VAIL RESORTS INC
Form 10-Q
March 10, 2010

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

FORM 10-Q

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended January 31, 2010

¨ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission File Number: 001-09614

Vail Resorts, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	51-0291762 (I.R.S. Employer Identification No.)
390 Interlocken Crescent Broomfield, Colorado (Address of Principal Executive Offices)	80021 (Zip Code)
(303) 404-1800 (Registrant's Telephone Number, Including Area Code)	

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.
x Yes ¨ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
¨ Yes ¨ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer x Accelerated filer ¨

Non-accelerated filer ¨ (Do not check if a smaller reporting company) Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.

¨ Yes x No

As of March 5, 2010, 36,248,333 shares of the registrant’s common stock were outstanding.

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PART I FINANCIAL INFORMATION

Item 1. Financial Statements -- Unaudited

Vail Resorts, Inc.
Consolidated Condensed Balance Sheets
(In thousands, except share and per share amounts)

	January 31, 2010 (Unaudited)	July 31, 2009	January 31, 2009 (Unaudited)
Assets			
Current assets:			
Cash and cash equivalents	$ 58,008	$ 69,298	$ 139,172
Restricted cash	15,532	11,065	14,603
Trade receivables, net	45,366	58,063	50,495
Inventories, net	51,641	48,947	52,189
Other current assets	51,684	41,615	39,112
Total current assets	222,231	228,988	295,571
Property, plant and equipment, net (Note 5)	1,039,555	1,057,658	1,084,031
Real estate held for sale and investment	414,501	311,485	247,329
Goodwill, net	167,950	167,950	167,950
Intangible assets, net	79,167	79,429	79,785
Other assets	32,661	38,970	42,931
Total assets	$ 1,956,065	$1,884,480	$ 1,917,597
Liabilities and Stockholders' Equity			
Current liabilities:			
Accounts payable and accrued liabilities (Note 5)	$ 339,256	$ 245,536	$ 302,118
Income taxes payable	10,482	5,460	33,315
Long-term debt due within one year (Note 4)	1,870	352	304
Total current liabilities	351,608	251,348	335,737
Long-term debt (Note 4)	489,865	491,608	491,777
Other long-term liabilities (Note 5)	197,759	233,169	221,814
Deferred income taxes	113,808	112,234	93,469
Commitments and contingencies (Note 9)			
Redeemable noncontrolling interest (Note 8)	21,318	15,415	25,455
Stockholders' equity:			
Preferred stock, $0.01 par value, 25,000,000 shares authorized, no shares issued and outstanding	--	--	--
Common stock, $0.01 par value, 100,000,000 shares authorized, 40,125,318 (unaudited), 40,049,988 and 40,007,068 (unaudited) shares issued, respectively	401	400	400
Additional paid-in capital	561,103	555,728	549,729
Retained earnings	356,512	356,995	330,701
Treasury stock, at cost, 3,878,535 (unaudited), 3,878,535 and 3,600,235 (unaudited) shares, respectively (Note 11)	(147,828)	(147,828)	(140,333)
Total Vail Resorts, Inc. stockholders' equity	770,188	765,295	740,497
Noncontrolling interests	11,519	15,411	8,848
Total stockholders' equity	781,707	780,706	749,345
Total liabilities and stockholders' equity	$ 1,956,065	$1,884,480	$ 1,917,597

The accompanying Notes are an integral part of these consolidated condensed financial statements.

Vail Resorts, Inc.
Consolidated Condensed Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three months ended January 31,	
	2010	2009
Net revenue:		
Mountain	$ 260,978	$ 258,489
Lodging	38,676	41,150
Real estate	870	89,157
Total net revenue	300,524	388,796
Segment operating expense (exclusive of depreciation and amortization shown separately below):		
Mountain	154,018	156,188
Lodging	37,788	38,697
Real estate	7,417	59,508
Total segment operating expense	199,223	254,393
Other operating (expense) income:		
Depreciation and amortization	(27,772)	(27,438)
Gain (loss) on disposal of fixed assets, net	12	(422)
Income from operations	73,541	106,543
Mountain equity investment income, net	207	1,161
Investment income	192	336
Interest expense, net	(4,148)	(7,295)
Income before provision for income taxes	69,792	100,745
Provision for income taxes	(24,713)	(36,412)
Net income	45,079	64,333
Net income attributable to noncontrolling interests	(4,389)	(3,788)
Net income attributable to Vail Resorts, Inc.	$ 40,690	$ 60,545
Per share amounts (Note 3):		
Basic net income per share attributable to Vail Resorts, Inc.	$ 1.12	$ 1.66
Diluted net income per share attributable to Vail Resorts, Inc.	$ 1.11	$ 1.65

The accompanying Notes are an integral part of these consolidated condensed financial statements.

Vail Resorts, Inc.
Consolidated Condensed Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Six months ended January 31,	
	2010	2009
Net revenue:		
Mountain	$300,182	$ 299,267
Lodging	80,031	86,403
Real estate	1,075	155,907
Total net revenue	381,288	541,577
Segment operating expense (exclusive of depreciation and amortization shown separately below):		
Mountain	230,486	237,411
Lodging	80,411	83,595
Real estate	12,594	110,885
Total segment operating expense	323,491	431,891
Other operating (expense) income:		
Depreciation and amortization	(54,956)	(52,516)
Gain on sale of real property	6,087	--
Loss on disposal of fixed assets, net	(101)	(602)
Income from operations	8,827	56,568
Mountain equity investment income, net	461	2,176
Investment income	422	979
Interest expense, net	(8,983)	(15,242)
Income before benefit (provision) for income taxes	727	44,481
Benefit (provision) for income taxes	841	(17,003)
Net income	1,568	27,478
Net income attributable to noncontrolling interests	(2,051)	(1,437)
Net (loss) income attributable to Vail Resorts, Inc.	$ (483)	$ 26,041
Per share amounts (Note 3):		
Basic net (loss) income per share attributable to Vail Resorts, Inc.	$ (0.01)	$ 0.71
Diluted net (loss) income per share attributable to Vail Resorts, Inc.	$ (0.01)	$ 0.71

The accompanying Notes are an integral part of these consolidated condensed financial statements.

Vail Resorts, Inc.
Consolidated Condensed Statements of Cash Flows
(In thousands)
(Unaudited)

	Six Months Ended January 31,	
	2010	2009
Cash flows from operating activities:		
Net income	$ 1,568	$ 27,478
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	54,956	52,516
Cost of real estate sales	--	87,631
Stock-based compensation expense	6,368	5,242
Deferred income taxes, net	(841)	16,204
Gain on sale of real property	(6,087)	--
Other non-cash income, net	(3,009)	(3,998)
Changes in assets and liabilities:		
Restricted cash	(4,467)	43,834
Trade receivables, net	12,697	358
Inventories, net	(2,694)	(2,481)
Investments in real estate	(109,186)	(80,567)
Accounts payable and accrued liabilities	61,238	36,725
Deferred real estate deposits	139	(36,117)
Private club deferred initiation fees and deposits	1,271	39,667
Other assets and liabilities, net	2,178	(19,828)
Net cash provided by operating activities	14,131	166,664
Cash flows from investing activities:		
Capital expenditures	(36,245)	(77,560)
Acquisition of business	--	(38,170)
Cash received from sale of real property	8,920	--
Other investing activities, net	(234)	(417)
Net cash used in investing activities	(27,559)	(116,147)
Cash flows from financing activities:		
Repurchases of common stock	--	(14,872)
Proceeds from borrowings under non-recourse real estate financings	--	9,013
Payments of non-recourse real estate financings	--	(58,407)
Proceeds from borrowings under other long-term debt	85,962	55,782
Payments of other long-term debt	(86,188)	(71,013)
Other financing activities, net	2,364	5,807
Net cash provided by (used in) financing activities	2,138	(73,690)
Net decrease in cash and cash equivalents	(11,290)	(23,173)
Cash and cash equivalents:		
Beginning of period	69,298	162,345
End of period	$ 58,008	$ 139,172

The accompanying Notes are an integral part of these consolidated condensed financial statements.

Vail Resorts, Inc.
Notes to Consolidated Condensed Financial Statements
(Unaudited)

1. Organization and Business

Vail Resorts, Inc. (“Vail Resorts” or the “Parent Company”) is organized as a holding company and operates through various subsidiaries. Vail Resorts and its subsidiaries (collectively, the “Company”) currently operate in three business segments: Mountain, Lodging and Real Estate. In the Mountain segment, the Company owns and operates five world-class ski resort properties at the Vail, Breckenridge, Keystone and Beaver Creek mountain resorts in Colorado and the Heavenly Mountain Resort in the Lake Tahoe area of California and Nevada, as well as ancillary services, primarily including ski school, dining and retail/rental operations. These resorts operate primarily on Federal land under the terms of Special Use Permits granted by the USDA Forest Service (the “Forest Service”). The Company holds a 69.3% interest in SSI Venture, LLC (“SSV”), a retail/rental company. In the Lodging segment, the Company owns and/or manages a collection of luxury hotels under its RockResorts brand, as well as other strategic lodging properties and a large number of condominiums located in proximity to the Company’s ski resorts, the Grand Teton Lodge Company (“GTLC”), which operates three destination resorts at Grand Teton National Park (under a National Park Service concessionaire contract), Colorado Mountain Express (“CME”), a resort ground transportation company, and golf courses. Vail Resorts Development Company (“VRDC”), a wholly-owned subsidiary, conducts the operations of the Company’s Real Estate segment, which owns and develops real estate in and around the Company’s resort communities. The Company’s mountain business and its lodging properties at or around the Company’s ski resorts are seasonal in nature with peak operating seasons from mid-November through mid-April. The Company’s operations at GTLC and its golf courses generally operate from mid-May through mid-October. The Company also has non-majority owned investments in various other entities, some of which are consolidated (see Note 6, Variable Interest Entities).

2. Summary of Significant Accounting Policies

The Financial Accounting Standards Board (“FASB”) has established the FASB Accounting Standards Codification (“ASC”) as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the United States of America for financial statements of interim and annual periods ending after September 15, 2009. This standard does not alter current accounting principles generally accepted in the United States of America (“GAAP”), but rather integrates existing accounting standards with other authoritative guidance.

