Compensation Upon Termination. Notwithstanding any provision to the contrary contained in this Agreement, if calculation of the amount of any bonus payment, if any, under an Incentive Plan is not administratively practicable due to events beyond the control of the Executive (or the Executive's beneficiary), the payment will be treated as made upon the date specified under the Incentive Plan if the payment is made during the first taxable year of the Executive in which the calculation of the amount of the payment is administratively practicable.

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4.6. Release. The Company's obligation to pay Executive the Severance Payment (Section 4.2.1.1) and the Change in Control Severance Payment (Section 4.3.1), shall be subject to the Executive executing a release of claims against the Company before the end of the Release Expiration Date (defined below) and provided further that nothing contained in such release shall constitute a release of the Company from any obligations it may have to the Executive (a) under this Agreement or any other written agreement between the Executive and the Company in effect as of the date of termination; (b) relating to any employee benefit plan, stock option plan, stock option agreement or ownership of the Company's stock or debt securities; or (c) relating to any rights of indemnification and/or defense under the Company's certificate of incorporation, bylaws, under any other written agreement between the Executive and the Company or coverage under officers and directors insurance. The Company will deliver such release to Executive pursuant to and in accordance with the terms of this Section 4.6 within ten (10) calendar days following the date on which such termination of employment constitutes a separation of service under the terms of this Agreement, and the Company's failure to deliver such release prior to the expiration of such date of termination shall constitute a waiver of any requirement to execute such release. Assuming timely delivery of the release by the Company, if the release is pursuant to and in accordance with this Section 4.6, and Executive fails to execute such release on or prior to the Release Expiration Date, Executive will not be entitled to Severance Payments or the Change in Control Severance Payment. In any case where the date of the separation from service and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are subject to the release condition and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. The term "Release Expiration Date" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers to Executive the release meeting the requirements as provided above, or in the event that Executive's separation from service is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery.

4.7. No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Section 4 be reduced by any compensation earned by the Executive as the result of the Executive's employment by another person, employer or business or by profits earned by the Executive from any other source at any time before and after the Executive's date of termination.

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4.8. Termination by the Executive for Any Reasons Other Than Good Reason. Upon Executive's separation from service as a result of the Executive terminating his employment with the Company for any reason other than for Good Reason during the Term, the Company shall pay to the Executive in a single lump sum payment on the date of such separation from service an amount equal to the Amounts and Benefits.

4.9. Resignation of All Other Positions. On termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

#### 5. Notice of Termination.

5.1. By Company. The Company shall not be deemed to have terminated this Agreement for "Cause" pursuant to the terms of Sections 4.1.3 and 4.2.1 hereof, unless and until there shall have been delivered to the Executive a copy of a resolution ("Notice of Termination for Cause") duly adopted by the affirmative vote of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together, with the Executive's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive should be terminated for "Cause" pursuant to Section 4.1.3 and 4.2.1, and specifying the particulars thereof in detail.

5.2. By Executive. The Executive shall not be deemed to have terminated this Agreement pursuant to the terms of Section 4.2 hereof, unless and until there shall have been delivered by the Executive to the Company a "Notice of Termination for Good Reason" which shall state the specific termination provision relied upon, and specifying the particulars thereof in detail.

#### 6. Indemnification.

- 6.1. The Company shall indemnify, defend and hold harmless the Executive against any and all expenses reasonably incurred by him in connection with or arising out of (a) the defense of any action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), in which he is a party, or (b) any claim asserted or threatened against him, in either case by reason of or relating to his being or having been an employee, officer, director or agent of the Company or a subsidiary of the Company or another company partnership, joint venture, trust or other enterprise for which he was serving in such capacity at the request of the Company, whether or not he continues to be such an employee, officer, director or agent at the time of incurring such expenses, provided, however, no such indemnification shall be made (i) if such indemnification is prohibited by law, (ii) with respect to any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, or (iii) if it is determined by a court of competent jurisdiction that the Executive did not (A) act in good faith, (B) act in a manner he reasonably believed to be in or not opposed to the best interest of the Company or (C) have reasonable cause to believe his conduct was not unlawful. Such expenses shall include, without limitation, the fees and disbursements of attorneys, amounts of judgments and amounts of any settlements. The foregoing indemnification obligation is independent of any similar obligation provided in the Company's certificate of incorporation or bylaws, and shall apply with respect to any matters attributable to periods prior to or after the date of this Agreement, and to matters attributable to the Executive's employment hereunder, without regard to when asserted. In no event shall the Company be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel, and the Company will not indemnify the Executive for the fees or expenses of the Executive's counsel in connection with any claim which is being defended by counsel appointed by the Company or the Company's insurance carrier; provided, however, that if the Executive shall have reasonably concluded (based on the advice of counsel) that there is a conflict of interest between the Company and the Executive for counsel appointed by the Company or the Company's insurance carrier that would prohibit the counsel retained by the Company or its insurance carrier from representing the Executive, the Company shall reimburse the Executive for the reasonable fees and expenses of one (1) separate counsel in addition to any local counsel for the Executive in connection with such claims, subject to the limitations set forth above in this Section 6.

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- 6.2. Costs and expenses incurred by the Executive in defense of any such Proceeding described in Section 6.1 above for which indemnification is to be made by the Company (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

#### 7. Section 409A and Section 280G of the Code

- 7.1. Compliance with Section 409A. It is intended that the provisions of this Agreement comply with or be excepted from Section 409A, as applicable, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to, in good faith, reform such provision to comply with Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained, but the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A to the extent such compliance is required. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A so long as it has acted in good faith with regard to compliance therewith.

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- 7.2. Separation From Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment" or like terms shall mean Separation from Service. If the Executive is deemed on the date of termination of his employment to be a "specified employee", within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology, then with regard to any payment, the providing of any benefit or any distribution of equity made subject to this Section to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, and any other payment, the provision of any other benefit or any other distribution of equity that is required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment, benefit or distribution shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of the Executive's Separation from Service or (ii) the date of the Executive's death. On the first day of the seventh month following the date of the Executive's Separation from Service or, if earlier, on the date of his death, (x) all payments delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein and (y) all distributions of equity delayed pursuant to this Section 7.2 shall be made to the Executive. In addition to the foregoing, to the extent required by Section 409A(a)(2)(B) of the Code, prior to the occurrence of a Disability termination as provided in this Agreement, the payment of any compensation to the Executive under this Agreement shall be suspended for a period of six months commencing at such time that the Executive shall be deemed to have had a Separation from Service because either (A) a sick leave ceases to be a bona fide sick leave of absence, or (B) the permitted time period for a sick leave of absence expires (an "SFS Disability"), without regard to whether such SFS Disability actually results in a Disability termination. Promptly following the expiration of such six-month period, all compensation suspended pursuant to the foregoing sentence (whether it would have otherwise been payable in a single sum or in installments in the absence of such suspension) shall be paid or reimbursed to the Executive in a lump sum. On any delayed payment date under this Section there shall be paid to the Executive or, if the Executive has died, to his estate, in a single cash lump sum together with the payment of such delayed payment, interest on the aggregate amount of such delayed payment at the Delayed Payment Interest Rate (defined below in this Section 7.2) computed from the date on which such delayed payment otherwise would have been made to the Executive until the date paid. For purposes of the foregoing, the "Delayed Payment Interest Rate" shall mean the short term applicable federal rate provided for in Section 1274(d) of the Code as of the business day immediately preceding the payment date for the applicable delayed payment. To the extent that this Agreement provides for any payments of nonqualified deferred compensation (within the meaning of Section 409A) to be made in installments (including, without limitation, any severance payments), each such installment shall be deemed to be a separate and distinct payment for purposes of Section 409A.

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- 7.3. Reimbursement Provisions. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred.

- 7.4. 280G Parachute Payments. In the event that any payments or benefits (whether made or provided pursuant to this Agreement or otherwise) provided to Executive constitute “parachute payments” within the meaning of Section 280G of the Code (“Parachute Payments”), and will be subject to an excise tax imposed pursuant to Section 4999 of the Code, the Executive’s Parachute Payments will be reduced to an amount determined by the Company in good faith to be the maximum amount that may be provided to the Executive without resulting in any portion of such Parachute Payments being subject to such excise tax (the amount of such reduction, “Cutback Benefits”). The Parachute Payment reduction contemplated by the preceding sentence, if applicable, shall be implemented by determining the “Parachute Payment Ratio” (as defined below) for each Parachute Payment and then reducing the Parachute Payment in order beginning with the Parachute Payment with the highest Parachute Payment Ratio. For Parachute Payments with the same Parachute Payment Ratio, such Parachute Payments shall be reduced based on the time of payment of such Parachute Payments, with amounts having later payment dates being reduced first. For Parachute Payments with the same Parachute Payment Ratio and the same time of payment, such Parachute Payments shall be reduced on a pro rata basis (but not below zero) prior to reducing Parachute Payments with a lower Parachute Payment Ratio. For purposes hereof, the term “Parachute Payment Ratio” shall mean a fraction the numerator of which is the value of the applicable Parachute Payment for purposes of Section 280G of the Code and the denominator of which is the intrinsic value of such Parachute Payment.

