

**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): June 14, 2018**

**ENDOLOGIX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

**000-28440**

**68-0328265**

(State or other jurisdiction of incorporation)

(Commission File Number)

(I.R.S. Employer Identification No.)

**2 Musick, Irvine, CA**

**92618**

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **(949) 595-7200**

**N/A**

(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 (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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

*Appointment of John Onopchenko to the Board*

On June 14, 2018, the Board of Directors (the “Board”) of Endologix, Inc. (the “Company”) unanimously appointed John Onopchenko as a Class II director to serve on the Board for a three-year term expiring at the annual meeting of stockholders to be held in 2021, and until his successor is duly elected and qualified. Following Mr. Onopchenko’s appointment, Class II will consist of two directors with no vacancies.

Mr. Onopchenko, age 60, was appointed to serve as the Company’s Chief Executive Officer in May 2018. He first joined the Company in October 2017 as its Chief Operating Officer. Mr. Onopchenko has 30 years of executive leadership experience in the medical device industry. Prior to joining the Company, he served as Executive Vice President for Acutus Medical, Inc., a privately-held medical device company, from September 2016 to October 2017, where he was responsible for program management/product development, quality, marketing and sales. Prior to joining Acutus Medical, Mr. Onopchenko served as Senior Vice President and Head of Therapy Strategy for Koninklijke Philips Electronics NV (“Philips”), a publicly-traded technology company from March 2015 to September 2016. Prior to joining Philips, he served as Executive Vice President, from April 2013 to November 2014, and Chief Operating Officer, from November 2014 to March 2015, of Volcano Corporation, a publicly-traded medical device company, where he was responsible for its peripheral and Axsun business units, regulatory affairs, quality assurance, program management, product development, clinical affairs, and business development. Prior to his employment with Volcano, he served on Volcano’s board of directors for 11 years. Mr. Onopchenko held senior positions at Johnson & Johnson, a publicly-held medical device company, including serving as lead of medical device investments with Johnson & Johnson Development Corporation, and as Vice President of Worldwide Operations and Marketing for Advanced Sterilization Products, a Johnson & Johnson company, from 1996 to 2006. He also served as founder and managing director of Synergy Life Sciences Partners, LLC, an early-stage medical device venture capital fund. Mr. Onopchenko holds an M.B.A. from the University of Chicago, Graduate School of Business and a B.S. from Ursinus College. As reflected in the biographical information summarized above, Mr. Onopchenko is qualified to serve on the Board due to his extensive and diverse experience in the medical device industry, including 30 years serving in executive leadership roles, most recently as our Chief Operating Officer and now as our Chief Executive Officer.

There are no arrangements or understandings between Mr. Onopchenko and any other person pursuant to which he was appointed to the Board. There are no family relationships between Mr. Onopchenko and any director, executive officer or person nominated or chosen by the Company to become a director or executive officer. Except for his employment relationship with the Company and the compensation arrangements arising in connection therewith, there are no relationships involving Mr. Onopchenko that are required to be reported pursuant to the regulations of the Securities and Exchange Commission (the “SEC”).

Mr. Onopchenko has entered into the Company’s standard indemnification agreement in the form previously filed with the SEC providing for indemnification and advancement of expenses to the fullest extent permitted by the General Corporation Law of the State of Delaware. In accordance with the Company’s standard compensation policies applicable to employee-directors, Mr. Onopchenko will not receive any additional compensation for serving as a director.

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### *Amendments to 2015 Stock Incentive Plan*

On April 12, 2018, the Board approved, subject to stockholder approval, certain amendments to the Company's 2015 Stock Incentive Plan (as amended, the "Plan"), which were approved by the Company's stockholders at the 2018 Annual Meeting of Stockholders (the "Annual Meeting") held on Thursday, June 14, 2018. Accordingly, the Plan was amended to do the following:

- *Increase Shares Reserved for Issuance:* Increase the total number of shares reserved for issuance under the Plan by 500,000 shares, or from 9,800,000 shares to 10,300,000 shares.
- *Minimum Vesting Requirement:* Impose a minimum vesting period of at least 12 months for awards granted under the Plan following the date on which the amendment was adopted, subject to certain limitations.
- *No Dividends on Unvested Awards:* Eliminate the Company's ability to provide for the payment of dividends on unvested shares of its common stock that are subject to outstanding awards granted under the Plan.
- *Clawback Policy:* Reference the adoption of the Company's Clawback Policy, and allow for the inclusion of other clawback, recovery or recoupment provisions in the relevant award agreements, including a reacquisition right upon the occurrence of certain events.

The foregoing description of the Plan amendments does not purport to be complete and is qualified in its entirety by reference to the full text of the Endologix, Inc. Amended and Restated 2015 Stock Incentive Plan, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K (this "Current Report") and is incorporated herein by reference.

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

#### *Amendment to Certificate of Incorporation*

On April 12, 2018, the Board approved, subject to stockholder approval, an amendment to the Company's Amended and Restated Certificate of Incorporation (as amended, the "Charter"), to increase the total number of authorized shares of the Company's common stock by 35,000,000 shares, or from 135,000,000 shares to 170,000,000 shares, which was approved by the Company's stockholders at the Annual Meeting.

The foregoing description of the amendment to the Charter does not purport to be complete and is qualified in its entirety by reference to the full text of the Certificate of Amendment to Amended and Restated Certificate of Incorporation, a copy of which is attached as Exhibit 3.1 to this Current Report and is incorporated herein by reference.

#### *Amendment to Bylaws*

On June 14, 2018, the Board amended the Amended and Restated Bylaws of the Company (as amended, the "Bylaws") to decrease the authorized number of directors on the Board from eight to seven, and to fix the number of directors at seven.

The foregoing description of the amendment to the Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Certificate of Amendment of the Amended and

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Restated Bylaws of Endologix Inc., a copy of which is attached as Exhibit 3.2 to this Current Report and is incorporated herein by reference.

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

The Company held the Annual Meeting on Thursday, June 14, 2018 at 8:00 a.m., Pacific Time, at 3910 Brickway Blvd., Santa Rosa, California 95403. As of April 16, 2018, the record date for the Annual Meeting, the Company had 83,996,817 shares of its common stock outstanding and entitled to vote, of which 77,288,986 shares of the Company's common stock were present in person or represented by proxy and entitled to vote at the Annual Meeting. The following is a brief description of the final voting results for each of the proposals submitted to a vote of the stockholders at the Annual Meeting. These matters are described in more detail in the Company's definitive proxy statement (revised), which was filed with the SEC on April 30, 2018 (the "Proxy Statement").