Basis of Presentation

Consolidated Condensed Financial Statements-- In the opinion of the Company, the accompanying Consolidated Condensed Financial Statements reflect all adjustments necessary to state fairly the Company's financial position, results of operations and cash flows for the interim periods presented. All such adjustments are of a normal recurring nature. Results for interim periods are not indicative of the results for the entire fiscal year. The accompanying Consolidated Condensed Financial Statements should be read in conjunction with the audited Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended July 31, 2009. Certain information and footnote disclosures, including significant accounting policies, normally included in fiscal year financial statements prepared in accordance with GAAP have been condensed or omitted. The July 31, 2009 Consolidated Condensed Balance Sheet was derived from audited financial statements.

Use of Estimates-- The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the balance sheet date and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Noncontrolling Interests in Consolidated Financial Statements-- Effective August 1, 2009, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 160, "Noncontrolling Interest in Consolidated Financial Statements – an Amendment of Accounting Research Bulletin No. 51" ("SFAS 160"). The guidance of this statement is now included in ASC Topic 810 "Consolidation." This statement requires the presentation of net income or loss attributable to noncontrolling interests (previously referred to as minority interest) along with net income or loss attributable to the stockholders of the Company separately in its consolidated statement of operations. Additionally, noncontrolling interests in the consolidated subsidiaries of the Company are reported as a separate component of equity in the consolidated balance sheet, apart from the Company's equity. However, redeemable noncontrolling interests in which the Company is subject to a put option under which it may be required to repurchase an interest in a consolidated subsidiary from a noncontrolling interest holder, must be classified outside of stockholders' equity. Since the Company is subject to a put option with respect to SSV beginning August 1, 2010 and each year thereafter (see Note 8, Redeemable Noncontrolling Interest, of the Notes to Consolidated Condensed Financial Statements), the redeemable noncontrolling interest in SSV has been classified in the mezzanine section of the accompanying consolidated condensed balance sheets at the redemption value as prescribed in the SSV operating agreement at the end of each reporting period.

Upon adoption, the provisions of this statement have been applied to all noncontrolling interests prospectively, except for the presentation and disclosure requirements, which have been applied retrospectively for all periods presented. The retrospective impact of applying this guidance was a reclassification of $15.4 million and $25.5 million as of July 31, 2009 and January 31, 2009, respectively, of minority interest to redeemable noncontrolling interest, representing noncontrolling interest subject to the SSV put option, and a reduction in retained earnings of $3.4 million as of January 31, 2009, representing the difference in the redemption value as of January 31, 2009 and the carrying value of the SSV noncontrolling interest. In addition, as of July 31, 2009 and January 31, 2010, the portion of noncontrolling interest, which is not subject to the SSV put option, has been reclassified as part of equity-noncontrolling interests. The following table summarizes the changes in total stockholders' equity (in thousands):

	For the Six Months Ended January 31,					
	2010			2009		
	Vail Resorts Stockholders' Equity	Noncontrolling Interests	Total Equity	Vail Resorts Stockholders' Equity	Noncontrolling Interests	Total Equity
Balance, beginning of period	$ 765,295	$ 15,411	$ 780,706	$ 716,633	$ 8,848	$ 725,481
Net (loss) income	(483)	2,051	1,568	26,041	1,437	27,478
Stock-based compensation expense	6,368	--	6,368	5,242	--	5,242
Issuance of shares under share award plans	(672)	--	(672)	(1,052)	--	(1,052)
Tax expense from share award plans	(320)	--	(320)	(232)	--	(232)
Repurchases of common stock	--	--	--	(14,872)	--	(14,872)
Adjustment to redemption value of redeemable noncontrolling interest	--	(5,903)	(5,903)	8,737	(1,003)	7,734
Distributions to noncontrolling interests,	--	(40)	(40)	--	(434)	(434)

net						
Balance, end of period	$ 770,188	$ 11,519	$ 781,707	$ 740,497	$ 8,848	$ 749,345

Additionally, upon adoption of this statement, even though the Company's total provision (benefit) for income taxes did not change, the Company's effective tax rate calculation has changed because net income or loss attributable to noncontrolling interests is no longer included in the determination of pre-tax income or loss in calculating its effective tax rate.

Fair Value Instruments-- The recorded amounts for cash and cash equivalents, receivables, other current assets, and accounts payable and accrued liabilities approximate fair value due to their short-term nature. The fair value of amounts outstanding under the Employee Housing Bonds (Note 4, Long-Term Debt) approximate book value due to the variable nature of the interest rate associated with that debt. The fair value of the 6.75% Senior Subordinated Notes ("6.75%Notes") (Note 4, Long-Term Debt) is based on quoted market price. The fair value of the Company's Industrial Development Bonds (Note 4, Long-Term Debt) and other long-term debt have been estimated using discounted cash flow analyses based on current borrowing rates for debt with similar remaining maturities and ratings. The estimated fair value of the 6.75% Notes, Industrial Development Bonds and other long-term debt as of January 31, 2010 is presented below (in thousands):

	January 31, 2010	
	Carrying Value	Fair Value
6.75% Notes	$390,000	$387,075
Industrial Development Bonds	$ 42,700	$ 46,368
Other long-term debt	$ 6,460	$ 6,273

New Accounting Standards

Fair Value Measurements and Disclosures-- In September 2006, the FASB issued guidance which is included in ASC Topic 820, "Fair Value Measurements and Disclosures" (SFAS No. 157 "Fair Value Measurements") on fair value measurements and disclosures. This standard defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. The fair value guidance in this standard for financial assets and liabilities was effective for the Company on August 1, 2008. The Company adopted the guidance for nonfinancial assets and liabilities on August 1, 2009 and the provisions did not have a material impact on the Company's financial position or results of operations.

Business Combinations-- In December 2007, the FASB issued guidance which is included in ASC Topic 805, "Business Combinations" (SFAS No. 141R, "Business Combinations") which establishes principles and requirements on how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in an acquiree, including the recognition and measurement of goodwill acquired in a business combination. This standard also requires acquisition-related transaction expenses and restructuring costs be expensed as incurred rather than capitalized as a component of the business combination. The guidance was effective for the Company on August 1, 2009 and will be applied prospectively to business combinations.

Amendments to FASB Interpretation, Consolidation of Variable Interest Entities-- In June 2009, the FASB issued guidance which is included in ASC 810, "Consolidation" (SFAS 167 "Amendments to FASB No. 46(R)") which amends the consolidation guidance for variable interest entities. Under this new standard, entities must perform a qualitative assessment in determining the primary beneficiary of a variable interest entity which includes, among other things, consideration as to whether a variable interest holder has the power to direct the activities that most significantly impact the economic performance of the variable interest entity and the obligation to absorb losses or the right to receive benefits of the variable interest entity that could potentially be significant to the variable interest entity. This standard is effective for the Company beginning August 1, 2010 (the Company's fiscal year ending July 31, 2011). The Company is currently evaluating the impacts, if any, the adoption of this new standard will have on the Company's financial position or results of operations.

Revenue Recognition Guidance for Arrangements with Multiple Deliverables-- In September 2009, the FASB issued Accounting Standards Update ("ASU") 2009-13, "Multiple-Deliverables Revenue Arrangements" (amendments to ASC Topic 605, "Revenue Recognition," and the Emerging Issues Task Force Issue No. 08-01 "Revenue Arrangements with Multiple Deliverables") which amends the revenue recognition guidance for arrangements with multiple deliverables. This new standard requires entities to allocate revenue in arrangements with multiple deliverables using estimated selling prices and eliminates the use of the residual method. The provisions of this new standard are effective for the Company beginning August 1, 2010 (the Company's fiscal year ending July 31, 2011); however, early adoption is permitted. The Company is currently evaluating the impacts, if any, the adoption of this new standard will have on the Company's financial position or results of operations.

3. Net Income (Loss) Per Common Share

Basic earnings per share ("EPS") excludes dilution and is computed by dividing net income (loss) attributable to Vail Resorts stockholders by the weighted-average shares outstanding during the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised, resulting in the issuance of shares of common stock that would then share in the earnings of Vail Resorts. Presented below is basic and diluted EPS for the three months ended January 31, 2010 and 2009 (in thousands, except per share amounts):

	Three Months Ended January 31,			
	2010		2009	
	Basic	Diluted	Basic	Diluted
Net income per share:				
Net income attributable to Vail Resorts	$ 40,690	$ 40,690	$ 60,545	$ 60,545
Weighted-average shares outstanding	36,245	36,245	36,570	36,570
Effect of dilutive securities	--	509	--	93
Total shares	36,245	36,754	36,570	36,663
Net income per share attributable to Vail Resorts	$ 1.12	$ 1.11	$ 1.66	$ 1.65

The number of shares issuable on the exercise of share based awards that were excluded from the calculation of diluted net income per share because the effect of their inclusion would have been anti-dilutive totaled 31,000 and 438,000 for the three months ended January 31, 2010 and 2009, respectively.

Presented below is basic and diluted EPS for the six months ended January 31, 2010 and 2009 (in thousands, except per share amounts):

	Six Months Ended January 31,			
	2010		2009	
	Basic	Diluted	Basic	Diluted
Net (loss) income per share:				
Net (loss) income attributable to Vail Resorts	$ (483)	$ (483)	$ 26,041	$ 26,041
Weighted-average shares outstanding	36,223	36,223	36,728	36,728
Effect of dilutive securities	--	--	--	184
Total shares	36,223	36,223	36,728	36,912

Net (loss) income per share attributable to Vail Resorts	$	(0.01)	$	(0.01)	$	0.71	$	0.71

The number of shares issuable on the exercise of share based awards that were excluded from the calculation of diluted net (loss) income per share because the effect of their inclusion would have been anti-dilutive totaled 1.2 million and 207,000 for the six months ended January 31, 2010 and 2009, respectively.