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- 7.5. Clawback Provisions. Notwithstanding any provision of this Agreement to the contrary, Executive acknowledges that any incentive-based compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government, regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement),

#### 8. Miscellaneous.

- 8.1. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with those laws, without reference to principles of conflict of laws. The Company and the Executive unconditionally consent to submit to the exclusive jurisdiction of any state or federal court located in Atlanta, Georgia, for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by registered mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against the Company or the Executive, as the case may be, in any such court.
- 8.2. No Assignment. The Executive may not delegate his duties or assign his rights hereunder. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company other than pursuant to a merger or consolidation in which the Company is not the continuing entity, or a sale, liquidation or other disposition of all or substantially all of the assets of the Company. For the purposes of this Agreement, the term “Company” shall include the Company and, subject to the foregoing, any of its successors and assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 8.3. Severable. The invalidity or unenforceability of any provision hereof shall not in any way affect the validity or enforceability of any other provision.

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- 8.4. Entire Understanding; Modification and Waiver. Unless specifically provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or termination of this Agreement will be effective only if it is in writing signed by the parties hereto. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- 8.5. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto.
- 8.6. Mutual Non-Disparagement. Subject to applicable law, the Executive covenants and agrees that the Executive shall not in any way publicly disparage, call into disrepute, or otherwise defame or slander the Company or any of its subsidiaries, in any manner that would materially damage the business or reputation of the Company or its subsidiaries. The Company covenants and agrees, on behalf of itself and its subsidiaries, that neither the Company, any of its subsidiaries nor any of the officers, directors or key employees of the Company or any of its subsidiaries shall in any way publicly disparage, call into disrepute, or otherwise defame or slander the Executive. Nothing in this paragraph 8.6 shall preclude or restrict the Executive or the Company, any of the subsidiaries of the Company or any of the Company’s officers, directors or key employees from making truthful statements, including, without limitation, those that are required by applicable law, regulation or in connection with a legal process or proceeding, and the making of such statements shall not be a violation of this subsection.
- 8.7. Confidential Information and Restrictive Covenants
- 8.7.1 No Disclosure. Subject to the terms of this Section 8.7, during the Restricted Period (as defined below), the Executive agrees to hold in confidence and not disclose any and all proprietary, secret or confidential information (“Confidential Information”) relating to the Company or the Company’s subsidiaries, which shall have been obtained by the Executive during the Executive’s employment by the Company. Confidential Information is defined as the proprietary, client or business information of the Company, written or in a physical embodiment, including, but not limited to, customer lists, employee lists, financial information, pricing data, sales data, marketing data, or business plans or proposals.

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- 8.7.2 Exception. Notwithstanding the provisions of Section 8.7.1 above, the Executive shall not be held liable for disclosure of information which was in the public domain, or is readily available to the public at the time of its disclosure by the Executive through means unrelated to the Executive’s disclosure, or is required to be disclosed in, or in connection with, a legal proceeding or process or is required to be disclosed by law, rule or regulation.
- 8.7.3 Permitted Communications. Nothing herein prohibits or restricts the Executive (or the Executive’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the SEC, the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding a possible securities law violation.

8.7.4 Other Restrictive Covenant. Subject to the terms hereof, the Executive agrees that during the Restricted Period he will not, by or for himself, or as an agent, representative or employee of another, do or attempt to solicit, entice, persuade or induce any individual who is employed by the Company or its subsidiaries (or was so employed within 90 days prior to the Executive's action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Company or its subsidiaries.

8.7.5 Restricted Period. "Restricted Period" is the 12-month period after the date of termination of the Executive's employment with the Company.

8.7.6 Other Agreements. If any of the restrictions provided in Section 8.7 are contrary to the requirements or limitations contained in any other agreement between the Executive and the Company, the terms of this Section 8.7 of this Agreement shall be controlling.

8.8. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

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#### 9. Notices.

All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by telecopy (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one business day after being sent by telecopy or five days after being mailed.

If to the Company:           Penna-Fix Environmental Services, Inc.  
8302 Dunwoody Place, Suite 250  
Atlanta, Georgia 30350 Attn: President

If to the Executive:       Louis F. Centofanti  
315 Wilderlake Ct  
Atlanta, GA 30328

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 25th day of April, 2023.

The "Company"

PERMA-FIX ENVIRONMENTAL SERVICES,  
INC., a Delaware corporation

By: /s/ Larry Shelton  
Larry Shelton, Chairman of the Board

The "Executive"

/s/ Louis Centofanti  
LOUIS F. CENTOFANTI

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the **20th day of April, 2023**, by and between PERMA-FIX ENVIRONMENTAL SERVICES, INC., a Delaware corporation (the “Company”), and Andrew Lombardo (the “Executive”).

WITNESSETH:

WHEREAS, the Company believes that the services, knowledge, and contributions of the Executive to the Company are of critical importance to the Company;

WHEREAS, the Company wishes to ensure that the Executive will continue to provide his services, knowledge and contributions to the Company; and

WHEREAS, the Executive is currently a “specified employee” as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (collectively, “Section 409A”);

WHEREAS, the Company and the Executive have previously entered into, or may from time to time enter into a separate arrangement, to provide certain management incentive compensation bonuses to the Executive based on the Company’s performance during a particular year or other period or periods.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth in this Agreement, the Company and the Executive agree as follows:

1. Term. Unless sooner terminated pursuant to the terms hereof, the term of this Agreement shall commence on the date hereof and terminate three (3) years from the date hereof unless earlier terminated as provided in this Agreement (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically be extended for one (1) additional year unless at least six (6) months prior to expiration of the Initial Term, the Company or the Executive shall have given written notice to the other not to extend the term of this Agreement. The Initial Term, as may be extended, is hereafter referred to as the “Term”.

2. Position and Duties.

2.1. Position. The Company agrees to employ the Executive, and the Executive agrees to such employment, as Executive Vice President of Nuclear and Technical Services of the Company, or such other position as the Executive and the Company agrees in writing as being acceptable to both of them. The Executive’s authority and duties, including, but not limited to, hierarchical standing in the Company and reporting requirements within the Company, shall be substantially similar in all material respects with the most significant of those exercised by the Executive during the 90 day period immediately preceding the date of this Agreement, except as otherwise agreed to in writing executed by both the Executive and the Company.

2.2. Location. The Executive’s duties and services shall be performed in New Brighton, Pennsylvania, except for travel responsibilities required in the performance of the Executive’s duties.

2.3. Duties. Excluding any periods of vacation and sick leave to which the Executive is entitled, and except as otherwise provided in Section 2.4 below, the Executive agrees to faithfully perform the duties of his office, and to devote substantially all of the Executive’s business time and attention to the business and affairs of the Company, as directed by the Board of Directors of the Company from time to time (the “Board”) and the Chief Executive Officer, and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

2.4. Other Activities. Notwithstanding Section 2.3, it shall not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, as long as such activities are disclosed in writing to the Board and not otherwise disapproved for being in violation of the Company’s Code of Business Conduct and Ethics Policy, (ii) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as any such investment represents a passive investment and the Executive is not a controlling person of, or a member of a group that controls, the entity in which the Executive is invested, and provided further, that any such entity in which the Executive is invested is not engaged in activities that are competitive with those of the Company, as determined by the Board in its discretion. Any such activities described in this Section 2.4 may not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

3. Compensation and Benefits.

3.1. Annual Base Salary. The Compensation and Stock Option Committee of the Board (the “Compensation Committee”) has set the annual base salary of the Executive at **\$304,772** Dollars per year (“Base Salary”), which Base Salary is payable by the Company to the Executive in equal bi-weekly installments, less appropriate withholdings and deductions in accordance with the Company’s customary payroll practices, with the amount of the Base Salary payable each year subject to adjustment as provided in Section 3.2 below.

3.2. Adjustment to Base Salary. The Base Salary may be increased, but not be reduced, from time to time as determined by and in the sole discretion of the Compensation Committee.

3.3. Incentive Compensation Bonus. In addition to the Base Salary, each year during the Term the Company will pay to the Executive the incentive compensation bonus, if any, that is payable pursuant to a Management Incentive Plan (“Incentive Plan”) in effect for such year that may be adopted by the Board of the Company or the Compensation Committee and agreed to by the Executive with respect to the particular fiscal year of the Company, (an “Incentive Bonus”) in accordance with and pursuant to the terms of the Incentive Plan. The Incentive Bonus, if any, may be modified, changed or terminated at any time or for any reason by the Compensation Committee in its sole discretion in accordance with the terms of the particular Incentive Plan.

3.4. Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans that are generally made available to other employees of the Company, subject to the terms and conditions of such benefits and plans and, as such benefits and plans may be changed by the Company from time to time. Such benefits include, but not limited to, (i) group medical insurance coverage, (ii) group life insurance coverage and (iii) certain stock option plans. The Company reserves the right to amend or terminate any employee benefit plans at any time in its sole discretion, subject to the terms of such employee benefit plan and applicable law.

- 3.5. Expenses. During the Term, the Company shall pay directly, or reimburse the Executive, for any reasonable and necessary expenses and costs incurred by the Executive in connection with, or arising out of, the performance of the Executive's duties hereunder, provided that such expenses and costs shall be paid or reimbursed subject to such rules, regulations, and policies of the Company as established from time to time by the Company and the applicable laws to which the Company is subject, and provided further that the Executive is not otherwise in breach of this Agreement with respect to the activity for which the Executive is seeking reimbursement.

In the event the Executive incurs legal fees and expenses to enforce this Agreement, the Company shall promptly reimburse the Executive the reasonable and necessary legal fees and expenses of the Executive in enforcing this Agreement, but only upon the adjudication by a court of competent jurisdiction that the Executive is not otherwise in breach of this Agreement.