**Proposal No. 1:** The Company's stockholders elected the Class II nominee named below to serve on the Board for a three-year term expiring at the annual meeting of stockholders to be held in 2021, and until his successor is duly elected and qualified.

| <b>Name of Director</b> | <b>Votes For</b> | <b>Votes Withheld</b> | <b>Broker Non-Votes</b> |
|-------------------------|------------------|-----------------------|-------------------------|
| Guido J. Neels          | 52,475,204       | 14,398,173            | 10,415,609              |

**Proposal No. 2:** The Company's stockholders approved, on a non-binding advisory basis, the compensation of the Company's named executive officers as described in the Proxy Statement.

| <b>Votes For</b> | <b>Votes Against</b> | <b>Votes Abstaining</b> | <b>Broker Non-Votes</b> |
|------------------|----------------------|-------------------------|-------------------------|
| 46,972,378       | 19,871,952           | 29,047                  | 10,415,609              |

**Proposal No. 3:** The Company's stockholders ratified the appointment of KPMG LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2018.

| <b>Votes For</b> | <b>Votes Against</b> | <b>Votes Abstaining</b> | <b>Broker Non-Votes</b> |
|------------------|----------------------|-------------------------|-------------------------|
| 77,170,327       | 88,935               | 29,724                  | 0                       |

**Proposal No. 4:** The Company's stockholders approved an amendment to the Charter to increase the total number of authorized shares of the Company's common stock by 35,000,000 shares, or from 135,000,000 shares to 170,000,000 shares.

| <b>Votes For</b> | <b>Votes Against</b> | <b>Votes Abstaining</b> | <b>Broker Non-Votes</b> |
|------------------|----------------------|-------------------------|-------------------------|
| 74,098,968       | 3,130,480            | 59,538                  | 0                       |

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**Proposal No. 5:** The Company's stockholders approved amendments to the Plan to, among other things, increase the total number of shares of the Company's common stock reserved for issuance under the Plan by 500,000 shares, or from 9,800,000 shares to 10,300,000 shares.

| <b>Votes For</b> | <b>Votes Against</b> | <b>Votes Abstaining</b> | <b>Broker Non-Votes</b> |
|------------------|----------------------|-------------------------|-------------------------|
| 62,581,452       | 4,265,034            | 26,891                  | 10,415,609              |

**Proposal No. 6:** The Company's stockholders approved the adoption of the stock option exchange program, as described in the Proxy Statement.

| <b>Votes For</b> | <b>Votes Against</b> | <b>Votes Abstaining</b> | <b>Broker Non-Votes</b> |
|------------------|----------------------|-------------------------|-------------------------|
| 57,442,556       | 9,418,237            | 12,584                  | 10,415,609              |

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are attached to this Current Report:

| Exhibit No.          | Description  |
|----------------------|--|
| <a href="#">3.1</a>  | Certificate of Amendment to Amended and Restated Certificate of Incorporation  |
| <a href="#">3.2</a>  | Certificate of Amendment of the Amended and Restated Bylaws of Endologix, Inc. |
| <a href="#">10.1</a> | Endologix, Inc. Amended and Restated 2015 Stock Incentive Plan                 |

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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.

ENDOLOGIX, INC.

Date: June 20, 2018

/s/ Vaseem Mahboob

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Vaseem Mahboob

Chief Financial Officer

**CERTIFICATE OF AMENDMENT**  
**OF**  
**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**ENDOLOGIX, INC.,**  
**a Delaware corporation**

ENDOLOGIX, INC., a Delaware corporation (the “*Corporation*”), organized and existing under and by virtue of the Delaware General Corporation Law (the “*DGCL*”), does hereby certify that:

FIRST: The Board of Directors of the Corporation (the “*Board of Directors*”) has duly adopted resolutions proposing and declaring advisable the following amendment to the Amended and Restated Certificate of Incorporation of the Corporation (the “*Certificate of Incorporation*”), directing that said amendment be submitted to the stockholders of the Corporation for consideration thereof, and authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Amended and Restated Certificate of Incorporation (this “*Certificate of Amendment*”).

SECOND: Upon the effectiveness of this Certificate of Amendment, the first four sentences of Article IV, Section (A) of the Certificate of Incorporation are hereby amended and restated to read as follows:

"(A) Classes of Stock. This corporation is authorized to issue two classes of stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this corporation is authorized to issue is one hundred seventy five million (175,000,000). The number of shares of Preferred Stock authorized to be issued is five million (5,000,000), par value \$0.001 per share. The number of shares of Common Stock authorized to be issued is one hundred seventy million (170,000,000), par value \$0.001 per share."

THIRD: That thereafter, the holders of the necessary number of shares of capital stock of the Corporation voted in favor of the foregoing amendment at the Corporation’s 2018 Annual Meeting of Stockholders called and held on June 14, 2018 upon notice in accordance with the provisions of Section 222 of the DGCL.

FOURTH: That said amendment was duly adopted in accordance with the provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by the undersigned, and the undersigned has executed this Certificate of Amendment and affirms the foregoing as true under penalty of perjury this 14th day of June, 2018.

/s/ John Onopchenko  
Name: John Onopchenko  
Title: Chief Executive Officer



**CERTIFICATE OF AMENDMENT  
OF THE AMENDED AND RESTATED BYLAWS  
OF  
ENDOLOGIX, INC.**

Section 1 of Article III of the Amended and Restated Bylaws of the Corporation, as amended on December 10, 2010, has been further amended and restated by resolution of the Board of Directors of the Corporation, effective as of June 14, 2018, to read in its entirety as follows:

“Section 1. The number of directors which shall constitute the whole Board shall be fixed by resolution of the Board of Directors, with the number fixed at seven (7). Each director shall be elected by the stockholders at the annual meeting and shall hold office until the next annual meeting and until his successor is elected and qualified, or until his earlier death, resignation or removal. Directors need not be stockholders of the corporation.”

This AMENDED AND RESTATED 2015 STOCK INCENTIVE PLAN (the “Plan”), originally established and adopted on the 31st day of March, 2015 (the “Effective Date”) by Endologix, Inc., a Delaware corporation (the “Company”) and amended and restated on March 2, 2017, is hereby amended and restated effective June 14, 2018.

**ARTICLE 1.**

**PURPOSES OF THE PLAN**

**1.1 Purposes.** The purposes of the Plan are (a) to enhance the Company’s ability to attract and retain the services of qualified employees, officers, directors, consultants and other service providers upon whose judgment, initiative and efforts the successful conduct and development of the Company’s business largely depends, and (b) to provide additional incentives to such persons or entities to devote their utmost effort and skill to the advancement and betterment of the Company, by providing them an opportunity to participate in the ownership of the Company and thereby have an interest in the success and increased value of the Company.

**ARTICLE 2.**

**DEFINITIONS**

For purposes of this Plan, the following terms shall have the meanings indicated:

**2.1 Administrator.** “Administrator” means the Board or, if the Board delegates responsibility for any matter to the Committee, the term Administrator shall mean the Committee.

**2.2 Affiliated Company.** “Affiliated Company” means:

(a) with respect to Incentive Options, any “parent corporation” or “subsidiary corporation” of the Company, whether now existing or hereafter created or acquired, as those terms are defined in Sections 424(e) and 424(f) of the Code, respectively; and

(b) with respect to Awards other than Incentive Options, any entity described in paragraph (a) of this Section 2.2 above, plus any other corporation, limited liability company (“LLC”), partnership or joint venture, whether now existing or hereafter created or acquired, with respect to which the Company beneficially owns more than fifty percent (50%) of: (1) the total combined voting power of all outstanding voting securities or (2) the capital or profits interests of an LLC, partnership or joint venture.