4. Long-Term Debt

Long-term debt as of January 31, 2010, July 31, 2009 and January 31, 2009 is summarized as follows (in thousands):

	Maturity (a)	January 31, 2010	July 31, 2009	January 31, 2009
Credit Facility Revolver	2012	$ --	$ --	$ --
SSV Facility	2011	--	--	--
Industrial Development Bonds	2011-2020	42,700	42,700	42,700
Employee Housing Bonds	2027-2039	52,575	52,575	52,575
6.75% Senior Subordinated Notes	2014	390,000	390,000	390,000
Other	2010-2029	6,460	6,685	6,806
Total debt		491,735	491,960	492,081
Less: Current maturities (b)		1,870	352	304
Long-term debt		$ 489,865	$ 491,608	$ 491,777

(a) Maturities are based on the Company's July 31 fiscal year end.

(b) Current maturities represent principal payments due in the next 12 months.

Aggregate maturities for debt outstanding as of January 31, 2010 reflected by fiscal year are as follows (in thousands):

2010	$ 122
2011	1,831
2012	305
2013	319
2014	390,219
Thereafter	98,939
Total debt	$ 491,735

The Company incurred gross interest expense of $8.5 million and $8.7 million for the three months ended January 31, 2010 and 2009, respectively, of which $0.4 million in each period was amortization of deferred financing costs. The Company capitalized $4.4 million and $1.4 million of interest during the three months ended January 31, 2010 and 2009, respectively. The Company incurred gross interest expense of $16.9 million and $18.4 million for the six months ended January 31, 2010 and 2009, respectively, of which $0.8 million and $1.2 million, respectively, was amortization of deferred financing costs. The Company capitalized $7.9 million and $3.1 million of interest during the six months ended January 31, 2010 and 2009, respectively.

5. Supplementary Balance Sheet Information

The composition of property, plant and equipment follows (in thousands):

	January 31, 2010	July 31, 2009	January 31, 2009
Land and land improvements	$ 269,248	$ 262,255	$ 263,922
Buildings and building improvements	738,165	734,576	736,730
Machinery and equipment	513,874	498,912	499,744
Furniture and fixtures	189,742	187,316	175,291
Software	52,942	44,584	43,753
Vehicles	35,208	33,991	34,573
Construction in progress	36,970	40,724	27,243
Gross property, plant and equipment	1,836,149	1,802,358	1,781,256
Accumulated depreciation	(796,594)	(744,700)	(697,225)
Property, plant and equipment, net	$ 1,039,555	$ 1,057,658	$ 1,084,031

The composition of accounts payable and accrued liabilities follows (in thousands):

	January 31, 2010	July 31, 2009	January 31, 2009
Trade payables	$ 55,677	$ 42,530	$ 56,758
Real estate development payables	42,635	45,681	38,098
Deferred revenue	83,363	57,171	80,762
Deferred real estate and other deposits	64,279	21,637	30,104
Accrued salaries, wages and deferred compensation	21,404	15,202	18,578
Accrued benefits	24,974	23,496	25,118
Accrued interest	13,788	14,002	13,910
Liabilities to complete real estate projects, short term	1,970	3,972	6,950
Other accruals	31,166	21,845	31,840
Total accounts payable and accrued liabilities	$339,256	$ 245,536	$302,118

The composition of other long-term liabilities follows (in thousands):

	January 31, 2010	July 31, 2009	January 31, 2009
Private club deferred initiation fee revenue and deposits	$ 150,980	$ 153,265	$ 155,195
Deferred real estate deposits	--	32,792	46,240
Other long-term liabilities	46,779	47,112	20,379
Total other long-term liabilities	$ 197,759	$ 233,169	$ 221,814

6. Variable Interest Entities

The Company is the primary beneficiary of four employee housing entities (collectively, the “Employee Housing Entities”), Breckenridge Terrace, LLC, The Tarnes at BC, LLC, BC Housing, LLC and Tenderfoot Seasonal Housing, LLC, which are Variable Interest Entities (“VIEs”), and has consolidated them in its Consolidated Condensed Financial Statements. As a group, as of January 31, 2010, the Employee Housing Entities had total assets of $34.8 million (primarily recorded in property, plant and equipment, net) and total liabilities of $62.4 million (primarily recorded in long-term debt as “Employee Housing Bonds”). The Company’s lenders have issued letters of credit totaling $53.4 million under the Company’s senior credit facility (the “Credit Facility”) related to Employee Housing Bonds. Payments under the letters of credit would be triggered in the event that one of the entities defaults on required payments. The letters of credit have no default provisions.

The Company is the primary beneficiary of Avon Partners II, LLC ("APII"), which is a VIE. APII owns commercial space and the Company currently leases substantially all of that space. APII had total assets of $5.5 million (primarily recorded in property, plant and equipment, net) and no debt as of January 31, 2010.

The Company, through various lodging subsidiaries, manages hotels in which the Company has no ownership interest in the entities that own such hotels. The Company has extended a $2.0 million note receivable to one of these entities. These entities were formed by unrelated third parties to acquire, own, operate and realize the value in resort hotel properties. The Company managed the day-to-day operations of seven hotel properties as of January 31, 2010. The Company has determined that the entities that own the hotel properties are VIEs, and the management contracts are significant variable interests in these VIEs. The Company has also determined that it is not the primary beneficiary of these entities and, accordingly, is not required to consolidate any of these entities. Based upon the latest information provided by these third party entities, these VIEs had estimated total assets of approximately $229 million and total liabilities of approximately $151 million. The Company's maximum exposure to loss as a result of its involvement with these VIEs is limited to a $2.4 million note receivable including accrued interest from one of the third parties and the net book value of the intangible asset associated with a management agreement in the amount of $0.6 million as of January 31, 2010.

7. Fair Value Measurements

The FASB issued fair value guidance that establishes how reporting entities should measure fair value for measurement and disclosure purposes. The guidance establishes a common definition of fair value applicable to all assets and liabilities measured at fair value and prioritizes the inputs into valuation techniques used to measure fair value. Accordingly, the Company uses valuation techniques which maximize the use of observable inputs and minimize the use of unobservable inputs when determining fair value. The three levels of the hierarchy are as follows:

Level 1: Inputs that reflect unadjusted quoted prices in active markets that are accessible to the Company for identical assets or liabilities;

Level 2: Inputs include quoted prices for similar assets and liabilities in active and inactive markets or that are observable for the asset or liability either directly or indirectly; and

Level 3: Unobservable inputs which are supported by little or no market activity.

The table below summarizes the Company's cash equivalents measured at fair value (all other assets and liabilities measured at fair value are immaterial) (in thousands):

Fair Value Measurements at Reporting Date Using	January 31, 2010	July 31, 2009	January 31, 2009
Level 1	$ 8,698	$ 47,915	$ 93,036
Level 2	300	13,300	18,500
Level 3	--	--	--
Total	$ 8,998	$ 61,215	$111,536

The Company's cash equivalents include money market funds, U.S. government debt securities and time deposits.

8. Redeemable Noncontrolling Interest

The Company holds an approximate 69.3% ownership interest in SSV. Additionally, the Company holds call rights and GSSI LLC (“GSSI”), the noncontrolling interest holder in SSV, holds put rights for the remaining interest in SSV beginning August 1, 2010, as further discussed below, and GSSI has a management agreement which extends to coincide with the exercise of the put and call rights.

The Company’s and GSSI’s put and call rights are as follows: (i) beginning August 1, 2010 and each year thereafter, each of the Company and GSSI has the right to call or put, respectively, 100% of GSSI's ownership interest in SSV to the Company during certain periods each year and (ii) GSSI has the right to put to the Company 100% of its ownership interest in SSV at any time after GSSI has been removed as manager of SSV or after an involuntary transfer of the Company's ownership interest in SSV has occurred. The put and call pricing is generally based on a multiple of the trailing twelve month EBITDA (as defined in the operating agreement) of SSV for the fiscal period ended prior to the commencement of the put or call period, as applicable.

Since GSSI's remaining interest in SSV has a redemption feature, as a result of the put option, the Company has classified the redeemable noncontrolling interest in SSV in the mezzanine section in the Consolidated Condensed Balance Sheets, outside of stockholders' equity. The Company has recorded the redeemable noncontrolling interest at the redemption value as prescribed in the operating agreement at the end of each reporting period. At the end of each reporting period if the redemption value is below the carrying value of the noncontrolling interest, the difference is recorded in noncontrolling interests as a component of stockholders’ equity; however, if the redemption value exceeds the carrying value of the noncontrolling interest the difference is recorded in retained earnings. As of January 31, 2010, July 31, 2009 and January 31, 2009, the redemption value of the put/call option for the remaining noncontrolling interest was $21.3 million, $15.4 million and $ 25.5 million, respectively.

9. Commitments and Contingencies

Metropolitan Districts

The Company credit-enhances $8.5 million of bonds issued by Holland Creek Metropolitan District (“HCMD”) through an $8.6 million letter of credit issued under the Company's Credit Facility. HCMD's bonds were issued and used to build infrastructure associated with the Company's Red Sky Ranch residential development. The Company has agreed to pay capital improvement fees to Red Sky Ranch Metropolitan District (“RSRMD”) until RSRMD's revenue streams from property taxes are sufficient to meet debt service requirements under HCMD's bonds, and the Company has recorded a liability of $1.8 million, $1.9 million and $1.5 million, primarily within “other long-term liabilities” in the accompanying Consolidated Condensed Balance Sheets, as of January 31, 2010, July 31, 2009 and January 31, 2009, respectively, with respect to the estimated present value of future RSRMD capital improvement fees. The Company estimates that it will make capital improvement fee payments under this arrangement through the year ending July 31, 2028.

Guarantees

As of January 31, 2010, the Company had various other letters of credit in the amount of $85.3 million, consisting primarily of $53.4 million in support of the Employee Housing Bonds, $25.8 million of construction and development related guarantees and $5.3 million for workers’ compensation and general liability deductibles related to construction and development activities.