- 3.6. Fringe Benefits. During the Term, the Executive shall be entitled to all fringe benefits, including, but not limited to, vacation in accordance with Section 3.7 or, if more favorable to the Executive, the most favorable plans, practices, programs and policies of the Company during 12-month period immediately preceding the date of this Agreement, or, if more favorable to the Executive, as in effect at any time thereafter with respect to other senior executives of the Company.
- 3.7. Vacation. The Executive shall be entitled to three (3) weeks of paid vacation per year except that after five (5) years of employment with the Company the Executive shall be entitled to four (4) weeks of paid vacation per year and except that after fifteen (15) years of employment with the Company the Executive shall be entitled to five (5) weeks of paid vacation per year or such longer period as provided in Section 3.6 above.

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#### 4. Termination.

- 4.1. Termination by the Company as a Result of Death or Disability; Termination by the Company for Cause; Termination by the Executive for Good Reason. At any time during the Term, the Executive's employment with the Company may be terminated for the following reasons:

4.1.1 Death. The Executive's employment with the Company shall terminate automatically upon the Executive's death.

4.1.2 Disability.

4.1.2.1 Definition. "Disability" of the Executive is defined for the purposes of this Agreement as the Executive being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

4.1.2.2 Application. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company after establishing the Executive's Disability as set forth in this Section 4.1.2, and giving written notice of its intention to terminate the Executive's employment with the Company ("Disability Termination Notice"). In such a case, the Executive's employment with the Company shall terminate effective on the earlier of the otherwise scheduled expiration of the Term pursuant to Section 4.1.2 or on the thirtieth (30<sup>th</sup>) day after receipt of the Disability Termination Notice, provided that the Executive has not resumed full-time performance of his duties under this Agreement. Notwithstanding the foregoing, if the Executive has recovered from a Disability and returned to full-time service prior to the date of termination set forth in the Disability Termination Notice relating thereto, the Company may not thereafter terminate the Executive's employment under this Agreement due to such Disability.

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4.1.3 Cause. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company at any time for "Cause". For the purposes of this Agreement, "Cause" is defined as (i) the ultimate conviction (after all appeals have been decided) of the Executive by a court of competent jurisdiction of, or a plea of nolo contendere or a plea of guilty by the Executive to, a felony involving moral turpitude; or (ii) willful or gross misconduct or gross neglect of duties by the Executive, which has a material adverse effect on the Company, provided that, (a) no action or failure to act by the Executive will constitute a reason for termination if the Executive believed in good faith that such action or failure to act was in the Company's best interests, as determined in good faith by the Board in its sole discretion, and (b) failure of the Executive to perform his duties hereunder due to a Disability shall not be considered gross misconduct or willful, gross neglect of duties for any purpose; (iii) the commission by the Executive of an act of fraud or embezzlement against the Company or a subsidiary of the Company; (iv) the Executive's willful failure to comply with any valid and legal directive of the Board; (v) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (vi) the Executive's willful unauthorized disclosure of Confidential Information (as defined in Section 8.7.1 of this Agreement); or (vii) the Executive's breach of any material provision of this Agreement or any other written agreement between the Executive and the Company, provided however, that failure of the Executive to perform his duties hereunder due to Disability shall not be considered a breach of this Agreement. For the purposes of this Section 4.1.3, no act or failure to act shall be considered "willful" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company.

4.1.4 Good Reason. Subject to the terms of this Agreement, the Executive may terminate the Executive's employment under this Agreement for Good Reason (defined below) at any time on or prior to the 60<sup>th</sup> day after the occurrence of any of the Good Reason events set forth in the following sentence; provided, however, that, within 30 days after the occurrence of any such event, the Executive shall have provided the Company with a Notice of Termination with respect to such event and afforded the Company a period of 30 days after its receipt of such Notice of Termination to cure the default that constitutes the Good Reason event relied upon by the Executive for such termination. For purposes of this Agreement, "Good Reason" shall mean the occurrence, during the Term of this Agreement, of any of the following events without the Executive's prior written consent:

4.1.4.1 the failure by the Company to timely comply with its material obligations and agreements contained in this Agreement; or

4.1.4.2 the removal of the Executive from the position of, or the loss by the Executive of the title of, Executive Vice President of Nuclear and Technical Services of the Company (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

4.1.4.3 a material diminution of the authorities, duties or responsibilities of the Executive set forth in Section 2 of this Agreement (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

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- 4.1.4.4 the relocation of the Executive to an office outside of the New Brighton, Pennsylvania metropolitan area; or
- 4.1.4.5 the Executive being required to report to someone other than the Board (the "Board"); or
- 4.1.4.6 any other action by the Company which results in a material reduction in compensation payable to the Executive (other than a general reduction in base salary that affects all similarly situated executives in substantially the same proportions) or in the position, authority, duties, other responsibilities, other than insubstantial and inadvertent action which is promptly remedied by the Company after receipt of notice thereof from the Executive.
- 4.1.5 Without Good Reason. Subject to the terms of this Agreement, the Executive may voluntarily terminate his employment under this Agreement without Good Reason upon written Notice of Termination to the Company at least 30 days prior to the effective date of termination (which termination the Company may, in its sole discretion, make effective earlier than the date set forth in the Executive's Notice of Termination).
- 4.1.6 Death. Upon the Executive's separation from service as a result of the termination of Executive's employment with the Company due to the Executive's Death, the Company shall pay to the Executive's estate and/or beneficiary, in a single lump sum payment, in current funds, within thirty (30) days of the Executive's Death, the following:
  - 4.1.6.1 any earned but unpaid Base Salary through the date of termination;
  - 4.1.6.2 reimbursement for any unreimbursed expenses properly incurred and paid in accordance with the terms of this Agreement, above, through the date of the Executive's Death;
  - 4.1.6.3 payment for any accrued but unused vacation time in accordance with the terms of this Agreement and the Company policy;
  - 4.1.6.4 such vested accrued benefits and other payments, if any, as to which the Executive (and his eligible dependents) may be entitled under, and in accordance with the terms and conditions of, the Company's employee benefit arrangements, other than any severance pay plan (4.1.6.1 through 4.1.6.4 collectively, the "Amounts and Benefits");
  - 4.1.6.5 any bonuses earned by the Executive but remaining unpaid for any year prior to the year in which the date of termination occurs (the "Prior Year Bonuses");

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- 4.1.6.6 a "Pro-Rata Bonus", which for purposes of this Agreement means (A) in the event the Company has established an Incentive Plan one or more executive bonus programs with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the aggregate bonuses payable under such bonus programs for the year in which the date of termination occurs (determined by multiplying the amount of the Executive's bonus which would be due for the full year by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365), provided that the performance goals established with respect to the entire such year are met, and provided, further, that in the event the date of termination occurs prior to the determination of performance goals applicable to the performance period for the year of the Executive's termination of employment, the performance criteria applicable to the Executive in respect of the Pro-Rata Bonus shall be at least as favorable to the Executive as the most favorable performance criteria applicable for that year to any award to a named executive officer of the Company, within the meaning of Section 402(a)(3) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"); or (B) in the event the Company has not established an Incentive Plan providing an incentive bonus plan with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs (determined by multiplying the amount of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365). If payable under (A), the Pro-Rata Bonus shall be payable in due course pursuant to the terms of the applicable bonus programs which shall be paid on or about 90 days after year-end or sooner, based on the Company's audited financial statements included in its Form 10-K filed with the SEC, subject to Section 4.5 of this Agreement. If payable under (B), the Pro-Rata Bonus shall be payable within thirty (30) days following the date of termination;
- 4.1.6.7 a lump-sum payment (the "Cash Medical Continuation Benefit") equal to (x) 18 multiplied by (y) the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), to continue group health coverage for the Executive's eligible covered dependents in effect on the date of the Executive's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the Executive's eligible covered dependents actually elect COBRA continuation coverage. ; and

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- 4.1.6.8 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, with such options and awards remaining exercisable for the lesser of the original option term or twelve (12) months from the date of the Executive's death.
- 4.1.7 Upon the Executive's separation from service as a result of the termination of Executive's employment by the Company for Cause, the Company shall pay to the Executive in a single lump sum payment, in current funds, on the date of such termination of employment the following:
  - 4.1.7.1 any earned but unpaid Base Salary through the date of termination; and
  - 4.1.7.2 any amounts payable to the Executive pursuant to the Prior Year Bonuses under the Company's prior year Incentive Plan.

4.2. Termination by the Company without Cause or Termination by the Executive for Good Reason.

4.2.1 Subject to the terms of this Agreement, the Company may terminate the Executive's employment at any time during the Term without Cause and the Executive may terminate his employment with the Company at any time during the Term for Good Reason. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of Death or Disability) during the Term, and the Executive has not received and is not entitled to any payment under Sections 4.3.1 hereof, then the Company shall pay or provide the Executive on the date of such termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.1) the following:

4.2.1.1 a lump sum cash payment in the total amount equal to the sum of (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid the Incentive Bonus for the immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, the "Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.2.1.2 the Amounts and Benefits;

4.2.1.3 the Prior Year Bonuses;

4.2.1.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.2.1.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.2.1.6 in the event a Change in Control shall not have theretofore occurred, and the Company has terminated the Executive's employment under this Agreement without Cause or the Executive has terminated his employment under this Agreement for Good Reason, notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, and the Executive shall be entitled to exercise such options within the sixty (60) consecutive day period immediately following the date of termination (but not after the original option term).