**2.3 Award.** “Award” means an Option, a Restricted Stock award, a Stock Appreciation Right award, a Dividend Equivalents award, a Stock Payment award or a Restricted Stock Unit award granted to a Participant pursuant to the Plan.

**2.4 Award Agreement.** “Award Agreement” means a written or electronic agreement entered into between the Company and a Participant setting forth the terms and conditions of an Award granted to a Participant.

**2.5 Board.** “Board” means the Board of Directors of the Company.

**2.6 Change in Control.** “Change in Control” shall mean:

(a) The acquisition, directly or indirectly, in one transaction or a series of related transactions, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of the beneficial ownership of securities of the Company possessing more than fifty percent (50%) of the total combined voting power of all outstanding securities of the Company;

(b) A merger or consolidation in which the Company is not the surviving entity, except for a transaction in which the holders of the outstanding voting securities of the Company immediately prior to such merger or consolidation hold as a result of holding Company securities prior to such transaction, in the aggregate, securities possessing more than fifty percent (50%) of the total combined voting power of all outstanding voting securities of the surviving entity (or the parent of the surviving entity) immediately after such merger or consolidation;

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## Exhibit 10.1

(c) A reverse merger in which the Company is the surviving entity but in which the holders of the outstanding voting securities of the Company immediately prior to such merger hold, in the aggregate, securities possessing less than fifty percent (50%) of the total combined voting power of all outstanding voting securities of the Company or of the acquiring entity immediately after such merger;

(d) The sale, transfer or other disposition (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company, except for a transaction in which the holders of the outstanding voting securities of the Company immediately prior to such transaction(s) receive as a distribution with respect to securities of the Company, in the aggregate, securities possessing more than fifty percent (50%) of the total combined voting power of all outstanding voting securities of the acquiring entity immediately after such transaction(s); or

(e) The approval by the stockholders of a plan or proposal for the liquidation or dissolution of the Company.

**2.7 Code.** “Code” means the Internal Revenue Code of 1986, as amended from time to time.

**2.8 Committee.** “Committee” means a committee of two or more members of the Board appointed to administer the Plan, as set forth in Section 10.1 hereof.

**2.9 Common Stock.** “Common Stock” means the Common Stock of the Company, subject to adjustment pursuant to Section 4.2 hereof.

**2.10 Covered Employee.** “Covered Employee” means the Chief Executive Officer of the Company (or the individual acting in a similar capacity) and the four (4) other individuals that are the highest compensated executive officers of the Company for the relevant taxable year for whom total compensation is required to be reported to stockholders under the Exchange Act.

**2.11 Disability.** “Disability” means permanent and total disability as defined in Section 22(e)(3) of the Code. The Administrator’s determination of a Disability or the absence thereof shall be conclusive and binding on all interested parties.

**2.12 Dividend Equivalent.** “Dividend Equivalent” means a right to receive payments equivalent to the amount of dividends paid by the Company to holders of shares of Common Stock with respect to the number of Dividend Equivalents held by the Participant. The Dividend Equivalent may provide for payment in Common Stock or in cash, or a fixed combination of Common Stock or cash, or the Administrator may reserve the right to determine the manner of payment at the time the Dividend Equivalent is payable. Dividend Equivalents may be granted only in connection with a grant of Restricted Stock Units and shall be subject to the vesting conditions that govern Restricted Stock Units as set forth in the applicable Restricted Stock Award Agreement.

**2.13 DRO.** “DRO” means a domestic relations order as defined in the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the regulations thereunder.

**2.15 Exchange Act.** “Exchange Act” means the Securities and Exchange Act of 1934, as amended.

**2.16 Exercise Price.** “Exercise Price” means the purchase price per share of Common Stock payable upon exercise of an Option.

**2.17 Fair Market Value.** “Fair Market Value” on any given date means the value of one share of Common Stock, determined as follows:

(a) If the Common Stock is then listed or admitted to trading on a Nasdaq market system or a stock exchange which reports closing sale prices, the Fair Market Value shall be the closing sale price on the date of valuation on such Nasdaq market system or principal stock exchange on which the Common Stock is then listed or admitted to trading, or, if no closing sale price is quoted on such day, then the Fair Market Value shall be the closing sale price of the Common Stock on such Nasdaq market system or such exchange on the next preceding day on which a closing sale price is reported.

(b) If the Common Stock is not then listed or admitted to trading on a Nasdaq market system or a stock exchange which reports closing sale prices, the Fair Market Value shall be the average of the closing bid and asked prices of the Common Stock in the over-the-counter market on the date of valuation.

(c) If neither (a) nor (b) is applicable as of the date of valuation, then the Fair Market Value shall be

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## Exhibit 10.1

determined by the Administrator in good faith using any reasonable method of evaluation, which determination shall be conclusive and binding on all interested parties.

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

**2.19 Incentive Option Agreement.** “Incentive Option Agreement” means an Option Agreement with respect to an Incentive Option.

**2.20 NASD Dealer.** “NASD Dealer” means a broker-dealer that is a member of the National Association of Securities Dealers, Inc.

**2.21 Non-Employee Director.** “Non-Employee Director” shall have the meaning given in Section 7.7 below.

**2.22 Nonqualified Option.** “Nonqualified Option” means any Option that is not an Incentive Option. To the extent that any Option designated as an Incentive Option fails in whole or in part to qualify as an Incentive Option, including, without limitation, for failure to meet the limitations applicable to a 10% Stockholder or because it exceeds the annual limit provided for in Section 5.7 below, it shall to that extent constitute a Nonqualified Option.

**2.23 Nonqualified Option Agreement.** “Nonqualified Option Agreement” means an Option Agreement with respect to a Nonqualified Option.

**2.24 Option.** “Option” means any option to purchase Common Stock granted pursuant to the Plan.

**2.25 Option Agreement.** “Option Agreement” means the written agreement entered into between the Company and the Optionee with respect to an Option granted under the Plan.

**2.26 Optionee.** “Optionee” means any Participant who holds an Option.

**2.27 Participant.** “Participant” means an individual or entity that holds an Option, Stock Appreciation Right, shares of Stock, Restricted Stock, Restricted Stock Units, Stock Payment or Dividend Equivalents under the Plan.

**2.28 Performance Criteria.** “Performance Criteria” means one or more of the following as established by the Administrator, which may be stated as a target percentage or dollar amount, a percentage increase over a base period percentage or dollar amount or the occurrence of a specific event or events:

- (a) Sales;
- (b) Gross margin;
- (c) Operating income;
- (d) Pre-tax income;
- (e) Earnings before interest, taxes, depreciation and amortization;
- (f) Earnings per share of Common Stock on a fully-diluted basis;
- (g) Consolidated net income of the Company divided by the average consolidated common stockholders equity;
- (h) Cash and cash equivalents derived from either (i) net cash flow from operations, or (ii) net cash flow from operations, financings and investing activities;
- (i) Adjusted operating cash flow return on income;
- (j) Cost containment or reduction;
- (k) The percentage increase in the market price of the Common Stock over a stated period;
- (l) Return on assets;
- (m) New Company product introductions;
- (n) Obtaining regulatory approvals for new or existing products; and
- (o) Individual business objectives.