In addition to the guarantees noted above, the Company has entered into contracts in the normal course of business which include certain indemnifications under which it could be required to make payments to third parties upon the occurrence or non-occurrence of certain future events. These indemnities include indemnities to licensees in connection with the licensees’ use of the Company’s trademarks and logos, indemnities for liabilities associated with the infringement of other parties’ technology and software products, indemnities related to liabilities associated with the use of easements, indemnities related to employment of contract workers, the Company’s use of trustees, indemnities related to the Company's use of public lands and environmental indemnifications. The duration of these indemnities generally is indefinite and generally do not limit the future payments the Company could be obligated to make.

As permitted under applicable law, the Company and certain of its subsidiaries indemnify their directors and officers over their lifetimes for certain events or occurrences while the officer or director is, or was, serving the Company or its subsidiaries in such a capacity. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that should enable the Company to recover a portion of any future amounts paid.

Unless otherwise noted, the Company has not recorded any significant liabilities for the letters of credit, indemnities and other guarantees noted above in the accompanying Consolidated Condensed Financial Statements, either because the Company has recorded on its Consolidated Condensed Balance Sheets the underlying liability associated with the guarantee, the guarantee is with respect to the Company's own performance and is therefore not subject to the measurement requirements as prescribed by GAAP, or because the Company has calculated the fair value of the indemnification or guarantee to be immaterial based upon the current facts and circumstances that would trigger a payment under the indemnification clause. In addition, with respect to certain indemnifications it is not possible to determine the maximum potential amount of liability under these guarantees due to the unique set of facts and circumstances that are likely to be involved in each particular claim and indemnification provision. Historically, payments made by the Company under these obligations have not been material.

As noted above, the Company makes certain indemnifications to licensees in connection with their use of the Company's trademarks and logos. The Company does not record any liabilities with respect to these indemnifications.

Self Insurance

The Company is self-insured for claims under its health benefit plans and for the majority of workers' compensation claims, subject to a stop loss policy. The self-insurance liability related to workers' compensation is determined actuarially based on claims filed. The self-insurance liability related to claims under the Company's health benefit plans is determined based on analysis of actual claims. The amounts related to these claims are included as a component of accrued benefits in accounts payable and accrued liabilities (see Note 5, Supplementary Balance Sheet Information).

Legal

The Company is a party to various lawsuits arising in the ordinary course of business. Management believes the Company has adequate insurance coverage or has accrued for loss contingencies for all known matters that are deemed to be probable losses and estimable. As of January 31, 2010, July 31, 2009 and January 31, 2009 the accrual for the above loss contingencies was not material individually and in the aggregate.

10. Segment Information

The Company has three reportable segments: Mountain, Lodging and Real Estate. The Mountain segment includes the operations of the Company's ski resorts and related ancillary services. The Lodging segment includes the operations of all of the Company's owned hotels, RockResorts, GTLC, condominium management, CME and golf operations. The Real Estate segment owns and develops real estate in and around the Company's resort communities. The Company's reportable segments, although integral to the success of the others, offer distinctly different products and services and require different types of management focus. As such, these segments are managed separately.

The Company reports its segment results using Reported EBITDA (defined as segment net revenue less segment operating expenses, plus or minus segment equity investment income or loss and for the Real Estate segment plus gain on sale of real property), which is a non-GAAP financial measure. The Company reports segment results in a manner consistent with management's internal reporting of operating results to the chief operating decision maker (Chief Executive Officer) for purposes of evaluating segment performance.

Reported EBITDA is not a measure of financial performance under GAAP. Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income (loss), net change in cash and cash equivalents or other financial statement data presented in the Consolidated Condensed Financial Statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with GAAP and thus is susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies.

The Company utilizes Reported EBITDA in evaluating performance of the Company and in allocating resources to its segments. Mountain Reported EBITDA consists of Mountain net revenue less Mountain operating expense plus or minus Mountain equity investment income or loss. Lodging Reported EBITDA consists of Lodging net revenue less Lodging operating expense. Real Estate Reported EBITDA consists of Real Estate net revenue less Real Estate operating expense plus gain on sale of real property. All segment expenses include an allocation of corporate administrative expense. Assets are not allocated between segments, or used to evaluate performance, except as shown in the table below.

Following is key financial information by reportable segment which is used by management in evaluating performance and allocating resources (in thousands):

	Three Months Ended January 31,		Six Months Ended January 31,	
	2010	2009	2010	2009
Net revenue:				
Lift tickets	$ 129,517	$127,158	$ 129,517	$ 127,158
Ski school	30,069	28,962	30,069	28,962
Dining	19,789	20,281	23,257	24,210
Retail/rental	61,026	59,238	82,564	81,664
Other	20,577	22,850	34,775	37,273
Total Mountain net revenue	260,978	258,489	300,182	299,267
Lodging	38,676	41,150	80,031	86,403
Total Resort net revenue	299,654	299,639	380,213	385,670
Real Estate	870	89,157	1,075	155,907
Total net revenue	$ 300,524	$388,796	$ 381,288	$ 541,577
Operating expense:				
Mountain	$ 154,018	$156,188	$ 230,486	$ 237,411
Lodging	37,788	38,697	80,411	83,595
Total Resort operating expense	191,806	194,885	310,897	321,006
Real estate	7,417	59,508	12,594	110,885
Total segment operating expense	$ 199,223	$254,393	$ 323,491	$ 431,891
Gain on sale of real property	$ --	$ --	$ 6,087	$ --
Mountain equity investment income, net	$ 207	$ 1,161	$ 461	$ 2,176
Reported EBITDA:				
Mountain	$ 107,167	$103,462	$ 70,157	$ 64,032
Lodging	888	2,453	(380)	2,808

Resort	108,055	105,915	69,777	66,840
Real Estate	(6,547)	29,649	(5,432)	45,022
Total Reported EBITDA	$ 101,508	$135,564	$ 64,345	$ 111,862
Real estate held for sale and investment	$ 414,501	$247,329	$ 414,501	$ 247,329
Reconciliation to net income (loss) attributable to Vail Resorts, Inc:				
Total Reported EBITDA	$ 101,508	$135,564	$ 64,345	$ 111,862
Depreciation and amortization	(27,772)	(27,438)	(54,956)	(52,516)
Gain (loss) on disposal of fixed assets, net	12	(422)	(101)	(602)
Investment income	192	336	422	979
Interest expense, net	(4,148)	(7,295)	(8,983)	(15,242)
Income before (provision) benefit for income taxes	69,792	100,745	727	44,481
(Provision) benefit for income taxes	(24,713)	(36,412)	841	(17,003)
Net income	$ 45,079	$ 64,333	$ 1,568	$ 27,478
Net income attributable to noncontrolling interests	(4,389)	(3,788)	(2,051)	(1,437)
Net income (loss) attributable to Vail Resorts, Inc.	$ 40,690	$ 60,545	$ (483)	$ 26,041

11. Stock Repurchase Plan

On March 9, 2006, the Company’s Board of Directors approved the repurchase of up to 3,000,000 shares of common stock and on July 16, 2008 approved an increase of the Company’s common stock repurchase authorization by an additional 3,000,000 shares. The Company did not repurchase any shares of common stock during the three and six months ended January 31, 2010. Since inception of its stock repurchase plan through January 31, 2010, the Company has repurchased 3,878,535 shares at a cost of approximately $147.8 million. As of January 31, 2010, 2,121,465 shares remained available to repurchase under the existing repurchase authorization. Shares of common stock purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of shares under the Company's employee share award plans.

12. Guarantor Subsidiaries and Non-Guarantor Subsidiaries

The Company’s payment obligations under the 6.75% Notes (see Note 4, Long-Term Debt) are fully and unconditionally guaranteed on a joint and several, senior subordinated basis by substantially all of the Company’s consolidated subsidiaries (collectively, and excluding Non-Guarantor Subsidiaries (as defined below), the “Guarantor Subsidiaries”) except for Eagle Park Reservoir Company, Gros Ventre Utility Company, Mountain Thunder, Inc., SSV, Larkspur Restaurant & Bar, LLC, Gore Creek Place, LLC and certain other insignificant entities (together, the “Non-Guarantor Subsidiaries”). APII and the Employee Housing Entities are included with the Non-Guarantor Subsidiaries for purposes of the consolidated financial information, but are not considered subsidiaries under the indenture governing the 6.75% Notes.

Presented below is the consolidated financial information of the Parent Company, the Guarantor Subsidiaries and the Non-Guarantor Subsidiaries. Financial information for the Non-Guarantor Subsidiaries is presented in the column titled “Other Subsidiaries.” Balance sheets are presented as of January 31, 2010, July 31, 2009 and January 31, 2009. Statements of operations are presented for the three and six months ended January 31, 2010 and 2009. Statements of cash flows are presented for the six months ended January 31, 2010 and 2009.

Investments in subsidiaries are accounted for by the Parent Company and Guarantor Subsidiaries using the equity method of accounting. Net income (loss) of Guarantor and Non-Guarantor Subsidiaries is, therefore, reflected in the Parent Company's and Guarantor Subsidiaries' investments in and advances to (from) subsidiaries. Net income (loss) of the Guarantor and Non-Guarantor Subsidiaries is reflected in Parent Company and Guarantor Subsidiaries as equity in income (loss) of consolidated subsidiaries. The elimination entries eliminate investments in Other Subsidiaries and intercompany balances and transactions for consolidated reporting purposes.