4.3. Termination Following a Change in Control. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of death or Disability) within 24 months after a Change in Control (defined below), then the Company shall pay or provide the Executive on the date of termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.2):

4.3.1 a lump sum cash payment in the total amount equal to the sum of: (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid his Incentive Bonus for such immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, "Change in Control Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.3.2 the Amounts and Benefits;

4.3.3 the Prior Year Bonuses;

4.3.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.3.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.3.6 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, in the event of a Change in Control, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination through the original term of such option or equity award.

4.4. Change in Control. For purposes of this Agreement, a "Change in Control" means any of the following events, within the meaning of Code Section 409A(a)(2)(A)(v), occurring during the Term:

4.4.1 individuals who, as of the date of this Agreement, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the date of this Agreement, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, or other actual or threatened solicitation of proxies by or on behalf of an individual, entity or group other than the Board relating to the election of the directors of the Company) shall be deemed to be, for purposes of this Agreement, a member of the Incumbent Board; or

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- 4.4.2 the date that any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; or
- 4.4.3 the date any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent (30%) or more of the total voting power of the stock of the Company, other than the acquisition by any person or group, which as of the date hereof has such ownership; or
- 4.4.4 the Company's execution of an agreement for a merger or consolidation or other business combination involving the Company in which the Company is not the surviving corporation, or, if immediately following such merger or consolidation or other business combination, less than fifty percent (50%) of the surviving corporation's outstanding voting stock is held by persons who are stockholders of the Company immediately prior to such merger or consolidation or other business combination; or
- 4.4.5 the Company's adoption of a plan of dissolution or liquidation, other than if the Company is in bankruptcy at the time such plan of dissolution or liquidation is adopted.

For purposes of this Agreement, the term "person" shall mean any individual, firm, corporation or other entity and shall include any successor (by merger, consolidation or otherwise) of such entity.

- 4.5. Payments of Compensation Upon Termination. Notwithstanding any provision to the contrary contained in this Agreement, if calculation of the amount of any bonus payment, if any, under an Incentive Plan is not administratively practicable due to events beyond the control of the Executive (or the Executive's beneficiary), the payment will be treated as made upon the date specified under the Incentive Plan if the payment is made during the first taxable year of the Executive in which the calculation of the amount of the payment is administratively practicable.

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- 4.6. Release. The Company's obligation to pay Executive the Severance Payment (Section 4.2.1.1) and the Change in Control Severance Payment (Section 4.3.1), shall be subject to the Executive executing a release of claims against the Company before the end of the Release Expiration Date (defined below) and provided further that nothing contained in such release shall constitute a release of the Company from any obligations it may have to the Executive (a) under this Agreement or any other written agreement between the Executive and the Company in effect as of the date of termination; (b) relating to any employee benefit plan, stock option plan, stock option agreement or ownership of the Company's stock or debt securities; or (c) relating to any rights of indemnification and/or defense under the Company's certificate of incorporation, bylaws, under any other written agreement between the Executive and the Company or coverage under officers and directors insurance. The Company will deliver such release to Executive pursuant to and in accordance with the terms of this Section 4.6 within ten (10) calendar days following the date on which such termination of employment constitutes a separation of service under the terms of this Agreement, and the Company's failure to deliver such release prior to the expiration of such date of termination shall constitute a waiver of any requirement to execute such release. Assuming timely delivery of the release by the Company, if the release is pursuant to and in accordance with this Section 4.6, and Executive fails to execute such release on or prior to the Release Expiration Date, Executive will not be entitled to Severance Payments or the Change in Control Severance Payment. In any case where the date of the separation from service and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are subject to the release condition and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. The term "Release Expiration Date" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers to Executive the release meeting the requirements as provided above, or in the event that Executive's separation from service is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery.
- 4.7. No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Section 4 be reduced by any compensation earned by the Executive as the result of the Executive's employment by another person, employer or business or by profits earned by the Executive from any other source at any time before and after the Executive's date of termination.

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- 4.8. Termination by the Executive for Any Reasons Other Than Good Reason. Upon Executive's separation from service as a result of the Executive terminating his employment with the Company for any reason other than for Good Reason during the Term, the Company shall pay to the Executive in a single lump sum payment on the date of such separation from service an amount equal to the Amounts and Benefits.
- 4.9. Resignation of All Other Positions. On termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

## 5. Notice of Termination.

- 5.1. By Company. The Company shall not be deemed to have terminated this Agreement for "Cause" pursuant to the terms of Sections 4.1.3 and 4.2.1 hereof, unless and until there shall have been delivered to the Executive a copy of a resolution ("Notice of Termination for Cause") duly adopted by the affirmative vote of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together, with the Executive's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive should be terminated for "Cause" pursuant to Section 4.1.3 and 4.2.1, and specifying the particulars thereof in detail.
- 5.2. By Executive. The Executive shall not be deemed to have terminated this Agreement pursuant to the terms of Section 4.2 hereof, unless and until there shall have been delivered by the Executive to the Company a "Notice of Termination for Good Reason" which shall state the specific termination provision relied upon, and specifying the particulars thereof in detail.

## 6. Indemnification.

- 6.1. The Company shall indemnify, defend and hold harmless the Executive against any and all expenses reasonably incurred by him in connection with or arising out of (a) the defense of any action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), in which he is a party, or (b) any claim asserted or threatened against him, in either case by reason of or relating to his being or having been an employee, officer, director or agent of the Company or a subsidiary of the Company or another company partnership, joint venture, trust or other enterprise for which he was serving in such capacity at the request of the Company, whether or not he continues to be such an employee, officer, director or agent at the time of incurring such expenses, provided, however, no such indemnification shall be made (i) if such indemnification is prohibited by law, (ii) with respect to any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, or (iii) if it is determined by a court of competent jurisdiction that the Executive did not (A) act in good faith, (B) act in a manner he reasonably believed to be in or not opposed to the best interest of the Company or (C) have reasonable cause to believe his conduct was not unlawful. Such expenses shall include, without limitation, the fees and disbursements of attorneys, amounts of judgments and amounts of any settlements. The foregoing indemnification obligation is independent of any similar obligation provided in the Company's certificate of incorporation or bylaws, and shall apply with respect to any matters attributable to periods prior to or after the date of this Agreement, and to matters attributable to the Executive's employment hereunder, without regard to when asserted. In no event shall the Company be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel, and the Company will not indemnify the Executive for the fees or expenses of the Executive's counsel in connection with any claim which is being defended by counsel appointed by the Company or the Company's insurance carrier; provided, however, that if the Executive shall have reasonably concluded (based on the advice of counsel) that there is a conflict of interest between the Company and the Executive for counsel appointed by the Company or the Company's insurance carrier that would prohibit the counsel retained by the Company or its insurance carrier from representing the Executive, the Company shall reimburse the Executive for the reasonable fees and expenses of one (1) separate counsel in addition to any local counsel for the Executive in connection with such claims, subject to the limitations set forth above in this Section 6.

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- 6.2. Costs and expenses incurred by the Executive in defense of any such Proceeding described in Section 6.1 above for which indemnification is to be made by the Company (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

#### 7. Section 409A and Section 280G of the Code

- 7.1. Compliance with Section 409A. It is intended that the provisions of this Agreement comply with or be excepted from Section 409A, as applicable, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to, in good faith, reform such provision to comply with Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained, but the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A to the extent such compliance is required. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A so long as it has acted in good faith with regard to compliance therewith.

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- 7.2. Separation From Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment" or like terms shall mean Separation from Service. If the Executive is deemed on the date of termination of his employment to be a "specified employee", within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology, then with regard to any payment, the providing of any benefit or any distribution of equity made subject to this Section to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, and any other payment, the provision of any other benefit or any other distribution of equity that is required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment, benefit or distribution shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of the Executive's Separation from Service or (ii) the date of the Executive's death. On the first day of the seventh month following the date of the Executive's Separation from Service or, if earlier, on the date of his death, (x) all payments delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein and (y) all distributions of equity delayed pursuant to this Section 7.2 shall be made to the Executive. In addition to the foregoing, to the extent required by Section 409A(a)(2)(B) of the Code, prior to the occurrence of a Disability termination as provided in this Agreement, the payment of any compensation to the Executive under this Agreement shall be suspended for a period of six months commencing at such time that the Executive shall be deemed to have had a Separation from Service because either (A) a sick leave ceases to be a bona fide sick leave of absence, or (B) the permitted time period for a sick leave of absence expires (an "SFS Disability"), without regard to whether such SFS Disability actually results in a Disability termination. Promptly following the expiration of such six-month period, all compensation suspended pursuant to the foregoing sentence (whether it would have otherwise been payable in a single sum or in installments in the absence of such suspension) shall be paid or reimbursed to the Executive in a lump sum. On any delayed payment date under this Section there shall be paid to the Executive or, if the Executive has died, to his estate, in a single cash lump sum together with the payment of such delayed payment, interest on the aggregate amount of such delayed payment at the Delayed Payment Interest Rate (defined below in this Section 7.2) computed from the date on which such delayed payment otherwise would have been made to the Executive until the date paid. For purposes of the foregoing, the "Delayed Payment Interest Rate" shall mean the short term applicable federal rate provided for in Section 1274(d) of the Code as of the business day immediately preceding the payment date for the applicable delayed payment. To the extent that this Agreement provides for any payments of nonqualified deferred compensation (within the meaning of Section 409A) to be made in installments (including, without limitation, any severance payments), each such installment shall be deemed to be a separate and distinct payment for purposes of Section 409A.

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- 7.3. Reimbursement Provisions. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred.