**2.29 Purchase Price.** “Purchase Price” means the purchase price payable to purchase a share of Restricted Stock, or a Restricted Stock Unit, which, in the sole discretion of the Administrator, may be zero (0), subject to limitations under applicable law.

**2.30 Repurchase Right.** “Repurchase Right” means the right of the Company to repurchase either unvested shares of

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## Exhibit 10.1

Restricted Stock pursuant to Section 6.6 or to cancel unvested Restricted Stock Units pursuant to Section 7.6.

**2.31 Restricted Stock.** “Restricted Stock” means shares of Common Stock issued pursuant to Article 6 hereof, subject to any restrictions and conditions as are established pursuant to such Article 6.

**2.32 Restricted Stock Award.** “Restricted Stock Award” means either the issuance of Restricted Stock or the grant of Restricted Stock Units or Dividend Equivalents under the Plan.

**2.33 Restricted Stock Award Agreement.** “Restricted Stock Award Agreement” means the written agreement entered into between the Company and a Participant evidencing the issuance of Restricted Stock or the grant of Restricted Stock Units or Dividend Equivalents under the Plan.

**2.34 Restricted Stock Unit.** “Restricted Stock Unit” means the right to receive one share of Common Stock issued pursuant to Article 7 hereof, subject to any restrictions and conditions as are established pursuant to such Article 7.

**2.35 Service Provider.** “Service Provider” means a consultant or other person or entity the Administrator authorizes to become a Participant in the Plan and who provides services to (i) the Company, (ii) an Affiliated Company, or (iii) any other business venture designated by the Administrator in which the Company or an Affiliated Company has a significant ownership interest.

**2.36 Stock Appreciation Right.** “Stock Appreciation Right” means a contractual right granted to a Participant under Article 8 hereof entitling such Participant to receive a payment representing the difference between the base price per share of the right and the Fair Market Value of a share of Common Stock, payable either in cash or in shares of the Company’s Common Stock, at such time, and subject to such conditions, as are set forth in this Plan and the applicable Stock Appreciation Rights Award agreement.

**2.37 Stock Appreciation Rights Holder.** “Stock Appreciation Rights Holder” means any Participant who holds a Stock Appreciation Right.

**2.38 Stock Payment.** “Stock Payment” means a payment in the form of shares of Common Stock.

**2.39 10% Stockholder.** “10% Stockholder” means a person who, as of a relevant date, owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of an Affiliated Company.

## ARTICLE 3.

### ELIGIBILITY

**3.1 Incentive Options.** Only employees of the Company or of an Affiliated Company (including members of the Board if they are employees of the Company or of an Affiliated Company) are eligible to receive Incentive Options under the Plan.

**3.2 Nonqualified Options, Stock Appreciation Rights, Stock Payments and Restricted Stock Awards.** Employees of the Company or of an Affiliated Company, members of the Board (whether or not employed by the Company or an Affiliated Company), and Service Providers are eligible to receive Nonqualified Options, Stock Appreciation Rights, Stock Payments or Restricted Stock Awards under the Plan.

**3.3 Annual Limitation.** In no event shall any Participant be granted Options or Stock Appreciation Rights in any one calendar year pursuant to which the aggregate number of shares of Common Stock that may be acquired thereunder exceeds 750,000 shares, subject to adjustment as to the number and kind of shares pursuant to Section 4.2 hereof. Notwithstanding the foregoing, in connection with his or her initial service to the Company, the aggregate number of shares of Common Stock with respect to which Options or Stock Appreciation Rights may be granted to any Participant shall not exceed 750,000 shares of Common Stock during the calendar year which includes such individual’s initial service to the Company. The foregoing limitations shall be applied on an aggregate basis taking into account Awards granted to a Participant under the Plan as well as awards of the same type granted to a Participant under any other equity-based compensation plan of the Company or any Affiliated Company.

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ARTICLE 4.

PLAN SHARES

**4.1 Shares Subject to the Plan.**

(a) The number of shares of Common Stock that may be issued pursuant to Awards under the Plan shall be 10,300,000 shares. The foregoing shall be subject to adjustment as to the number and kind of shares pursuant to Section 4.2 hereof. In the event that (a) all or any portion of any Option granted under the Plan can no longer under any circumstances be exercised, (b) any shares of Common Stock subject to an Award Agreement are reacquired by the Company or (c) all or any portion of any Restricted Stock Units granted under the Plan are forfeited or can no longer under any circumstances vest, the shares of Common Stock allocable to the unexercised portion of such Option or the shares so reacquired shall again be available for grant or issuance under the Plan. The following shares of Common Stock may not again be made available for issuance as awards under the Plan: (x) the gross number of shares of Common Stock subject to outstanding Stock Appreciation Rights settled in exchange for shares of Common Stock, (y) shares of Common Stock used to pay the Exercise Price related to outstanding Options, or (z) shares of Common Stock used to pay withholding taxes related to outstanding Options, Stock Appreciation Rights or Restricted Stock Units. For purposes of this Section 4.1, the number of shares of Common Stock available for grant under the Plan shall be reduced by one share of Common Stock for each share of Common Stock granted pursuant to the exercise to an Option or Stock Appreciation Right, and by one-and-six-tenths (1.6) shares of Common Stock for each share of Common Stock granted pursuant to a Restricted Stock award, Stock Payment award or Restricted Stock Unit award.

(b) The maximum number of shares of Common Stock that may be issued under the Plan as Incentive Options shall be 10,300,000 shares, subject to adjustment as to the number and kind of shares pursuant to Section 4.2 hereof.

**4.2 Changes in Capital Structure.** In the event that the outstanding shares of Common Stock are hereafter increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Company by reason of a recapitalization, stock split, reverse stock split, reclassification, stock dividend, or other change in the capital structure of the Company, then appropriate adjustments shall be made by the Administrator to the aggregate number and kind of shares subject to this Plan, the number and kind of shares and the price per share subject to outstanding Award Agreements and the limit on the number of shares under Section 3.3, all in order to preserve, as nearly as practical, but not to increase, the benefits to Participants.

**4.3 Minimum Vesting.** All Awards shall be granted subject to a minimum vesting period of at least twelve (12) months; provided, that up to five percent (5%) of the shares of Common Stock that may be issued pursuant to Awards under the Plan, as may be adjusted pursuant to Section 4.2 hereof, may be issued in respect of Awards that are not subject to this minimum vesting period requirement.

ARTICLE 5.

OPTIONS

**5.1 Grant of Stock Options.** The Administrator shall have the right to grant, pursuant to this Plan, Options subject to such terms, restrictions and conditions as the Administrator may determine at the time of grant. Such conditions may include, but are not limited to, continued employment or the achievement of specified performance goals or objectives established by the Administrator with respect to one or more Performance Criteria.