Supplemental Condensed Consolidating Balance Sheet
As of January 31, 2010
(in thousands)
(Unaudited)

	Parent Company	100% Owned Guarantor Subsidiaries	Other Subsidiaries	Eliminating Entries	Consolidated
Current assets:					
Cash and cash equivalents	$ --	$ 51,783	$ 6,225	$ --	$ 58,008
Restricted cash	--	14,916	616	--	15,532
Trade receivables, net	--	41,054	4,312	--	45,366
Inventories, net	--	10,467	41,174	--	51,641
Other current assets	23,754	25,752	2,178	--	51,684
Total current assets	23,754	143,972	54,505	--	222,231
Property, plant and equipment, net	--	978,079	61,476	--	1,039,555
Real estate held for sale and investment	--	414,501	--	--	414,501
Goodwill, net	--	148,702	19,248	--	167,950
Intangible assets, net	--	63,321	15,846	--	79,167
Other assets	2,871	24,793	4,997	--	32,661
Investments in subsidiaries and advances to (from) parent	1,299,947	310,835	(3,990)	(1,606,792)	--
Total assets	$1,326,572	$ 2,084,203	$ 152,082	$(1,606,792)	$ 1,956,065
Current liabilities:					
Accounts payable and accrued liabilities	$ 12,404	$ 304,522	$ 22,330	$ --	$ 339,256
Income taxes payable	10,482	--	--	--	10,482
Long-term debt due within one year	--	1,510	360	--	1,870
Total current liabilities	22,886	306,032	22,690	--	351,608
Long-term debt	390,000	41,214	58,651	--	489,865
Other long-term liabilities	29,690	165,601	2,468	--	197,759
Deferred income taxes	113,808	--	--	--	113,808
Redeemable noncontrolling interest	--	--	21,318	--	21,318
Total Vail Resorts, Inc. stockholders’ equity	770,188	1,571,356	35,436	(1,606,792)	770,188
Noncontrolling interests	--	--	11,519	--	11,519
Total stockholders’ equity	770,188	1,571,356	46,955	(1,606,792)	781,707
Total liabilities and stockholders' equity	$1,326,572	$ 2,084,203	$ 152,082	$(1,606,792)	$ 1,956,065

Supplemental Condensed Consolidating Balance Sheet
As of July 31, 2009
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Other Subsidiaries	Eliminating Entries	Consolidated
Current assets:					
Cash and cash equivalents	$ --	$ 66,364	$ 2,934	$ --	$ 69,298
Restricted cash	--	11,065	--	--	11,065
Trade receivables, net	--	56,834	1,229	--	58,063
Inventories, net	--	11,895	37,052	--	48,947
Other current assets	21,333	18,407	1,875	--	41,615
Total current assets	21,333	164,565	43,090	--	228,988
Property, plant and equipment, net	--	991,027	66,631	--	1,057,658
Real estate held for sale and investment	--	311,485	--	--	

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or special items, operating income, net cash provided by operations, total liquidity, net debt, gross margin, operating leverage, operating working capital and related metrics and strategic business criteria consisting of one or more objectives based on meeting specified goals relating to market penetration, geographic business expansion, cost targets, customer satisfaction, reductions in errors and omissions, reductions in lost business, management of employment practices and employee benefits, supervision of litigation and information technology, quality and quality audit scores, productivity, efficiency, safety and acquisitions or divestitures, rate of new product introduction or any combination of the foregoing. With respect to Participants who are not "covered employees" within the meaning of Section 162(m) of the Code and who, in the Committee's judgment, are not likely to be a covered employees at any time during the applicable Performance Period, the performance goals established for the

Performance Period may consist of any objective corporate-wide or subsidiary, division, operating unit or individual measures, whether or not listed herein. Performance goals shall be subject to such other special rules and conditions as the Committee may establish at any time within the Determination Period. The applicable Performance Measures may be applied on a pre- or post-tax basis and may be adjusted in accordance with Section 162(m) of the Code to include or exclude objectively determinable components of any Performance Measure, including, without limitation, special charges such as restructuring or impairment charges, debt refinancing costs, extraordinary or noncash items, unusual, nonrecurring or one-time events affecting the Company or its financial statements or changes in law or accounting principles.

“Performance Period” shall mean any period designated by the Committee during which (i) the

Performance Measures applicable to an award shall be measured and (ii) the conditions to vesting applicable to an award shall remain in effect.

"Restricted Stock" shall mean shares of Common Stock which are subject to a Restriction Period and which may, in addition thereto, be subject to the attainment of specified Performance Measures within a specified Performance Period.

"Restricted Stock Award" shall mean an award of Restricted Stock under this Plan.

"Restricted Stock Unit" shall mean a right to receive one share of Common Stock or, in lieu thereof and to the extent provided in the applicable Agreement, the Fair Market Value of such share of Common Stock in cash, which shall be contingent upon the expiration of a specified Restriction Period and which may, in addition thereto, be contingent upon the attainment of specified

Performance Measures within a specified Performance Period.

"Restricted Stock Unit Award" shall mean an award of Restricted Stock Units under this Plan.

"Restriction Period" shall mean any period designated by the Committee during which (i) the Common Stock subject to a Restricted Stock Award may not be sold, transferred, assigned, pledged, hypothecated or otherwise encumbered or disposed of, except as provided in this Plan or the Agreement relating to such award, or (ii) the conditions to vesting applicable to a Restricted Stock Unit Award shall remain in effect.

"SAR" shall mean a stock appreciation right which may be a Free-Standing SAR or a Tandem SAR.

"Stock Award" shall mean a Restricted Stock Award, Restricted Stock Unit Award or Unrestricted

Stock Award.

“Stock Option” shall mean an option to purchase shares of Common Stock.

“Subsidiary” shall mean any corporation, limited liability company, partnership, joint venture or similar entity in which the Company owns, directly or indirectly, an equity interest possessing more than 50% of the combined voting power of the total outstanding equity interests of such entity.

“Substitute Awards” shall have the meaning set forth in Section 1.7.

“Tandem SAR” shall mean an SAR which is granted in tandem with, or by reference to, a Stock Option (including a Stock Option granted prior to the date of grant of the SAR), which entitles the holder thereof to receive, upon exercise of such SAR and surrender for cancellation of all or a portion of such Stock Option, shares of Common Stock (which may be Restricted Stock) or, to the extent provided in the applicable Agreement, cash or a combination thereof, with an aggregate value equal to the excess of the Fair Market Value of one share of Common Stock on the date of exercise over the base price of such SAR, multiplied by the number of shares of Common Stock subject to such Stock Option, or portion thereof, which is surrendered.

"Tax Date" shall have the meaning set forth in Section 5.5.

"Unrestricted Stock" shall mean shares of Common Stock which are not subject to a Restriction Period or Performance Measures.

"Unrestricted Stock Award" shall mean an award of Unrestricted Stock under this Plan.

1.3 Administration

This Plan shall be administered by the Committee. Any one or a combination of the following awards may be made under this Plan to eligible persons: (i) Stock Options, (ii) SARs in the form of Tandem SARs or Free-Standing SARs; (iii) Stock Awards in the form of Restricted Stock, Restricted Stock Units or Unrestricted Stock; and (iv) Performance Awards. The Committee shall, subject to the terms of this Plan, select eligible persons for participation in this Plan and determine the form, amount and timing of each award to such persons and, if applicable, the number of shares of Common Stock subject to an award, the number of SARs, the number of Restricted Stock Units, the dollar value or share amount subject to a Performance Award, the purchase price or base price associated with the award, the time and conditions of exercise or settlement of the award and all other terms and conditions of the award, including, without limitation, the form of the Agreement evidencing the award. The Committee may, in its sole discretion and for any reason at any time, unless such action would cause a grant to a covered employee to fail to qualify under Section 162(m) of the Code and regulations thereunder as qualified performance-based compensation, take action such that (i) any or all outstanding Stock Options and SARs shall become exercisable in part or in full, (ii) all or a portion of the Restriction Period applicable to any outstanding Restricted Stock or Restricted Stock Units shall lapse, (iii) all or a portion of the Performance Period applicable to any outstanding Restricted Stock, Restricted Stock Units or Performance Awards shall lapse and (iv) the Performance Measures (if any) applicable to any outstanding award shall be deemed to be satisfied at the target or any other level specified by the Committee. The Committee shall, subject to the terms of this Plan, interpret this Plan and the application thereof, establish rules and regulations it deems necessary or desirable for the administration of this Plan and may impose, incidental to the grant of an award, conditions with respect to the award, such as limiting competitive employment or other activities. All such interpretations, rules, regulations and conditions shall be conclusive and binding on all parties.

The Committee may delegate some or all of its power and authority hereunder to the Board or, subject to applicable law, to the Chairman and Chief Executive Officer or such other executive officer of the Company as the Committee deems appropriate; provided, however, that (i) the Committee may not delegate its power and authority to the Board or the Chairman and Chief Executive Officer or other executive officer of the Company with regard to the grant of an award to any person who is a "covered employee" within the meaning of Section 162(m) of the Code or who, in the Committee's judgment, is likely to be a "covered employee" within the meaning of Section 162(m) of the Code at any time during the period an award hereunder to such employee would be outstanding and

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(ii) the Committee may not delegate its power and authority to the Chairman and Chief Executive Officer or other executive officer of the Company with regard to the selection for participation in this Plan of an officer, director or other person subject to Section 16 of the Exchange Act or decisions concerning the timing, pricing or amount of an award to such an officer, director or other person.

No member of the Board or Committee, and neither the Chairman and Chief Executive Officer nor any other executive officer to whom the Committee delegates any of its power and authority hereunder, shall be liable for any act, omission, interpretation, construction or determination made in connection with this Plan in good faith, and the members of the Board and the Committee and the Chairman and Chief Executive Officer or other executive officer shall be entitled to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including attorneys' fees) arising therefrom to the full extent permitted by law (except as otherwise may be provided in the Company's Certificate of Incorporation and/or By-laws) and under any directors' and officers' liability insurance that may be in effect from time to time.

A majority of the Committee shall constitute a quorum. The acts of the Committee shall be either (i) acts of a majority of the members of the Committee present at any meeting at which a quorum is present or (ii) acts approved in writing by all of the members of the Committee without a meeting.

1.4 Eligibility

Participants in this Plan shall consist of such officers, other Employees, Non-Employee Directors, and persons expected to become officers, other Employees and Non-Employee

Directors of the Company and its Subsidiaries as the Committee in its sole discretion may select from time to time. The Committee's selection of a person to participate in this Plan at any time shall not require the Committee to select such person to participate in this Plan at any other time. Except as provided otherwise in an Agreement, for purposes of this Plan, references to employment by the Company shall also mean employment by a Subsidiary, and references to employment shall include service as a Non-Employee Director. The Committee shall determine, in its sole discretion, the extent to which a participant shall be considered employed during any periods during which such participant is on a leave of absence.