- 7.4. 280G Parachute Payments. In the event that any payments or benefits (whether made or provided pursuant to this Agreement or otherwise) provided to Executive constitute “parachute payments” within the meaning of Section 280G of the Code (“Parachute Payments”), and will be subject to an excise tax imposed pursuant to Section 4999 of the Code, the Executive’s Parachute Payments will be reduced to an amount determined by the Company in good faith to be the maximum amount that may be provided to the Executive without resulting in any portion of such Parachute Payments being subject to such excise tax (the amount of such reduction, “Cutback Benefits”). The Parachute Payment reduction contemplated by the preceding sentence, if applicable, shall be implemented by determining the “Parachute Payment Ratio” (as defined below) for each Parachute Payment and then reducing the Parachute Payment in order beginning with the Parachute Payment with the highest Parachute Payment Ratio. For Parachute Payments with the same Parachute Payment Ratio, such Parachute Payments shall be reduced based on the time of payment of such Parachute Payments, with amounts having later payment dates being reduced first. For Parachute Payments with the same Parachute Payment Ratio and the same time of payment, such Parachute Payments shall be reduced on a pro rata basis (but not below zero) prior to reducing Parachute Payments with a lower Parachute Payment Ratio. For purposes hereof, the term “Parachute Payment Ratio” shall mean a fraction the numerator of which is the value of the applicable Parachute Payment for purposes of Section 280G of the Code and the denominator of which is the intrinsic value of such Parachute Payment.

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- 7.5. Clawback Provisions. Notwithstanding any provision of this Agreement to the contrary, Executive acknowledges that any incentive-based compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government, regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement),

#### 8. Miscellaneous.

- 8.1. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with those laws, without reference to principles of conflict of laws. The Company and the Executive unconditionally consent to submit to the exclusive jurisdiction of any state or federal court located in Atlanta, Georgia, for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by registered mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against the Company or the Executive, as the case may be, in any such court.
- 8.2. No Assignment. The Executive may not delegate his duties or assign his rights hereunder. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company other than pursuant to a merger or consolidation in which the Company is not the continuing entity, or a sale, liquidation or other disposition of all or substantially all of the assets of the Company. For the purposes of this Agreement, the term “Company” shall include the Company and, subject to the foregoing, any of its successors and assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 8.3. Severable. The invalidity or unenforceability of any provision hereof shall not in any way affect the validity or enforceability of any other provision.

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- 8.4. Entire Understanding; Modification and Waiver. Unless specifically provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or termination of this Agreement will be effective only if it is in writing signed by the parties hereto. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- 8.5. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto.
- 8.6. Mutual Non-Disparagement. Subject to applicable law, the Executive covenants and agrees that the Executive shall not in any way publicly disparage, call into disrepute, or otherwise defame or slander the Company or any of its subsidiaries, in any manner that would materially damage the business or reputation of the Company or its subsidiaries. The Company covenants and agrees, on behalf of itself and its subsidiaries, that neither the Company, any of its subsidiaries nor any of the officers, directors or key employees of the Company or any of its subsidiaries shall in any way publicly disparage, call into disrepute, or otherwise defame or slander the Executive. Nothing in this paragraph 8.6 shall preclude or restrict the Executive or the Company, any of the subsidiaries of the Company or any of the Company’s officers, directors or key employees from making truthful statements, including, without limitation, those that are required by applicable law, regulation or in connection with a legal process or proceeding, and the making of such statements shall not be a violation of this subsection.
- 8.7. Confidential Information and Restrictive Covenants
- 8.7.1 No Disclosure. Subject to the terms of this Section 8.7, during the Restricted Period (as defined below), the Executive agrees to hold in confidence and not disclose any and all proprietary, secret or confidential information (“Confidential Information”) relating to the Company or the Company’s subsidiaries, which shall have been obtained by the Executive during the Executive’s employment by the Company. Confidential Information is defined as the proprietary, client or business information of the Company, written or in a physical embodiment, including, but not limited to, customer lists, employee lists, financial information, pricing data, sales data, marketing data, or business plans or proposals.

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- 8.7.2 Exception. Notwithstanding the provisions of Section 8.7.1 above, the Executive shall not be held liable for disclosure of information which was in the public domain, or is readily available to the public at the time of its disclosure by the Executive through means unrelated to the Executive’s disclosure, or is required to be disclosed in, or in connection with, a legal proceeding or process or is required to be disclosed by law, rule or regulation.
- 8.7.3 Permitted Communications. Nothing herein prohibits or restricts the Executive (or the Executive’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the SEC, the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding a possible securities law violation.

- 8.7.4 Other Restrictive Covenant. Subject to the terms hereof, the Executive agrees that during the Restricted Period he will not, by or for himself, or as an agent, representative or employee of another, do or attempt to solicit, entice, persuade or induce any individual who is employed by the Company or its subsidiaries (or was so employed within 90 days prior to the Executive's action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Company or its subsidiaries.
- 8.7.5 Restricted Period. "Restricted Period" is the 12-month period after the date of termination of the Executive's employment with the Company.
- 8.7.6 Other Agreements. If any of the restrictions provided in Section 8.7 are contrary to the requirements or limitations contained in any other agreement between the Executive and the Company, the terms of this Section 8.7 of this Agreement shall be controlling.
- 8.8. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

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9. Notices.

All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by telecopy (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one business day after being sent by telecopy or five days after being mailed.

If to the Company:           Penna-Fix Environmental Services, Inc.  
8302 Dunwoody Place, Suite 250  
Atlanta, Georgia 30350 Attn: President

If to the Executive:        Andrew Lombardo  
205 Mulberry St Ext  
Beaver, PA 15009

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 25th day of April, 2023.

The "Company"

PERMA-FIX ENVIRONMENTAL SERVICES,  
INC., a Delaware corporation

By: /s/ Larry Shelton  
Larry Shelton, Chairman of the Board

The "Executive"

/s/ Andrew Lombardo  
ANDREW LOMBARDO

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the **20th day of April, 2023**, by and between PERMA-FIX ENVIRONMENTAL SERVICES, INC., a Delaware corporation (the “Company”), and Richard Grondin (the “Executive”).

WITNESSETH:

WHEREAS, the Company believes that the services, knowledge, and contributions of the Executive to the Company are of critical importance to the Company;

WHEREAS, the Company wishes to ensure that the Executive will continue to provide his services, knowledge and contributions to the Company; and

WHEREAS, the Executive is currently a “specified employee” as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (collectively, “Section 409A”);

WHEREAS, the Company and the Executive have previously entered into, or may from time to time enter into a separate arrangement, to provide certain management incentive compensation bonuses to the Executive based on the Company’s performance during a particular year or other period or periods.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth in this Agreement, the Company and the Executive agree as follows:

1. Term. Unless sooner terminated pursuant to the terms hereof, the term of this Agreement shall commence on the date hereof and terminate three (3) years from the date hereof unless earlier terminated as provided in this Agreement (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically be extended for one (1) additional year unless at least six (6) months prior to expiration of the Initial Term, the Company or the Executive shall have given written notice to the other not to extend the term of this Agreement. The Initial Term, as may be extended, is hereafter referred to as the “Term”.

2. Position and Duties.

2.1. Position. The Company agrees to employ the Executive, and the Executive agrees to such employment, as Executive Vice President of Waste Treatment Operations of the Company, or such other position as the Executive and the Company agrees in writing as being acceptable to both of them. The Executive’s authority and duties, including, but not limited to, hierarchical standing in the Company and reporting requirements within the Company, shall be substantially similar in all material respects with the most significant of those exercised by the Executive during the 90 day period immediately preceding the date of this Agreement, except as otherwise agreed to in writing executed by both the Executive and the Company.

2.2. Location. The Executive’s duties and services shall be performed in Richland, Washington, except for travel responsibilities required in the performance of the Executive’s duties.

2.3. Duties. Excluding any periods of vacation and sick leave to which the Executive is entitled, and except as otherwise provided in Section 2.4 below, the Executive agrees to faithfully perform the duties of his office, and to devote substantially all of the Executive’s business time and attention to the business and affairs of the Company, as directed by the Board of Directors of the Company from time to time (the “Board”) and the Chief Executive Officer, and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

2.4. Other Activities. Notwithstanding Section 2.3, it shall not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, as long as such activities are disclosed in writing to the Board and not otherwise disapproved for being in violation of the Company’s Code of Business Conduct and Ethics Policy, (ii) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as any such investment represents a passive investment and the Executive is not a controlling person of, or a member of a group that controls, the entity in which the Executive is invested, and provided further, that any such entity in which the Executive is invested is not engaged in activities that are competitive with those of the Company, as determined by the Board in its discretion. Any such activities described in this Section 2.4 may not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

3. Compensation and Benefits.

3.1. Annual Base Salary. The Compensation and Stock Option Committee of the Board (the “Compensation Committee”) has set the annual base salary of the Executive at **\$261,233** Dollars per year (“Base Salary”), which Base Salary is payable by the Company to the Executive in equal bi-weekly installments, less appropriate withholdings and deductions in accordance with the Company’s customary payroll practices, with the amount of the Base Salary payable each year subject to adjustment as provided in Section 3.2 below.

3.2. Adjustment to Base Salary. The Base Salary may be increased, but not be reduced, from time to time as determined by and in the sole discretion of the Compensation Committee.