**5.2 Option Agreements.** Each Option granted pursuant to this Plan shall be evidenced by an Option Agreement which shall specify the number of shares subject thereto, vesting provisions relating to such Option, the Exercise Price per share, and whether the Option is an Incentive Option or Nonqualified Option. As soon as is practical following the grant of an Option, an Option Agreement shall be duly executed and delivered by or on behalf of the Company to the Optionee to whom such Option was granted. Each Option Agreement shall be in such form and contain such additional terms and conditions, not inconsistent with the provisions of this Plan, as the Administrator shall, from time to time, deem desirable.

**5.3 Exercise Price.** The Exercise Price per share of Common Stock covered by each Option shall be determined by the Administrator, subject to the following: (a) the Exercise Price of an Incentive Option shall not be less than 100% of Fair

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## Exhibit 10.1

Market Value on the date the Incentive Option is granted, (b) the Exercise Price of a Nonqualified Option shall not be less than 100% of Fair Market Value on the date the Nonqualified Option is granted, and (c) if the person to whom an Incentive Option is granted is a 10% Stockholder on the date of grant, the Exercise Price shall not be less than 110% of Fair Market Value on the date the Incentive Option is granted.

However, an Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424 of the Code.

**5.4 Payment of Exercise Price.** Payment of the Exercise Price shall be made upon exercise of an Option and may be made, in the discretion of the Administrator, subject to any legal restrictions, by: (a) cash; (b) check; (c) the surrender of shares of Common Stock owned by the Optionee (provided that shares acquired pursuant to the exercise of options granted by the Company must have been held by the Optionee for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes), which surrendered shares shall be valued at Fair Market Value as of the date of such exercise; (d) the cancellation of indebtedness of the Company to the Optionee; (e) the waiver of compensation due or accrued to the Optionee for services rendered; (f) provided that a public market for the Common Stock exists, a "same day sale" commitment from the Optionee and an NASD Dealer whereby the Optionee irrevocably elects to exercise the Option and to sell a portion of the shares so purchased to pay for the Exercise Price and whereby the NASD Dealer irrevocably commits upon receipt of such shares to forward the Exercise Price directly to the Company; (g) provided that a public market for the Common Stock exists, a "margin" commitment from the Optionee and an NASD Dealer whereby the Optionee irrevocably elects to exercise the Option and to pledge the shares so purchased to the NASD Dealer in a margin account as security for a loan from the NASD Dealer in the amount of the Exercise Price, and whereby the NASD Dealer irrevocably commits upon receipt of such shares to forward the Exercise Price directly to the Company; or (h) any combination of the foregoing methods of payment or any other consideration or method of payment as shall be permitted by applicable law.

**5.5 Term and Termination of Options.** The term and provisions for termination of each Option shall be as fixed by the Administrator, but no Option may be exercisable more than ten (10) years after the date it is granted.

**5.6 Vesting and Exercise of Options.** Each Option shall vest and become exercisable in one or more installments, at such time or times and subject to such conditions, including without limitation the achievement of specified performance goals or objectives established with respect to one or more Performance Criteria, as shall be determined by the Administrator.

**5.7 Annual Limit on Incentive Options.** To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the Common Stock with respect to which Incentive Options granted under this Plan and any other plan of the Company or any Affiliated Company become exercisable for the first time by an Optionee during any calendar year shall not exceed \$100,000.

**5.8 Nontransferability of Options.** Except as otherwise provided in this Section 5.8, Options shall not be assignable or transferable except by will, the laws of descent and distribution or pursuant to a DRO entered by a court in settlement of marital property rights, and during the life of the Optionee, Options shall be exercisable only by the Optionee. At the discretion of the Administrator and in accordance with rules it establishes from time to time, Optionees may be permitted to transfer some or all of their Nonqualified Options to one or more "family members," which is not a "prohibited transfer for value," provided that (i) the Optionee (or such Optionee's estate or representative) shall remain obligated to satisfy all income or other tax withholding obligations associated with the exercise of such Nonqualified Option; (ii) the Optionee shall notify the Company in writing that such transfer has occurred and disclose to the Company the name and address of the "family member" or "family members" and their relationship to the Optionee, and (iii) such transfer shall be effected pursuant to transfer documents in a form approved by the Administrator. For purposes of the foregoing, the terms "family members" and "prohibited transfer for value" have the meaning ascribed to them in the General Instructions to Form S-8 (or any successor form) promulgated under the Securities Act of 1933, as amended.

**5.9 Repricing Prohibited.** Subject to Section 4.2 hereof, without the prior approval of the Company's stockholders, evidenced by a majority of votes cast, the Administrator shall not amend the terms of outstanding Options to reduce the Exercise Price of outstanding Options, cancel outstanding Options in exchange for cash, other awards or Options with an Exercise Price that is less than the Exercise Price of the original Options, or otherwise approve any modification to such an Option that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements adopted by the Nasdaq Stock Market.

**5.10 Rights as a Stockholder.** An Optionee or permitted transferee of an Option shall have no rights or privileges as a stockholder with respect to any shares covered by an Option until such Option has been duly exercised and certificates

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representing shares purchased upon such exercise have been issued to such person.

**5.11 Unvested Shares.** The Administrator shall have the discretion to grant Options which are exercisable for unvested shares of Common Stock. Should the Optionee cease being an employee, officer or director of the Company while owning such unvested shares, the Company shall have the right to repurchase, at the exercise price paid per share, any or all of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Administrator and set forth in the document evidencing such repurchase right.

## ARTICLE 6.

### RESTRICTED STOCK

**6.1 Issuance of Restricted Stock.** The Administrator shall have the right to issue pursuant to this Plan and at a Purchase Price determined by the Administrator, shares of Common Stock subject to such terms, restrictions and conditions as the Administrator may determine at the time of grant. Such conditions may include, but are not limited to, continued employment or the achievement of specified performance goals or objectives established by the Administrator with respect to one or more Performance Criteria, which require the Administrator to certify in writing whether and the extent to which such performance goals were achieved before such restrictions are considered to have lapsed.

**6.2 Restricted Stock Award Agreements.** A Participant shall have no rights with respect to the shares of Restricted Stock covered by a Restricted Stock Award Agreement until the Participant has paid the full Purchase Price, if any, to the Company in the manner set forth in Section 6.3(b) hereof and has executed and delivered to the Company the applicable Restricted Stock Award Agreement. Each Restricted Stock Award Agreement shall be in such form, and shall set forth the Purchase Price, if any, and such other terms, conditions and restrictions of the Restricted Stock Award Agreement, not inconsistent with the provisions of this Plan, as the Administrator shall, from time to time, deem desirable. Each such Restricted Stock Award Agreement may be different from each other Restricted Stock Award Agreement.

#### 6.3 Purchase Price.

(a) Amount. Restricted Stock may be issued to Participants for such consideration as is determined by the Administrator in its sole discretion, including no consideration or such minimum consideration as may be required by applicable law.