1.5 Shares Available

Subject to adjustment as provided in Section 5.7 and to all other limits set forth in this Section 1.5, 5,000,000 shares of Common Stock shall initially be available for all awards under this Plan, other than Substitute Awards. Upon the effectiveness of this Plan, no more shares of Common Stock shall be available for future grants of awards under the Brunswick Corporation 2003 Stock Incentive Plan (the "2003 Plan").

To the extent that shares of Common Stock subject to an outstanding Stock Option, SAR, Stock Award or Performance Award granted under the Plan or the 2003 Plan, other than Substitute Awards, are not issued or delivered by reason of (i) the expiration, termination, cancellation or forfeiture of such award (excluding shares subject to a Stock Option cancelled upon settlement in shares of a related Tandem SAR or shares subject to a Tandem SAR cancelled upon exercise of a related Stock Option) or (ii) the settlement of such award in cash, then such shares of Common Stock shall again be available under this Plan. Shares of Common Stock subject to an award granted under this Plan or the 2003 Plan, other than Substitute Awards, that are (x) not issued or delivered upon the net settlement or net exercise of a Stock Option or SAR, (y) delivered to or withheld by the Company to pay the purchase price or the withholding taxes related to an outstanding Stock Option or SAR or (z) delivered to or withheld by the Company to pay the withholding taxes for Stock Awards or Performance Awards shall again be available for issuance under this Plan.

Shares of Common Stock to be delivered under this Plan shall be made available from authorized and unissued shares of Common Stock, or authorized and issued shares of Common Stock reacquired and held as treasury shares or otherwise or a combination thereof. No shares of Common Stock shall be issued pursuant to any Award unless consideration at least equal to the par value of such shares of Common Stock has been received by the Company in the form of cash, services rendered or property.

1.6 Per Person Limits

To the extent necessary for an award to be qualified performance-based compensation under Section 162(m) of the Code and the regulations thereunder (i) the maximum number of shares of Common Stock with respect to which Stock Options or SARs, or a combination thereof, may be granted during any calendar year to any person shall be 1,000,000, subject to adjustment as provided in Section 5.7, (ii) the maximum number of shares of Common Stock with respect to which Stock Awards subject to Performance Measures or Performance Awards denominated in Common Stock that may be earned by any person during any calendar year shall be 500,000, subject to adjustment as provided in Section 5.7, and (iii) the maximum amount that may be earned by any person during any calendar year with respect to Performance Awards denominated in cash shall be $10,000,000; provided, however, that (x) each of the preceding limitations in this Section 1.6 shall be multiplied by two (2) with respect to awards granted to an Employee in the year in which such Employee's employment with the Company or a Subsidiary commences and (y) the limitations in this Section 1.6 shall not apply to Substitute Awards. If an award granted to a participant is cancelled, the cancelled award shall continue to be counted toward the applicable per person limitation in this Section 1.6 with respect to such participant. Notwithstanding anything in this Plan to the contrary, the aggregate grant date fair value of shares of Common Stock that may be granted during any calendar year to any Non-Employee Director shall not exceed $500,000; provided, that shares of Common Stock provided to Non-Employee Directors in lieu of cash otherwise payable to a Non-Employee Director shall be disregarded for purposes of this limitation.

1.7 Substitute Awards

The Committee may grant awards under this Plan (i) upon the assumption of, or in substitution or exchange for, outstanding equity awards previously granted by a company or other entity in connection with any change in corporate or capital structure of the Company or any Subsidiary, including, without limitation, a Change in Control, a merger, consolidation, reorganization, combination or acquisition. In the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders which is not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for awards under the Plan; provided that awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or Non-Employee Directors prior to such acquisition or combination. Awards granted pursuant to this Section 1.7 shall be referred to herein as "Substitute Awards."

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II. STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

2.1 Stock Options

The Committee may, in its discretion, grant Stock Options to purchase shares of Common Stock to such eligible persons as may be selected by the Committee. Stock Options shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable:

(a) Number of Shares and Purchase Price. The number of shares of Common Stock subject to a Stock Option and the purchase price per share purchasable upon exercise of the Stock Option shall be determined by the Committee; provided, however, that, except with respect to Substitute Awards, the purchase price per share purchasable upon exercise of a Stock Option shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such Stock Option.

(b) Option Period and Exercisability. The period during which a Stock Option may be exercised shall be determined by the Committee; provided, however, that no Stock Option shall be exercised later than ten (10) years after its date of grant. The Committee may, in its discretion, establish Performance Measures which shall be satisfied or met as a condition to the grant of a Stock Option or to the exercisability of all or a portion of a Stock Option. The Committee shall determine whether a Stock Option shall become exercisable in cumulative or non-cumulative installments and in part or in full at any time. An exercisable Stock Option, or portion thereof, may be exercised only with respect to whole shares of Common Stock. Prior to the exercise of a Stock Option, the holder of such Stock Option shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such Stock Option.

(c) Method of Exercise. A Stock Option may be exercised by (i) giving notice to the Company (in any form acceptable to the Company) specifying the number of whole shares of Common Stock to be purchased and accompanying such notice with payment therefor in full (or arrangement made for such payment to the Company's satisfaction) either (A) in cash, (B) by delivery (either actual delivery or by attestation procedures established by the Company) of shares of Common Stock having a Fair Market Value, determined as of the date of exercise, equal to the aggregate purchase price payable by reason of such exercise, (C) authorizing the

Company to withhold whole shares of Common Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the date of exercise, equal to the amount necessary to satisfy such obligation, (D) in cash by a broker-dealer acceptable to the Company or (E) a combination of (A), (B) and (C), in each case to the extent set forth in the Agreement relating to the Stock Option, (ii) if applicable, by surrendering to the Company any Tandem SARs which are cancelled by reason of the exercise of the Stock Option and (iii) by executing such documents as the Company may reasonably request. No shares of Common Stock shall be issued and no certificate representing shares of Common Stock shall be delivered until the full purchase price therefor and any withholding taxes thereon, as described in Section 5.5, have been paid (or arrangement made for such payment to the Company's satisfaction).

2.2 Stock Appreciation Rights

The Committee may, in its discretion, grant SARs to such eligible persons as may be selected by the Committee. Unless the Agreement relating to an SAR specifies that a SAR is a Tandem SAR, the SAR shall be a Free-Standing SAR. SARs shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable:

(a) Number of SARs and Base Price. The number of SARs subject to an award shall be determined by the Committee. The base price of a Tandem SAR shall be the purchase price per share of the related Stock Option. The base price of a Free-Standing SAR shall be determined by the Committee; provided, however, that, except with respect to Substitute Awards, such base price shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such SAR.

(b) Exercise Period and Exercisability. The period for the exercise of an SAR shall be determined by the Committee; provided, however, that no SAR shall be exercised later than ten (10) years after its date of grant; provided further, that no Tandem SAR shall be exercised later than the expiration, cancellation, forfeiture or other termination of the related Stock Option. The Committee may, in its discretion, establish Performance Measures which shall be satisfied or met as a condition to the grant of an SAR or to the exercisability of all or a portion of an SAR. The Committee shall determine whether an SAR may be exercised in cumulative or non-cumulative installments and in part or in full at any time. An exercisable SAR, or portion thereof, may be exercised, in the case of a Tandem SAR, only with respect to whole shares of Common Stock and, in the case of a Free-Standing SAR, only with respect to a whole number of SARs. If an SAR is exercised for shares of Restricted Stock, a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.3(c), or such shares shall be transferred to the holder in book entry form with restrictions on the shares duly noted, and the holder of such Restricted Stock shall have such rights of a stockholder of the Company as determined pursuant to Section 3.3(d). Prior to the exercise of an SAR, the holder of such SAR shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such SAR.

(c) Method of Exercise. A Tandem SAR

may be exercised (i) by giving notice to the Company (in any form acceptable to the Company) specifying the number of whole SARs which are being exercised, (ii) by surrendering to the Company any Stock Options which are cancelled by reason of the exercise of the Tandem SAR and (iii) by executing such documents as the Company may reasonably request. A Free-Standing SAR may be exercised (A) by giving notice to the Company (in any form acceptable to the Company) specifying the whole number of SARs which are being exercised and (B) by executing such documents as the Company may reasonably request. No shares of Common Stock shall be issued and no certificate representing shares of Common Stock shall be delivered until any withholding taxes thereon, as described in Section 5.5, have been paid (or arrangement made for such payment to the Company's satisfaction).

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2.3 Termination of Employment or Service

All of the terms relating to the exercise, cancellation or other disposition of a Stock Option or SAR (i) upon a termination of employment with or service to the Company of the holder of such Stock Option or SAR, as the case may be, whether by reason of disability, retirement, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Committee and set forth in the applicable award Agreement.

2.4 No Repricing

The Committee shall not, without the approval of the stockholders of the Company, (i) reduce the purchase price or base price of any previously granted Stock Option or SAR, (ii) cancel any previously granted Stock Option or SAR in exchange for cash or another award if the purchase price of such Stock Option or the base price of such SAR exceeds the Fair Market Value of a share of Common Stock on the date of such cancellation, or (iii) take any other action with respect to a Stock Option or SAR that would be treated as a repricing under the rules and regulations of the principal U.S. national securities exchange on which the shares of Common stock are then listed, in each case, other than in connection with a Change in Control or the adjustment provisions set forth in Section 5.7.

III. STOCK AWARDS

3.1 Stock Awards

The Committee may, in its discretion, grant Stock Awards to such eligible persons as may be selected by the Committee. The Agreement relating to a Stock Award shall specify whether the Stock Award is a Restricted Stock Award, Restricted Stock Unit Award or Unrestricted Stock Award.

3.2 Terms of Restricted Stock Awards

Restricted Stock Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable.

(a) Number of Shares and Other Terms. The number of shares of Common Stock subject to a Restricted Stock Award and the Restriction Period, Performance Period (if any) and Performance Measures (if any) applicable to a Restricted Stock Award shall be determined by the Committee.