3.3. Incentive Compensation Bonus. In addition to the Base Salary, each year during the Term the Company will pay to the Executive the incentive compensation bonus, if any, that is payable pursuant to a Management Incentive Plan (“Incentive Plan”) in effect for such year that may be adopted by the Board of the Company or the Compensation Committee and agreed to by the Executive with respect to the particular fiscal year of the Company, (an “Incentive Bonus”) in accordance with and pursuant to the terms of the Incentive Plan. The Incentive Bonus, if any, may be modified, changed or terminated at any time or for any reason by the Compensation Committee in its sole discretion in accordance with the terms of the particular Incentive Plan.

3.4. Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans that are generally made available to other employees of the Company, subject to the terms and conditions of such benefits and plans and, as such benefits and plans may be changed by the Company from time to time. Such benefits include, but not limited to, (i) group medical insurance coverage, (ii) group life insurance coverage and (iii) certain stock option plans. The Company reserves the right to amend or terminate any employee benefit plans at any time in its sole discretion, subject to the terms of such employee benefit plan and applicable law.

- 3.5. Expenses. During the Term, the Company shall pay directly, or reimburse the Executive, for any reasonable and necessary expenses and costs incurred by the Executive in connection with, or arising out of, the performance of the Executive's duties hereunder, provided that such expenses and costs shall be paid or reimbursed subject to such rules, regulations, and policies of the Company as established from time to time by the Company and the applicable laws to which the Company is subject, and provided further that the Executive is not otherwise in breach of this Agreement with respect to the activity for which the Executive is seeking reimbursement.

In the event the Executive incurs legal fees and expenses to enforce this Agreement, the Company shall promptly reimburse the Executive the reasonable and necessary legal fees and expenses of the Executive in enforcing this Agreement, but only upon the adjudication by a court of competent jurisdiction that the Executive is not otherwise in breach of this Agreement.

- 3.6. Fringe Benefits. During the Term, the Executive shall be entitled to all fringe benefits, including, but not limited to, vacation in accordance with Section 3.7 or, if more favorable to the Executive, the most favorable plans, practices, programs and policies of the Company during 12-month period immediately preceding the date of this Agreement, or, if more favorable to the Executive, as in effect at any time thereafter with respect to other senior executives of the Company.
- 3.7. Vacation. The Executive shall be entitled to three (3) weeks of paid vacation per year except that after five (5) years of employment with the Company the Executive shall be entitled to four (4) weeks of paid vacation per year and except that after fifteen (15) years of employment with the Company the Executive shall be entitled to five (5) weeks of paid vacation per year or such longer period as provided in Section 3.6 above.

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#### 4. Termination.

- 4.1. Termination by the Company as a Result of Death or Disability; Termination by the Company for Cause; Termination by the Executive for Good Reason. At any time during the Term, the Executive's employment with the Company may be terminated for the following reasons:

4.1.1 Death. The Executive's employment with the Company shall terminate automatically upon the Executive's death.

4.1.2 Disability.

4.1.2.1 Definition. "Disability" of the Executive is defined for the purposes of this Agreement as the Executive being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

4.1.2.2 Application. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company after establishing the Executive's Disability as set forth in this Section 4.1.2, and giving written notice of its intention to terminate the Executive's employment with the Company ("Disability Termination Notice"). In such a case, the Executive's employment with the Company shall terminate effective on the earlier of the otherwise scheduled expiration of the Term pursuant to Section 4.1.2 or on the thirtieth (30<sup>th</sup>) day after receipt of the Disability Termination Notice, provided that the Executive has not resumed full-time performance of his duties under this Agreement. Notwithstanding the foregoing, if the Executive has recovered from a Disability and returned to full-time service prior to the date of termination set forth in the Disability Termination Notice relating thereto, the Company may not thereafter terminate the Executive's employment under this Agreement due to such Disability.

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4.1.3 Cause. Subject to the terms of this Agreement, the Company may terminate the Executive's employment with the Company at any time for "Cause". For the purposes of this Agreement, "Cause" is defined as (i) the ultimate conviction (after all appeals have been decided) of the Executive by a court of competent jurisdiction of, or a plea of nolo contendere or a plea of guilty by the Executive to, a felony involving moral turpitude; or (ii) willful or gross misconduct or gross neglect of duties by the Executive, which has a material adverse effect on the Company, provided that, (a) no action or failure to act by the Executive will constitute a reason for termination if the Executive believed in good faith that such action or failure to act was in the Company's best interests, as determined in good faith by the Board in its sole discretion, and (b) failure of the Executive to perform his duties hereunder due to a Disability shall not be considered gross misconduct or willful, gross neglect of duties for any purpose; (iii) the commission by the Executive of an act of fraud or embezzlement against the Company or a subsidiary of the Company; (iv) the Executive's willful failure to comply with any valid and legal directive of the Board; (v) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (vi) the Executive's willful unauthorized disclosure of Confidential Information (as defined in Section 8.7.1 of this Agreement); or (vii) the Executive's breach of any material provision of this Agreement or any other written agreement between the Executive and the Company, provided however, that failure of the Executive to perform his duties hereunder due to Disability shall not be considered a breach of this Agreement. For the purposes of this Section 4.1.3, no act or failure to act shall be considered "willful" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company.

4.1.4 Good Reason. Subject to the terms of this Agreement, the Executive may terminate the Executive's employment under this Agreement for Good Reason (defined below) at any time on or prior to the 60<sup>th</sup> day after the occurrence of any of the Good Reason events set forth in the following sentence; provided, however, that, within 30 days after the occurrence of any such event, the Executive shall have provided the Company with a Notice of Termination with respect to such event and afforded the Company a period of 30 days after its receipt of such Notice of Termination to cure the default that constitutes the Good Reason event relied upon by the Executive for such termination. For purposes of this Agreement, "Good Reason" shall mean the occurrence, during the Term of this Agreement, of any of the following events without the Executive's prior written consent:

4.1.4.1 the failure by the Company to timely comply with its material obligations and agreements contained in this Agreement; or

4.1.4.2 the removal of the Executive from the position of, or the loss by the Executive of the title of, Executive Vice President of Waste Treatment Operations of the Company (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

4.1.4.3 a material diminution of the authorities, duties or responsibilities of the Executive set forth in Section 2 of this Agreement (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

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- 4.1.4.4 the relocation of the Executive to an office outside of the Richland, Washington metropolitan area; or
- 4.1.4.5 the Executive being required to report to someone other than the Board (the "Board"); or
- 4.1.4.6 any other action by the Company which results in a material reduction in compensation payable to the Executive (other than a general reduction in base salary that affects all similarly situated executives in substantially the same proportions) or in the position, authority, duties, other responsibilities, other than insubstantial and inadvertent action which is promptly remedied by the Company after receipt of notice thereof from the Executive.
- 4.1.5 Without Good Reason. Subject to the terms of this Agreement, the Executive may voluntarily terminate his employment under this Agreement without Good Reason upon written Notice of Termination to the Company at least 30 days prior to the effective date of termination (which termination the Company may, in its sole discretion, make effective earlier than the date set forth in the Executive's Notice of Termination).
- 4.1.6 Death. Upon the Executive's separation from service as a result of the termination of Executive's employment with the Company due to the Executive's Death, the Company shall pay to the Executive's estate and/or beneficiary, in a single lump sum payment, in current funds, within thirty (30) days of the Executive's Death, the following:
  - 4.1.6.1 any earned but unpaid Base Salary through the date of termination;
  - 4.1.6.2 reimbursement for any unreimbursed expenses properly incurred and paid in accordance with the terms of this Agreement, above, through the date of the Executive's Death;
  - 4.1.6.3 payment for any accrued but unused vacation time in accordance with the terms of this Agreement and the Company policy;
  - 4.1.6.4 such vested accrued benefits and other payments, if any, as to which the Executive (and his eligible dependents) may be entitled under, and in accordance with the terms and conditions of, the Company's employee benefit arrangements, other than any severance pay plan (4.1.6.1 through 4.1.6.4 collectively, the "Amounts and Benefits");
  - 4.1.6.5 any bonuses earned by the Executive but remaining unpaid for any year prior to the year in which the date of termination occurs (the "Prior Year Bonuses");

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- 4.1.6.6 a "Pro-Rata Bonus", which for purposes of this Agreement means (A) in the event the Company has established an Incentive Plan one or more executive bonus programs with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the aggregate bonuses payable under such bonus programs for the year in which the date of termination occurs (determined by multiplying the amount of the Executive's bonus which would be due for the full year by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365), provided that the performance goals established with respect to the entire such year are met, and provided, further, that in the event the date of termination occurs prior to the determination of performance goals applicable to the performance period for the year of the Executive's termination of employment, the performance criteria applicable to the Executive in respect of the Pro-Rata Bonus shall be at least as favorable to the Executive as the most favorable performance criteria applicable for that year to any award to a named executive officer of the Company, within the meaning of Section 402(a)(3) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"); or (B) in the event the Company has not established an Incentive Plan providing an incentive bonus plan with performance goals covering the year in which the date of termination occurs, a pro-rata portion of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs (determined by multiplying the amount of the bonus earned by the Executive for the year prior to the year in which the date of termination occurs by a fraction, the numerator of which is the number of days that the Executive was employed by the Company in the year in which the date of termination occurs and the denominator of which is 365). If payable under (A), the Pro-Rata Bonus shall be payable in due course pursuant to the terms of the applicable bonus programs which shall be paid on or about 90 days after year-end or sooner, based on the Company's audited financial statements included in its Form 10-K filed with the SEC, subject to Section 4.5 of this Agreement. If payable under (B), the Pro-Rata Bonus shall be payable within thirty (30) days following the date of termination;
- 4.1.6.7 a lump-sum payment (the "Cash Medical Continuation Benefit") equal to (x) 18 multiplied by (y) the monthly premium that would be required to be paid, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), to continue group health coverage for the Executive's eligible covered dependents in effect on the date of the Executive's termination of employment, based on the premium for the first month of COBRA coverage. Such cash payment will be taxable and will be made regardless of whether the Executive's eligible covered dependents actually elect COBRA continuation coverage. ; and

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- 4.1.6.8 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, with such options and awards remaining exercisable for the lesser of the original option term or twelve (12) months from the date of the Executive's death.
- 4.1.7 Upon the Executive's separation from service as a result of the termination of Executive's employment by the Company for Cause, the Company shall pay to the Executive in a single lump sum payment, in current funds, on the date of such termination of employment the following:
  - 4.1.7.1 any earned but unpaid Base Salary through the date of termination; and
  - 4.1.7.2 any amounts payable to the Executive pursuant to the Prior Year Bonuses under the Company's prior year Incentive Plan.