(b) Payment. Payment of the Purchase Price, if any, may be made, in the discretion of the Administrator, subject to any legal restrictions, by: (a) cash; (b) check; (c) the surrender of shares of Common Stock owned by the Participant (provided that shares acquired pursuant to the exercise of options granted by the Company shall have been held by the Participant for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes), which surrendered shares shall be valued at Fair Market Value as of the date of such acceptance; (d) the cancellation of indebtedness of the Company to the Participant; (e) the waiver of compensation due or accrued to the Participant for services rendered; or (f) any combination of the foregoing methods of payment or any other consideration or method of payment as shall be permitted by applicable law. If payment for shares of Restricted Stock is made by promissory note, any cash dividends paid with respect to the Restricted Stock may be applied, in the discretion of the Administrator, to repayment of such note.

**6.4 Vesting of Restricted Stock.** The Restricted Stock Award Agreement shall specify the date or dates, the performance goals, if any, established by the Administrator with respect to one or more Performance Criteria that must be achieved, and any other conditions on which the Restricted Stock may vest.

**6.5 Rights as a Stockholder.** Upon complying with the provisions of Sections 6.2 and 6.3 hereof, a Participant shall have the rights of a stockholder with respect to the Restricted Stock acquired pursuant to a Restricted Stock Award Agreement, including voting and dividend rights (subject to Section 10.4), subject to the terms, restrictions and conditions as are set forth in such Restricted Stock Award Agreement. Unless the Administrator shall determine otherwise, certificates evidencing shares of Restricted Stock shall remain in the possession of the Company until such shares have vested in accordance with the terms of the Restricted Stock Award Agreement.

**6.6 Restrictions.** Shares of Restricted Stock may not be sold, pledged or otherwise encumbered or disposed of and shall not be assignable or transferable except by will, the laws of descent and distribution or pursuant to a DRO entered by a court in settlement of marital property rights, except as specifically provided in the Restricted Stock Award Agreement or as

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authorized by the Administrator. In the event of termination of a Participant's employment, service as a director of the Company or Service Provider status for any reason whatsoever (including death or disability), the Restricted Stock Award Agreement may provide, in the discretion of the Administrator, that the Company may, at the discretion of the Administrator, exercise a Repurchase Right to repurchase at the original Purchase Price the shares of Restricted Stock that have not vested as of the date of termination.

**ARTICLE 7.**

**RESTRICTED STOCK UNITS**

**7.1 Grants of Restricted Stock Units and Dividend Equivalents.** The Administrator shall have the right to grant, pursuant to this Plan, Restricted Stock Units and Dividend Equivalents, subject to such terms, restrictions and conditions as the Administrator may determine at the time of grant. Such conditions may include, but are not limited to, continued employment or the achievement of specified performance goals or objectives established by the Administrator with respect to one or more Performance Criteria, which require the Administrator to certify in writing whether and the extent to which such performance goals were achieved before such restrictions are considered to have lapsed.

**7.2 Restricted Stock Award Agreements.** A Participant shall have no rights with respect to the Restricted Stock Units or Dividend Equivalents covered by a Restricted Stock Award Agreement until the Participant has executed and delivered to the Company the applicable Restricted Stock Award Agreement. Each Restricted Stock Award Agreement shall be in such form, and shall set forth the Purchase Price, if any, and such other terms, conditions and restrictions of the Restricted Stock Award Agreement, not inconsistent with the provisions of this Plan, as the Administrator shall, from time to time, deem desirable. Each such Restricted Stock Award Agreement may be different from each other Restricted Stock Award Agreement.

**7.3 Purchase Price.**

(a) Amount. Restricted Stock Units may be issued to Participants for such consideration as is determined by the Administrator in its sole discretion, including no consideration or such minimum consideration as may be required by applicable law.

(b) Payment. Payment of the Purchase Price, if any, may be made, in the discretion of the Administrator, subject to any legal restrictions, by: (a) cash; (b) check; (c) the surrender of shares of Common Stock owned by the Participant (provided that shares acquired pursuant to the exercise of options granted by the Company shall have been held by the Participant for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes), which surrendered shares shall be valued at Fair Market Value as of the date of such acceptance; (d) the cancellation of indebtedness of the Company to the Participant; (e) the waiver of compensation due or accrued to the Participant for services rendered; or (f) any combination of the foregoing methods of payment or any other consideration or method of payment as shall be permitted by applicable law.

**7.4 Vesting of Restricted Stock Units and Dividend Equivalents.** The Restricted Stock Award Agreement shall specify the date or dates, the performance goals, if any, established by the Administrator with respect to one or more Performance Criteria that must be achieved, and any other conditions on which the Restricted Stock Units and Dividend Equivalents may vest.

**7.5 Rights as a Stockholder.** Holders of Restricted Stock Units shall not be entitled to vote or to receive dividends unless or until they become owners of the shares of Common Stock pursuant to their Restricted Stock Award Agreement and the terms and conditions of the Plan, including Section 10.4 hereof.

**7.6 Restrictions.** Restricted Stock Units and Dividend Equivalents may not be sold, pledged or otherwise encumbered or disposed of and shall not be assignable or transferable except by will, the laws of descent and distribution or pursuant to a DRO entered by a court in settlement of marital property rights, except as specifically provided in the Restricted Stock Award Agreement or as authorized by the Administrator. In the event of termination of a Participant's employment, service as a director of the Company or Service Provider status for any reason whatsoever (including death or disability), the Restricted Stock Award Agreement may provide that all Restricted Stock Units and Dividend Equivalents that have not vested as of such date shall be automatically forfeited by the Participant. However, if, with respect to such unvested Restricted Stock Units the Participant paid a Purchase Price, the Administrator shall have the right, exercisable at the discretion of the Administrator, to exercise a Repurchase Right to cancel such unvested Restricted Stock Units upon payment to the Participant of the original Purchase Price. The Participant shall forfeit such unvested Restricted Stock Units upon the Administrator's exercise of such

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right.

**7.7 Restricted Stock Unit Grants to Non-Employee Directors.**

(a) Automatic Grants. Each director of the Company who is not an employee or executive officer of the Company (a “Non-Employee Director”) shall automatically be granted (i) a Restricted Stock Unit convertible into \$200,000 of shares of the Common Stock, as valued on the Restricted Stock Unit grant date, upon commencement of service as a director of the Company, and (ii) a Restricted Stock Unit convertible into \$100,000 of shares of Common Stock at each annual meeting of the Company’s stockholders (provided such individual has served as a Non-Employee Director for at least six (6) months prior to such meeting). All such Restricted Stock Units shall be subject to the terms and conditions of this Plan.

(b) Vesting of Restricted Stock Units Granted to Non-Employee Directors. Each initial Restricted Stock Unit granted to a newly-elected or appointed Non-Employee Director shall vest, in a series of four (4) successive equal annual installments over the Non-Employee Director’s period of continued service as a director, with the first such installment to vest upon the Non-Employee Director’s completion of one (1) year of service as a Non-Employee Director measured from the Restricted Stock Unit grant date. Each annual Restricted Stock Unit granted to continuing Non-Employee Directors shall vest, upon the Non-Employee Director’s completion of one (1) year of service as a Non-Employee Director measured from the Restricted Stock Unit grant date.