(b) Vesting and Forfeiture. The Agreement relating to a Restricted Stock Award shall provide, in the manner determined by the Committee, in its discretion, and subject to the provisions of this

Plan, for the vesting of the shares of Common Stock subject to such award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period and (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period.

(c) Stock Issuance. During the Restriction Period, the shares of Restricted Stock shall be held by a custodian in book entry form with restrictions on such shares duly noted or, alternatively, a certificate or certificates representing a Restricted Stock Award shall be registered in the holder's name and may bear a legend, in addition to any legend which may be required pursuant to Section 5.6, indicating that the ownership of the shares of Common Stock represented by such certificate is subject to the restrictions, terms and conditions of this Plan and the Agreement relating to the Restricted Stock Award. All such certificates shall be deposited with the Company, together with stock powers or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if deemed necessary or appropriate, which would permit transfer to the Company of all or a portion of the shares of Common Stock subject to the Restricted Stock Award in the event such award is forfeited in whole or in part. Upon termination of any applicable Restriction Period (and the satisfaction or attainment of applicable Performance Measures), subject to the Company’s right to require payment of any taxes in accordance with Section 5.5, the restrictions shall be removed from the requisite number of any shares of Common Stock that are held in book entry form, and all certificates evidencing ownership of the requisite number of shares of Common Stock shall be delivered to the holder of such award.

(d) Rights with Respect to Restricted Stock Awards. Unless otherwise set forth in the Agreement relating to a Restricted Stock Award, and subject to the terms and conditions of a Restricted Stock Award, the holder of such award shall have all rights as a stockholder of the Company, including, but not limited to, voting rights, the right to receive dividends and the right to participate in any capital adjustment applicable to all holders of Common

Stock; provided, however, that (i) a distribution with respect to shares of Common Stock, other than a regular cash dividend, and (ii) a regular cash dividend with respect to shares of Common Stock that are subject to performance-based vesting conditions, in each case, shall be deposited with the Company and shall be subject to the same restrictions as the shares of Common Stock with respect to which such distribution was made.

3.3 Terms of Restricted Stock Unit Awards

Restricted Stock Unit Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable.

(a) Number of Shares and Other Terms. The number of shares of Common

Stock subject to a Restricted Stock Unit Award and the Restriction Period, Performance Period (if any) and Performance Measures (if any) applicable to a Restricted Stock Unit Award shall be determined by the Committee.

(b) Vesting and Forfeiture. The Agreement relating to a Restricted Stock Unit Award shall provide, in the manner determined by the Committee, in its discretion, and subject to the provisions of this Plan, for the vesting of such Restricted Stock Unit Award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period and (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares

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of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period.

(c) Settlement of Vested Restricted Stock Unit Awards. The Agreement relating to a Restricted Stock Unit Award shall specify (i) whether such award may be settled in shares of Common Stock or cash or a combination thereof and (ii) whether the holder thereof shall be entitled to receive, on a current or deferred basis, dividend equivalents, and, if determined by the Committee, interest on, or the deemed reinvestment of, any deferred dividend equivalents, with respect to the number of shares of Common Stock subject to such award; provided, however, that dividend equivalents with respect to Restricted Stock Units that are subject to performance-based vesting conditions shall be subject to the same restrictions as such Restricted Stock Units. Prior to the settlement of a Restricted Stock Unit Award, the holder of such award shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such award.

3.4 Termination of Employment or Service

All of the terms relating to the satisfaction of Performance Measures and the termination of the Restriction Period or Performance Period relating to a Stock Award, or any forfeiture and cancellation of such award (i) upon a termination of employment with or service to the Company of the holder of such award, whether by reason of disability, retirement, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Committee and set forth in the applicable award Agreement.

3.5 Terms of Unrestricted Stock Awards

The number of shares of Common Stock subject to an Unrestricted Stock Award shall be determined by the Committee. Unrestricted Stock Awards shall not be subject to any Restriction Periods or Performance Measures; provided, however, Unrestricted Stock Awards shall be limited to (i) awards to Non-Employee Directors, (ii) awards to newly hired Employees, (iii) awards made in lieu of a cash bonus or (iv) awards granted under this Plan with respect to the number of shares of Common Stock which, in the aggregate, does not exceed ten percent (10%) of the total number of shares available for awards under this Plan. Upon the grant of an Unrestricted Stock Award, subject to the

Company's right to require payment of any taxes in accordance with Section 5.5, a certificate or certificates evidencing ownership of the requisite number of shares of Common Stock shall be delivered to the holder of such award or such shares shall be transferred to the holder in book entry form.

IV. PERFORMANCE AWARDS

4.1 Performance Awards

The Committee may, in its discretion, grant Performance Awards to such eligible persons as may be selected by the Committee.

4.2 Terms of Performance Awards

Performance Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable.

(a) Value of Performance Awards and Performance Measures. The method of determining the value of the Performance Award and the Performance Measures and Performance Period applicable to a Performance Award shall be determined by the Committee.

(b) Vesting and Forfeiture. The Agreement relating to a Performance Award shall provide, in the manner determined by the Committee, in its discretion, and subject to the provisions of this Plan, for the vesting of such Performance Award if the specified Performance Measures are satisfied or met during the specified Performance Period and for the forfeiture of such award if the specified Performance Measures are not satisfied or met during the specified Performance Period.

(c) Settlement of Vested Performance Awards. The Agreement relating to a Performance Award shall specify whether such award may be settled in shares of Common Stock (including shares of Restricted Stock) or cash or a combination thereof. If a Performance Award is settled in shares of Restricted Stock, such shares of Restricted Stock shall be issued to the holder in book entry form or a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.3(c) and the holder of such Restricted Stock shall have such rights as a stockholder of the Company as determined pursuant to Section 3.3(d). Any dividends or dividend equivalents with respect to a Performance Award shall be subject to the same restrictions as such Performance Award. Prior to the settlement of a

Performance Award in shares of Common Stock, including Restricted Stock, the holder of such award shall have no rights as a stockholder of the Company.

4.3 Termination of Employment or Service

All of the terms relating to the satisfaction of Performance Measures and the termination of the Performance Period relating to a Performance Award, or any forfeiture and cancellation of such award (i) upon a termination of employment with or service to the Company of the holder of such award, whether by reason of disability, retirement, death or any other reason, or (ii) during a paid or unpaid leave of absence, shall be determined by the Committee and set forth in the applicable award Agreement.

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V. GENERAL

5.1 Effective Date and Term of Plan

This Plan shall be submitted to the stockholders of the Company for approval and, if approved, shall become effective as of the date of such stockholder approval. This Plan shall terminate on the tenth anniversary of such effective date, unless terminated earlier by the Board. Termination of this Plan shall not affect the terms or conditions of any award granted prior to termination. Awards hereunder may be made at any time prior to the termination of this Plan.

5.2 Amendments

The Board may amend this Plan as it shall deem advisable; provided, however, that no amendment to the Plan shall be effective without the approval of the Company's stockholders if (i) stockholder approval is required by applicable law, rule or regulation, including Section 162(m) of the Code and any rule of the New York Stock Exchange, or any other stock exchange on which the Common Stock is then traded, or (ii) such amendment seeks to modify Section 2.4 hereof; and provided further, that no amendment may materially impair the rights of a holder of an outstanding award without the consent of such holder.

5.3 Agreement

Each award under this Plan shall be evidenced by an Agreement setting forth the terms and conditions applicable to such award. No award shall be valid until an Agreement is executed by the Company and, to the extent required by the Company, either executed, accepted or acknowledged by the recipient by such means approved by the Company within the time period specified by the Company. Upon such execution or execution and electronic acceptance, and delivery of the Agreement to the

Company, such award shall be effective as of the effective date set forth in the Agreement.

5.4 Non-Transferability

No award shall be transferable other than by will, the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code or beneficiary designation procedures approved by the Company or, to the extent expressly permitted in the Agreement relating to such award, to the holder’s family members, a trust or entity established by the holder for estate planning purposes or a charitable organization designated by the holder, in each case, without consideration. Except to the extent permitted by the foregoing sentence or the Agreement relating to an award, each award may be exercised or settled during the holder’s lifetime only by the holder or the holder’s legal representative or similar person. Except as permitted by the second preceding sentence, no award may be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of any award, such award and all rights thereunder shall immediately become null and void.

5.5 Tax Withholding

The Company shall have the right to require, prior to the issuance or delivery of any shares of Common Stock or the payment of any cash pursuant to an award made hereunder, payment by the holder of such award of any federal, state, local or other taxes which may be required to be withheld or paid in connection with such award. An Agreement may provide that (i) the Company shall withhold whole shares of Common Stock which would otherwise be delivered to a holder, having an aggregate Fair Market

Value determined as of the date the obligation to withhold or pay taxes arises in connection with an award (the "Tax Date"), or withhold an amount of cash which would otherwise be payable to a holder, in the amount necessary to satisfy any such obligation or (ii) the holder may satisfy any such obligation by any of the following means: (A) a cash payment to the Company; (B) delivery (either actual delivery or by attestation procedures established by the Company) to the Company of previously owned whole shares of Common Stock having an aggregate Fair Market Value, determined as of the Tax Date, equal to the amount necessary to satisfy any such obligation; (C) authorizing the Company to withhold whole shares of Common Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the Tax Date, or withhold an amount of cash which would otherwise be payable to a holder, equal to the amount necessary to satisfy any such obligation; (D) in the case of the exercise of a Stock Option or SAR, a cash payment by a broker-dealer acceptable to the Company or (E) any combination of (A), (B) and (C), in each case to the extent set forth in the Agreement relating to the award. Shares of Common Stock to be delivered or withheld may not have an aggregate Fair Market Value in excess of the amount determined by applying the minimum statutory withholding rate; provided, however, that if a fraction of a share of Common Stock would be required to satisfy the minimum statutory withholding taxes, then the number of shares of Common Stock to be delivered or withheld may be rounded up to the next nearest whole share of Common Stock.