4.2. Termination by the Company without Cause or Termination by the Executive for Good Reason.

4.2.1 Subject to the terms of this Agreement, the Company may terminate the Executive's employment at any time during the Term without Cause and the Executive may terminate his employment with the Company at any time during the Term for Good Reason. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of Death or Disability) during the Term, and the Executive has not received and is not entitled to any payment under Sections 4.3.1 hereof, then the Company shall pay or provide the Executive on the date of such termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.1) the following:

4.2.1.1 a lump sum cash payment in the total amount equal to the sum of (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid the Incentive Bonus for the immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, the "Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.2.1.2 the Amounts and Benefits;

4.2.1.3 the Prior Year Bonuses;

4.2.1.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.2.1.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.2.1.6 in the event a Change in Control shall not have theretofore occurred, and the Company has terminated the Executive's employment under this Agreement without Cause or the Executive has terminated his employment under this Agreement for Good Reason, notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination, and the Executive shall be entitled to exercise such options within the sixty (60) consecutive day period immediately following the date of termination (but not after the original option term).

4.3. Termination Following a Change in Control. If the Executive terminates his employment under this Agreement for Good Reason or the Company terminates the Executive's employment hereunder without Cause (other than a termination by reason of death or Disability) within 24 months after a Change in Control (defined below), then the Company shall pay or provide the Executive on the date of termination (except, and only to the extent that, a later date is expressly provided in this Section 4.2.2):

4.3.1 a lump sum cash payment in the total amount equal to the sum of: (a) 2.0 times the amount of the Executive's Base Salary as of the date of termination plus (b) (i) 1.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive has already been paid his Incentive Bonus for such immediately preceding calendar year or (ii) 2.0 times the amount of the Executive's Incentive Bonus with respect to the calendar year immediately preceding the year in which the date of termination occurs if as of the date of such termination the Executive is entitled to an Incentive Bonus for such immediately preceding calendar year but has not yet been paid such Incentive Bonus by the Company (collectively, "Change in Control Severance Payment"), subject to receipt by the Company of a release executed by the Executive pursuant to and in accordance with Section 4.6 hereof;

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4.3.2 the Amounts and Benefits;

4.3.3 the Prior Year Bonuses;

4.3.4 current year of the date of such Termination Pro-Rata Bonus, if applicable;

4.3.5 the lump-sum Cash Medical Continuation Benefit provided for in Section 4.1.6.7 of this Agreement; and

4.3.6 notwithstanding anything to the contrary contained herein or in the vesting and exercisability schedule in any stock option or other grant agreement between the Company and the Executive, in the event of a Change in Control, all of the Executive's then outstanding stock options and other equity awards, if any, granted by the Company to the Executive pursuant to any such agreement shall, to the extent not already vested, vest in their entirety and, as applicable, become immediately and automatically exercisable commencing on the date of termination through the original term of such option or equity award.

4.4. Change in Control. For purposes of this Agreement, a "Change in Control" means any of the following events, within the meaning of Code Section 409A(a)(2)(A)(v), occurring during the Term:

4.4.1 individuals who, as of the date of this Agreement, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the date of this Agreement, whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, or other actual or threatened solicitation of proxies by or on behalf of an individual, entity or group other than the Board relating to the election of the directors of the Company) shall be deemed to be, for purposes of this Agreement, a member of the Incumbent Board; or

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- 4.4.2 the date that any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; or
- 4.4.3 the date any one person, or more than one person acting as a group (as defined in Treas. Regs. Section 1.409A-3), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent (30%) or more of the total voting power of the stock of the Company, other than the acquisition by any person or group, which as of the date hereof has such ownership; or
- 4.4.4 the Company's execution of an agreement for a merger or consolidation or other business combination involving the Company in which the Company is not the surviving corporation, or, if immediately following such merger or consolidation or other business combination, less than fifty percent (50%) of the surviving corporation's outstanding voting stock is held by persons who are stockholders of the Company immediately prior to such merger or consolidation or other business combination; or
- 4.4.5 the Company's adoption of a plan of dissolution or liquidation, other than if the Company is in bankruptcy at the time such plan of dissolution or liquidation is adopted.

For purposes of this Agreement, the term "person" shall mean any individual, firm, corporation or other entity and shall include any successor (by merger, consolidation or otherwise) of such entity.

- 4.5. Payments of Compensation Upon Termination. Notwithstanding any provision to the contrary contained in this Agreement, if calculation of the amount of any bonus payment, if any, under an Incentive Plan is not administratively practicable due to events beyond the control of the Executive (or the Executive's beneficiary), the payment will be treated as made upon the date specified under the Incentive Plan if the payment is made during the first taxable year of the Executive in which the calculation of the amount of the payment is administratively practicable.

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- 4.6. Release. The Company's obligation to pay Executive the Severance Payment (Section 4.2.1.1) and the Change in Control Severance Payment (Section 4.3.1), shall be subject to the Executive executing a release of claims against the Company before the end of the Release Expiration Date (defined below) and provided further that nothing contained in such release shall constitute a release of the Company from any obligations it may have to the Executive (a) under this Agreement or any other written agreement between the Executive and the Company in effect as of the date of termination; (b) relating to any employee benefit plan, stock option plan, stock option agreement or ownership of the Company's stock or debt securities; or (c) relating to any rights of indemnification and/or defense under the Company's certificate of incorporation, bylaws, under any other written agreement between the Executive and the Company or coverage under officers and directors insurance. The Company will deliver such release to Executive pursuant to and in accordance with the terms of this Section 4.6 within ten (10) calendar days following the date on which such termination of employment constitutes a separation of service under the terms of this Agreement, and the Company's failure to deliver such release prior to the expiration of such date of termination shall constitute a waiver of any requirement to execute such release. Assuming timely delivery of the release by the Company, if the release is pursuant to and in accordance with this Section 4.6, and Executive fails to execute such release on or prior to the Release Expiration Date, Executive will not be entitled to Severance Payments or the Change in Control Severance Payment. In any case where the date of the separation from service and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are subject to the release condition and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. The term "Release Expiration Date" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers to Executive the release meeting the requirements as provided above, or in the event that Executive's separation from service is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery.
- 4.7. No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Section 4 be reduced by any compensation earned by the Executive as the result of the Executive's employment by another person, employer or business or by profits earned by the Executive from any other source at any time before and after the Executive's date of termination.

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- 4.8. Termination by the Executive for Any Reasons Other Than Good Reason. Upon Executive's separation from service as a result of the Executive terminating his employment with the Company for any reason other than for Good Reason during the Term, the Company shall pay to the Executive in a single lump sum payment on the date of such separation from service an amount equal to the Amounts and Benefits.
- 4.9. Resignation of All Other Positions. On termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

## 5. Notice of Termination.

- 5.1. By Company. The Company shall not be deemed to have terminated this Agreement for "Cause" pursuant to the terms of Sections 4.1.3 and 4.2.1 hereof, unless and until there shall have been delivered to the Executive a copy of a resolution ("Notice of Termination for Cause") duly adopted by the affirmative vote of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together, with the Executive's counsel, to be heard before the Board), finding that in the good faith opinion of the Board, the Executive should be terminated for "Cause" pursuant to Section 4.1.3 and 4.2.1, and specifying the particulars thereof in detail.
- 5.2. By Executive. The Executive shall not be deemed to have terminated this Agreement pursuant to the terms of Section 4.2 hereof, unless and until there shall have been delivered by the Executive to the Company a "Notice of Termination for Good Reason" which shall state the specific termination provision relied upon, and specifying the particulars thereof in detail.

## 6. Indemnification.

6.1. The Company shall indemnify, defend and hold harmless the Executive against any and all expenses reasonably incurred by him in connection with or arising out of (a) the defense of any action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding"), in which he is a party, or (b) any claim asserted or threatened against him, in either case by reason of or relating to his being or having been an employee, officer, director or agent of the Company or a subsidiary of the Company or another company partnership, joint venture, trust or other enterprise for which he was serving in such capacity at the request of the Company, whether or not he continues to be such an employee, officer, director or agent at the time of incurring such expenses, provided, however, no such indemnification shall be made (i) if such indemnification is prohibited by law, (ii) with respect to any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, or (iii) if it is determined by a court of competent jurisdiction that the Executive did not (A) act in good faith, (B) act in a manner he reasonably believed to be in or not opposed to the best interest of the Company or (C) have reasonable cause to believe his conduct was not unlawful. Such expenses shall include, without limitation, the fees and disbursements of attorneys, amounts of judgments and amounts of any settlements. The foregoing indemnification obligation is independent of any similar obligation provided in the Company's certificate of incorporation or bylaws, and shall apply with respect to any matters attributable to periods prior to or after the date of this Agreement, and to matters attributable to the Executive's employment hereunder, without regard to when asserted. In no event shall the Company be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel, and the Company will not indemnify the Executive for the fees or expenses of the Executive's counsel in connection with any claim which is being defended by counsel appointed by the Company or the Company's insurance carrier; provided, however, that if the Executive shall have reasonably concluded (based on the advice of counsel) that there is a conflict of interest between the Company and the Executive for counsel appointed by the Company or the Company's insurance carrier that would prohibit the counsel retained by the Company or its insurance carrier from representing the Executive, the Company shall reimburse the Executive for the reasonable fees and expenses of one (1) separate counsel in addition to any local counsel for the Executive in connection with such claims, subject to the limitations set forth above in this Section 6.