**ARTICLE 8.**

**STOCK APPRECIATION RIGHTS**

**8.1 Grant of Stock Appreciation Rights.** A Stock Appreciation Right may be granted to any Participant selected by the Administrator. Stock Appreciation Rights may be granted on a basis that allows for the exercise of the right by the Participant or that provides for the automatic payment of the right upon a specified date or event. Stock Appreciation Rights shall be exercisable or payable at such time or times and upon conditions as may be approved by the Administrator, provided that the Administrator may accelerate the exercisability or payment of a Stock Appreciation Right at any time.

**8.2 Vesting of Stock Appreciation Rights.** Each Stock Appreciation Right shall vest and become exercisable in one or more installments at such time or times and subject to such conditions, including without limitation the achievement of specified performance goals or objectives established with respect to one or more Performance Criteria, as shall be determined by the Administrator. A Stock Appreciation Right will be exercisable or payable at such time or times as determined by the Administrator, provided that the maximum term of a Stock Appreciation Right shall be ten (10) years from the date of grant. The base price of a Stock Appreciation Right shall be determined by the Administrator in its sole discretion; provided, however, that the base price per share of any Stock Appreciation Right shall not be less than one hundred percent (100%) of the Fair Market Value of the shares of Common Stock on the date of grant.

**8.3 Payment of Stock Appreciation Rights.** A Stock Appreciation Right will entitle the holder, upon exercise or other payment of the Stock Appreciation Right, as applicable, to receive an amount determined by multiplying: (i) the excess of the Fair Market Value of a share of Common Stock on the date of exercise or payment of the Stock Appreciation Right over the base price of such Stock Appreciation Right, by (ii) the number of shares as to which such Stock Appreciation Right is exercised or paid. Payment of the amount determined under the foregoing shall be made either in cash or in shares of Common Stock, as determined by the Administrator in its discretion. If payment is made in shares of Common Stock, such shares shall be valued at their Fair Market Value on the date of exercise or payment, subject to applicable tax withholding requirements and to such conditions, as are set forth in this Plan and the applicable Stock Appreciation Rights Award Agreement.

**8.4 Nontransferability of Stock Appreciation Rights.** Except as otherwise provided in this Section 8.4, Stock Appreciation Rights shall not be assignable or transferable except by will, the laws of descent and distribution or pursuant to a DRO entered by a court in settlement of marital property rights, and during the life of the Stock Appreciation Rights Holder, Stock Appreciation Rights shall be exercisable only by the Stock Appreciation Rights Holder. At the discretion of the Administrator and in accordance with rules it establishes from time to time, Stock Appreciation Rights Holders may be permitted to transfer some or all of their Stock Appreciation Rights to one or more “family members,” which is not a “prohibited transfer for value,” provided that (i) the Stock Appreciation Rights Holder (or such holder’s estate or representative) shall remain obligated to satisfy all income or other tax withholding obligations associated with the exercise of such Stock Appreciation Right; (ii) the Stock Appreciation Rights Holder shall notify the Company in writing that such transfer has occurred and disclose to the Company the name and address of the “family member” or “family members” and their relationship to the holder, and (iii) such transfer shall be effected pursuant to transfer documents in a form approved by the

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Administrator. For purposes of the foregoing, the terms “family members” and “prohibited transfer for value” have the meaning ascribed to them in the General Instructions to Form S-8 (or any successor form) promulgated under the Securities Act of 1933, as amended.

**ARTICLE 9.**

**STOCK PAYMENT AWARDS**

**9.1 Grant of Stock Payment Awards.** A Stock Payment award may be granted to any Participant selected by the Administrator. A Stock Payment award may be granted for past services, in lieu of bonus or other cash compensation, as directors’ compensation or for any other valid purpose as determined by the Administrator. A Stock Payment award granted to a Participant represents shares of Common Stock that are issued without restrictions on transfer and other incidents of ownership and free of forfeiture conditions, except as otherwise provided in the Plan and the Award Agreement. The Administrator may, in connection with any Stock Payment award, provide that no payment is required, or require the payment by the Participant of a specified purchase price.

**9.2 Rights as Stockholder.** Subject to the foregoing provisions of this Article 9 and the applicable Award Agreement, upon the issuance of the Common Stock under a Stock Payment award the Participant shall have all rights of a stockholder with respect to the shares of Common Stock, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto.

**ARTICLE 10.**

**ADMINISTRATION OF THE PLAN**

**10.1 Administrator.** Authority to control and manage the operation and administration of the Plan shall be vested in the Board, which may delegate such responsibilities in whole or in part to a Committee. Members of the Committee may be appointed from time to time by, and shall serve at the pleasure of, the Board. The Board may limit the composition of the Committee to those persons necessary to comply with the requirements of Section 16 of the Exchange Act.

**10.2 Powers of the Administrator.** In addition to any other powers or authority conferred upon the Administrator elsewhere in the Plan or by law, the Administrator shall have full power and authority: (a) to determine the persons to whom, and the time or times at which, Awards shall be granted, the number of shares to be represented by each Award, and the consideration to be received by the Company upon the exercise and/or vesting of such Awards; (b) to interpret the Plan; (c) to create, amend or rescind rules and regulations relating to the Plan; (d) to determine the terms, conditions and restrictions contained in, and the form of, Award Agreements; (e) to determine the identity or capacity of any persons who may be entitled to exercise a Participant’s rights under any Award Agreement under the Plan; (f) to correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award Agreement; (g) notwithstanding the minimum vesting provisions of Section 4.3, to accelerate the vesting of any Award or release or waive any repurchase rights of the Company with respect to Restricted Stock Awards in connection with a Participant’s death or Disability or a Change in Control; (h) to extend the expiration date of any Option; (i) to amend outstanding Award Agreements to provide for, among other things, any change or modification which the Administrator could have included in the original Agreement or in furtherance of the powers provided for herein; and (j) to make all other determinations necessary or advisable for the administration of the Plan, but only to the extent not contrary to the express provisions of the Plan. Any action, decision, interpretation or determination made in good faith by the Administrator in the exercise of its authority conferred upon it under the Plan shall be final and binding on the Company and all Participants. To the extent permitted by applicable law, the Administrator may from time to time delegate to one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards to Participants other than (a) senior executives of the Company who are subject to Section 16 of the Exchange Act, (b) Covered Employees, or (c) officers of the Company (or members of the Board) to whom authority to grant or amend Awards has been delegated hereunder. Any delegation hereunder shall be subject to the restrictions and limits that the Administrator specifies at the time of such delegation, and the Administrator may at any time rescind the authority so delegated or appoint a new delegatee.

**10.3 Limitation on Liability.** No employee of the Company or member of the Board or Administrator shall be subject to any liability with respect to duties under the Plan unless the person acts fraudulently or in bad faith. To the extent permitted by law, the Company shall indemnify each member of the Board or Administrator, and any employee of the Company with duties under the Plan, who was or is a party, or is threatened to be made a party, to any threatened, pending or completed

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**Exhibit 10.1**

proceeding, whether civil, criminal, administrative or investigative, by reason of such person's conduct in the performance of duties under the Plan.