5.6 Restrictions on Shares

Each award made hereunder shall be subject to the requirement that if at any time the Company determines that the listing, registration or qualification of the shares of Common Stock subject to such award upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the delivery of shares thereunder, such shares shall not be delivered unless such listing, registration, qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company may require that certificates evidencing shares of Common Stock delivered pursuant to any award made hereunder bear a legend indicating that the sale, transfer or other disposition thereof by the holder is prohibited except in compliance with the Securities Act of 1933, as amended, and the rules and regulations thereunder.

5.7 Adjustment

In the event of any increase or decrease in the number of issued shares of Common Stock resulting from a subdivision or consolidation of shares or other capital adjustment, or the payment of a stock dividend or other increase or decrease in shares, effected without receipt of consideration by the Company, or other change in corporate or capital structure, the number and class of securities available under this Plan, the maximum number of securities available for awards under this Plan, the terms of each outstanding Stock Option and SAR (including the number and class of securities subject to each outstanding Stock Option or SAR and the purchase price or base price per share), the terms of each outstanding Stock Award (including the number and class of securities subject thereto), the terms of each outstanding Performance Award (including the number

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and class of securities subject thereto), the maximum number of securities with respect to which Stock Options or SARs may be granted during any calendar year of the Company to any one grantee, and the maximum number of shares of Common Stock that may be awarded during any calendar year to any one grantee pursuant to a Stock Award that is subject to Performance Measures or a Performance Award shall be appropriately adjusted by the Committee, such adjustments to be made in the case of outstanding options and stock appreciation rights without an increase in the aggregate purchase price and in accordance with Section 409A of the Code; *provided, however*, that any fractional shares resulting from any such adjustment shall be eliminated. In furtherance of this authorization, with respect to outstanding awards, upon the occurrence of an event constituting an "equity restructuring" (within the meaning of Financial Accounting Standards Board Accounting Standards Codification

Topic 718, Compensation—Stock Compensation), each Participant shall have a legal right to the equitable adjustment of the Participant's outstanding awards, with the manner of such adjustment to be determined by the Committee as provided in this Section 5.7. In the event of any other change in corporate capitalization, including a merger, consolidation, reorganization, or partial or complete liquidation of the Company, including a Change in Control, the adjustments described in this Section 5.7 may be made as determined to be appropriate or desirable by the Committee in its discretion. The decision of the Committee regarding any adjustment pursuant to this Section 5.7 shall be final, binding and conclusive.

5.8 Change in Control

(a) Subject to the terms of the applicable award Agreement, in the event of any other change in corporate capitalization, including a merger, consolidation, reorganization, or partial or complete liquidation of the Company, including a Change in Control, then in addition to the adjustments described in Section 5.7 determined to be appropriate or desirable by the Committee, the Board (as constituted prior to such Change in Control) may, in its discretion:

(i) provide that (A) some or all outstanding Stock Options and SARs shall become exercisable in full or in part, either immediately or upon a subsequent termination of employment, (B) the Restriction Period applicable to some or all outstanding Restricted Stock Awards and Restricted Stock Unit Awards shall lapse in full or in part, either immediately or upon a subsequent termination of employment, (C) the Performance Period applicable to some or all outstanding awards shall lapse in full or in part, and (D) the Performance Measures applicable to some or all outstanding awards shall be deemed to be satisfied at the target or any other level;

(ii) require that shares of stock of the corporation resulting from such Change in Control, or a parent corporation thereof, be substituted for some or all of the shares of Common Stock subject to an outstanding award, with an appropriate and equitable adjustment to such award as shall be determined by the Board or the Committee in accordance with Section 5.7; and/or

(iii) require outstanding awards, in whole or in part, to be surrendered to the Company by the holder, and to be immediately cancelled by the Company, and to provide for the holder to receive (A) a cash payment in an amount equal to (1) in the case of a Stock Option or an SAR, the aggregate number of shares of Common Stock then subject to the portion of such Stock Option or SAR surrendered multiplied by the excess, if any, of the Fair Market Value of a share of Common Stock as of the date of the Change in Control, over the purchase price or base price per share of Common Stock subject to such Stock Option or SAR (including no payment or consideration in the case of a Stock Option or

SAR having a purchase price or base price per share of Common Stock equal to, or in excess of, the Fair Market Value of a share of Common Stock subject to such Stock Option or SAR), (2) in the case of a Stock Award or a Performance Award denominated in shares of Common Stock, the aggregate number of shares of Common Stock then subject to the portion of such award surrendered to the extent the Performance Measures applicable to such award have been satisfied or are deemed satisfied pursuant to Section 5.8(a)(i), multiplied by the Fair Market Value of a share of Common Stock as of the date of the Change in Control, and (3) in the case of a Performance Award denominated in cash, the value of the Performance Award then subject to the portion of such award surrendered to the extent the Performance Measures applicable to such award have been satisfied or are deemed satisfied pursuant to Section 5.8(a)(i); (B) shares of capital stock of the corporation resulting from or succeeding to the business of the Company pursuant to such Change in Control, or a parent corporation thereof, having a fair market value not less than the amount determined under clause (A) above; or (C) a combination of the payment of cash pursuant to clause (A) above and the issuance of shares pursuant to clause (B) above.

(b) For purposes of this Plan, unless otherwise provided in an Agreement, "Change in Control" means a change in the beneficial ownership of the Company's voting stock or a change in the composition of the Board which occurs as follows:

(i) any Person (as defined below) other than a trustee or other fiduciary of securities held under an employee benefit plan of the Company or any of its subsidiaries, is or becomes a Beneficial Owner, directly or indirectly, of stock of the Company representing 25% or more of the total voting power of the Company's then outstanding stock and securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in Clause (A) of Section 5.8(b)(iii), below;

(ii) individuals who, as of the date hereof, constitute the Board (the "Incumbent Board"), cease for any reason to constitute a majority thereof; *provided, however,* that any individual becoming a director whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least 75% of the directors then comprising the Incumbent Board shall be considered as though such individual was a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) there is consummated a merger or consolidation of the Company (or any direct or indirect subsidiary of the Company) with any other Company, other than (A) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 75% of the combined voting power of the stock and securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of stock and securities of the Company representing more than 25% of the combined voting power of the Company's then outstanding

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stock and securities; or

(iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets other than a sale or disposition by the Company of all or substantially all of the assets to an entity at least 75% of the combined voting power of the stock and securities which is owned by Persons in substantially the same proportions as their ownership of the Company's voting stock immediately prior to such sale.

As used in this Section 5.8, "Person" shall mean any person (as defined in Section 3(a)(9) of the Exchange Act, as such term is modified in Section 13(d) and 14(d) of the Exchange Act) other than (1) any employee plan established by the Company, (2) the

Company or any of its affiliates (as defined in Rule 12b-2 promulgated under the Exchange Act), (3) an underwriter temporarily holding securities pursuant to an offering of such securities, or (4) a Company owned, directly or indirectly, by stockholders of the Company in substantially the same proportions as their ownership of the Company and "Beneficial Owner" shall mean beneficial owner as defined in Rule 13d-3 under the Exchange Act. The decision of the Board or Committee regarding any adjustment, action or cancellation pursuant to this Section 5.8 shall be final, binding and conclusive.

5.9 Deferrals

The Committee may determine that the delivery of shares of Common Stock or the payment of cash, or a combination thereof, upon the exercise or settlement of all or a portion of any award (other than awards of Stock Options and SARs) made hereunder shall be deferred, or the

Committee may, in its sole discretion, approve deferral elections made by holders of awards. Deferrals shall be for such periods and upon such terms as the Committee may determine in its sole discretion, subject to the requirements of Section 409A of the Code.

5.10 No Right of Participation, Employment or Service

Unless otherwise set forth in an employment agreement, no person shall have any right to participate in this Plan. Neither this Plan nor any award made hereunder shall confer upon any person any right to continued employment by or service with the Company, any Subsidiary or any affiliate of the Company or affect in any manner the right of the Company, any Subsidiary or any affiliate of the Company to terminate the employment or service of any person at any time without liability hereunder.

5.11 Rights as Stockholder

No person shall have any right as a stockholder of the Company with respect to any shares of Common Stock or other equity security of the Company which is subject to an award hereunder unless and until such person becomes a stockholder of record with respect to such shares of Common Stock or equity security.

5.12 Designation of Beneficiary

To the extent permitted by the Company, a holder of an award may file with the Company a written designation of one or more persons as such holder's beneficiary or beneficiaries (both primary and contingent) in the event of the holder's death or incapacity. To the extent an outstanding Stock Option or SAR granted hereunder is exercisable, such beneficiary or beneficiaries shall be entitled to exercise such Stock Option or SAR pursuant to procedures prescribed by the Company. Each beneficiary designation shall become effective only when filed in writing with the Company during the holder's lifetime on a form prescribed by the Company. The spouse of a married holder domiciled in a community property jurisdiction shall join in any designation of a beneficiary other than such spouse. The filing with the Company of a new beneficiary designation shall cancel all previously filed beneficiary designations. If a holder fails to designate a beneficiary, or if all designated beneficiaries of a holder predecease the holder, then each outstanding award held by such holder, to the extent vested or exercisable, shall be payable to or may be exercised by such holder's executor, administrator, legal representative or similar person.

5.13 Governing Law

This Plan, each award hereunder and the related Agreement, and all determinations made and actions taken pursuant thereto, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Illinois and construed in accordance therewith without giving effect to principles of conflicts of laws.

5.14 Foreign Employees

Without amending this Plan, the Committee may grant awards to eligible persons who are foreign nationals and/or reside outside the U.S. on such terms and conditions different from those specified in this Plan as may in the judgment of the Committee be necessary or desirable to foster and promote achievement of the purposes of this Plan and, in furtherance of such purposes the Committee may make such modifications, amendments, procedures, subplans and the like as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or its Subsidiaries operates or has Employees.

5.15 Awards Subject to Clawback

The awards granted under this Plan and any cash payment or shares of Common Stock delivered pursuant to an award are subject to forfeiture, recovery by the Company or other action pursuant to the applicable Agreement or any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.

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