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6.2. Costs and expenses incurred by the Executive in defense of any such Proceeding described in Section 6.1 above for which indemnification is to be made by the Company (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

#### 7. Section 409A and Section 280G of the Code

7.1. Compliance with Section 409A. It is intended that the provisions of this Agreement comply with or be excepted from Section 409A, as applicable, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to, in good faith, reform such provision to comply with Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained, but the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A to the extent such compliance is required. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A so long as it has acted in good faith with regard to compliance therewith.

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7.2. Separation From Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "resignation," "termination," "termination of employment" or like terms shall mean Separation from Service. If the Executive is deemed on the date of termination of his employment to be a "specified employee", within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time, or if none, the default methodology, then with regard to any payment, the providing of any benefit or any distribution of equity made subject to this Section to the extent required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, and any other payment, the provision of any other benefit or any other distribution of equity that is required to be delayed in compliance with Section 409A(a)(2)(B) of the Code, such payment, benefit or distribution shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of the Executive's Separation from Service or (ii) the date of the Executive's death. On the first day of the seventh month following the date of the Executive's Separation from Service or, if earlier, on the date of his death, (x) all payments delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein and (y) all distributions of equity delayed pursuant to this Section 7.2 shall be made to the Executive. In addition to the foregoing, to the extent required by Section 409A(a)(2)(B) of the Code, prior to the occurrence of a Disability termination as provided in this Agreement, the payment of any compensation to the Executive under this Agreement shall be suspended for a period of six months commencing at such time that the Executive shall be deemed to have had a Separation from Service because either (A) a sick leave ceases to be a bona fide sick leave of absence, or (B) the permitted time period for a sick leave of absence expires (an "SFS Disability"), without regard to whether such SFS Disability actually results in a Disability termination. Promptly following the expiration of such six-month period, all compensation suspended pursuant to the foregoing sentence (whether it would have otherwise been payable in a single sum or in installments in the absence of such suspension) shall be paid or reimbursed to the Executive in a lump sum. On any delayed payment date under this Section there shall be paid to the Executive or, if the Executive has died, to his estate, in a single cash lump sum together with the payment of such delayed payment, interest on the aggregate amount of such delayed payment at the Delayed Payment Interest Rate (defined below in this Section 7.2) computed from the date on which such delayed payment otherwise would have been made to the Executive until the date paid. For purposes of the foregoing, the "Delayed Payment Interest Rate" shall mean the short term applicable federal rate provided for in Section 1274(d) of the Code as of the business day immediately preceding the payment date for the applicable delayed payment. To the extent that this Agreement provides for any payments of nonqualified deferred compensation (within the meaning of Section 409A) to be made in installments (including, without limitation, any severance payments), each such installment shall be deemed to be a separate and distinct payment for purposes of Section 409A.

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7.3. Reimbursement Provisions. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that the foregoing clause (i) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred.

- 7.4. 280G Parachute Payments. In the event that any payments or benefits (whether made or provided pursuant to this Agreement or otherwise) provided to Executive constitute “parachute payments” within the meaning of Section 280G of the Code (“Parachute Payments”), and will be subject to an excise tax imposed pursuant to Section 4999 of the Code, the Executive’s Parachute Payments will be reduced to an amount determined by the Company in good faith to be the maximum amount that may be provided to the Executive without resulting in any portion of such Parachute Payments being subject to such excise tax (the amount of such reduction, “Cutback Benefits”). The Parachute Payment reduction contemplated by the preceding sentence, if applicable, shall be implemented by determining the “Parachute Payment Ratio” (as defined below) for each Parachute Payment and then reducing the Parachute Payment in order beginning with the Parachute Payment with the highest Parachute Payment Ratio. For Parachute Payments with the same Parachute Payment Ratio, such Parachute Payments shall be reduced based on the time of payment of such Parachute Payments, with amounts having later payment dates being reduced first. For Parachute Payments with the same Parachute Payment Ratio and the same time of payment, such Parachute Payments shall be reduced on a pro rata basis (but not below zero) prior to reducing Parachute Payments with a lower Parachute Payment Ratio. For purposes hereof, the term “Parachute Payment Ratio” shall mean a fraction the numerator of which is the value of the applicable Parachute Payment for purposes of Section 280G of the Code and the denominator of which is the intrinsic value of such Parachute Payment.

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- 7.5. Clawback Provisions. Notwithstanding any provision of this Agreement to the contrary, Executive acknowledges that any incentive-based compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government, regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement),

#### 8. Miscellaneous.

- 8.1. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with those laws, without reference to principles of conflict of laws. The Company and the Executive unconditionally consent to submit to the exclusive jurisdiction of any state or federal court located in Atlanta, Georgia, for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by registered mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against the Company or the Executive, as the case may be, in any such court.
- 8.2. No Assignment. The Executive may not delegate his duties or assign his rights hereunder. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company other than pursuant to a merger or consolidation in which the Company is not the continuing entity, or a sale, liquidation or other disposition of all or substantially all of the assets of the Company. For the purposes of this Agreement, the term “Company” shall include the Company and, subject to the foregoing, any of its successors and assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 8.3. Severable. The invalidity or unenforceability of any provision hereof shall not in any way affect the validity or enforceability of any other provision.

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- 8.4. Entire Understanding; Modification and Waiver. Unless specifically provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or termination of this Agreement will be effective only if it is in writing signed by the parties hereto. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- 8.5. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto.
- 8.6. Mutual Non-Disparagement. Subject to applicable law, the Executive covenants and agrees that the Executive shall not in any way publicly disparage, call into disrepute, or otherwise defame or slander the Company or any of its subsidiaries, in any manner that would materially damage the business or reputation of the Company or its subsidiaries. The Company covenants and agrees, on behalf of itself and its subsidiaries, that neither the Company, any of its subsidiaries nor any of the officers, directors or key employees of the Company or any of its subsidiaries shall in any way publicly disparage, call into disrepute, or otherwise defame or slander the Executive. Nothing in this paragraph 8.6 shall preclude or restrict the Executive or the Company, any of the subsidiaries of the Company or any of the Company’s officers, directors or key employees from making truthful statements, including, without limitation, those that are required by applicable law, regulation or in connection with a legal process or proceeding, and the making of such statements shall not be a violation of this subsection.
- 8.7. Confidential Information and Restrictive Covenants
- 8.7.1 No Disclosure. Subject to the terms of this Section 8.7, during the Restricted Period (as defined below), the Executive agrees to hold in confidence and not disclose any and all proprietary, secret or confidential information (“Confidential Information”) relating to the Company or the Company’s subsidiaries, which shall have been obtained by the Executive during the Executive’s employment by the Company. Confidential Information is defined as the proprietary, client or business information of the Company, written or in a physical embodiment, including, but not limited to, customer lists, employee lists, financial information, pricing data, sales data, marketing data, or business plans or proposals.

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- 8.7.2 Exception. Notwithstanding the provisions of Section 8.7.1 above, the Executive shall not be held liable for disclosure of information which was in the public domain, or is readily available to the public at the time of its disclosure by the Executive through means unrelated to the Executive’s disclosure, or is required to be disclosed in, or in connection with, a legal proceeding or process or is required to be disclosed by law, rule or regulation.
- 8.7.3 Permitted Communications. Nothing herein prohibits or restricts the Executive (or the Executive’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the SEC, the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding a possible securities law violation.

8.7.4 Other Restrictive Covenant. Subject to the terms hereof, the Executive agrees that during the Restricted Period he will not, by or for himself, or as an agent, representative or employee of another, do or attempt to solicit, entice, persuade or induce any individual who is employed by the Company or its subsidiaries (or was so employed within 90 days prior to the Executive's action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Company or its subsidiaries.

8.7.5 Restricted Period. "Restricted Period" is the 12-month period after the date of termination of the Executive's employment with the Company.

8.7.6 Other Agreements. If any of the restrictions provided in Section 8.7 are contrary to the requirements or limitations contained in any other agreement between the Executive and the Company, the terms of this Section 8.7 of this Agreement shall be controlling.

8.8. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

9. Notices.

All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by telecopy (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one business day after being sent by telecopy or five days after being mailed.

If to the Company:           Penna-Fix Environmental Services, Inc.  
8302 Dunwoody Place, Suite 250  
Atlanta, Georgia 30350 Attn: President

If to the Executive:       Richard Grondin  
1704 Sagewood Street  
Richland, WA 99352

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 25th day of April, 2023.

The "Company"

PERMA-FIX ENVIRONMENTAL SERVICES,  
INC., a Delaware corporation

By: /s/ Larry Shelton  
Larry Shelton, Chairman of the Board

The "Executive"

/s/ Richard Grondin  
RICHARD GRONDIN