**10.4 No Dividends on Unvested Awards.** The Administrator may not provide for the current payment of dividends or Dividend Equivalents with respect to any shares of Common Stock subject to an outstanding award granted under the Plan (or portion thereof) that has not vested. For any such award, the Committee may provide only for the accrual of dividends or Dividend Equivalents that will not be payable to the Participant unless and until, and only to the extent that, such award vests. Notwithstanding the foregoing, Dividend Equivalents may be granted only in connection with a grant of Restricted Stock Units subject to the vesting conditions that govern Restricted Stock Units as set forth in the applicable Restricted Stock Award Agreement. No dividends or Dividend Equivalents shall be paid on Options or Stock Appreciation Rights.

**ARTICLE 11.**

**CHANGE IN CONTROL**

**11.1 Impact of Change in Control on Awards Under Plan.** In order to preserve a Participant's rights in the event of a Change in Control of the Company:

(a) The Administrator shall have the discretion to provide in each Award Agreement the terms and conditions that relate to (i) vesting of such Award in the event of a Change in Control, and (ii) assumption of such Awards or issuance of comparable securities under an incentive program in the event of a Change in Control. The aforementioned terms and conditions may vary in each Award Agreement.

(b) If the terms of an outstanding Option provide for accelerated vesting in the event of a Change in Control, or to the extent that a Option is vested and not yet exercised, the Administrator in its discretion may provide, in connection with the Change in Control transaction, for the purchase or exchange of each Option for an amount of cash or other property having a value equal to the difference (or "spread") between: (x) the value of the cash or other property that the Participant would have received pursuant to the Change in Control transaction in exchange for the shares issuable upon exercise of the Option had the Option been exercised immediately prior to the Change in Control, and (y) the Exercise Price of the Option.

(c) If the terms of an outstanding Stock Appreciation Right provide for accelerated vesting in the event of a Change in Control, or to the extent that a Stock Appreciation Right is vested and not yet exercised, the Administrator in its discretion may provide, in connection with the Change in Control transaction, for the purchase or exchange of each Stock Appreciation Right for an amount of cash or other property having a value equal to the value of the cash or other property that the Participant would have received pursuant to the Change in Control transaction in exchange for the shares issuable upon exercise of the Stock Appreciation Right had the Stock Appreciation Right been exercised immediately prior to the Change in Control.

(d) Outstanding Options and Stock Appreciation Rights shall terminate and cease to be exercisable upon consummation of a Change in Control except to the extent that the Options or Stock Appreciation Rights are assumed by the successor entity (or parent thereof) pursuant to the terms of the Change in Control transaction.

(e) The Administrator shall cause written notice of a proposed Change in Control transaction to be given to Participants not less than fifteen (15) days prior to the anticipated effective date of the proposed transaction.

**ARTICLE 12.**

**AMENDMENT AND TERMINATION OF THE PLAN**

**12.1 Amendments.** The Board may from time to time alter, amend, suspend or terminate the Plan in such respects as the Board may deem advisable. No such alteration, amendment, suspension or termination shall be made which shall substantially affect or impair the rights of any Participant under an outstanding Award Agreement without such Participant's consent. The Board may alter or amend the Plan to comply with requirements under the Code relating to Incentive Options or other types of options which give Optionees more favorable tax treatment than that applicable to Options granted under this Plan as of the date of its adoption. Upon any such alteration or amendment, any outstanding Option granted hereunder may, if the Administrator so determines and if permitted by applicable law, be subject to the more favorable tax treatment afforded to an Optionee pursuant to such terms and conditions.

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**12.2 Plan Termination.** Unless the Plan shall theretofore have been terminated, the Plan shall terminate on the tenth (10th) anniversary of the Effective Date and no Awards may be granted under the Plan thereafter, but Awards and Award Agreements then outstanding shall continue in effect in accordance with their respective terms.

**ARTICLE 13.**

**TAX WITHHOLDING**

**13.1 Tax Withholding.** The Participant shall be responsible for payment of any taxes or similar charges required by law to be withheld from an Award or an amount paid in satisfaction of an Award, which shall be paid by the Participant on or prior to the payment or other event that results in taxable income in respect of an Award. The Award Agreement may specify the manner in which the withholding obligation shall be satisfied with respect to the particular type of Award.

**ARTICLE 14.**

**MISCELLANEOUS**

**14.1 Benefits Not Alienable.** Other than as provided above, benefits under the Plan may not be assigned or alienated, whether voluntarily or involuntarily. Any unauthorized attempt at assignment, transfer, pledge or other disposition shall be without effect.

**14.2 Awards subject to Code Section 409A.** Any Award that constitutes, or provides for, a deferral of compensation subject to Section 409A of the Code (a "Section 409A Award") shall satisfy the requirements of Section 409A of the Code, to the extent applicable as determined by the Administrator. The Award Agreement with respect to a Section 409A Award shall incorporate the terms and conditions required by Section 409A of the Code. If any deferral of compensation is to be permitted in connection with a 409A Award, the Administrator shall establish rules and procedures relating to such deferral in a manner intended to comply with the requirements of Section 409A of the Code, including, without limitation, the time when an election to defer may be made, the time period of the deferral and the events that would result in payment of the deferred amount, the interest or other earnings attributable to the deferral and the method of funding, if any, attributable to the deferred amount.

**14.3 No Enlargement of Employee Rights.** This Plan is strictly a voluntary undertaking on the part of the Company and shall not be deemed to constitute a contract between the Company and any Participant to be consideration for, or an inducement to, or a condition of, the employment of any Participant. Nothing contained in the Plan shall be deemed to give the right to any Participant to be retained as an employee of the Company or any Affiliated Company or to interfere with the right of the Company or any Affiliated Company to discharge any Participant at any time.

**14.4 Application of Funds.** The proceeds received by the Company from the sale of Common Stock pursuant to Option Agreements and Restricted Stock Award Agreements, except as otherwise provided herein, will be used for general corporate purposes.

**14.5 Unfunded Plan.** The adoption of the Plan and any reservation of shares of Common Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of Common Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan.

**14.6 Annual Reports.** During the term of this Plan, the Company will furnish to each Participant who does not otherwise receive such materials, copies of all reports, proxy statements and other communications that the Company distributes generally to its stockholders.

**14.7 Recovery.** All Options and Stock Appreciation Rights, or any shares of Common Stock or cash issued or awarded pursuant to the exercise of Options or Stock Appreciation Rights, and all Restricted Stock and Restricted Stock Units will be subject to recoupment in accordance with the Company's Incentive Compensation Clawback Policy, as amended or modified from time to time. In addition, the Administrator may impose such other clawback, recovery or recoupment provisions in a Stock Option Agreement, Stock Appreciation Right Agreement or Restricted Stock Award Agreement as the Administrator

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#### **Exhibit 10.1**

determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of any of the following events with respect to a Participant: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company, any customer or vendor of the Company or any third party with whom the Company is or was engaged in business; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. No recovery of compensation under this Section 14.7 will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company.

**14.8 Stockholder Approval.** This Plan, as amended and restated, shall be effective as of the date of approval of the stockholders of the Company.