

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K/A**

(Amendment No. 1)

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

Date of Report (Date of earliest event reported): August 7, 2021

**Orbsat Corp**

(Exact name of registrant as specified in its charter)

**Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**001-40447**  
(Commission  
File Number)

**65-0783722**  
(I.R.S. Employer  
Identification No.)

**18851 N.E. 29th Ave., Suite 700, Aventura, FL 33180**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (305) 560-5355**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbols(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001	OSAT	The Nasdaq Stock Market, Inc.
Warrants	OSATW	The Nasdaq Stock Market, Inc.

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

Emerging growth company

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

**EXPLANATORY NOTE**

This Amendment to the Current Report on Form 8-K filed by Orbsat Corp (the "Company") on August 12, 2021 (the "Original Report") is being filed to address the inadvertent omission of a description of amendments to the Company's 2020 Equity Incentive Plan that were incorporated into a newly adopted Amended and Restated 2020 Equity Incentive Plan. Except for the foregoing, this amendment does not amend, modify or update the disclosures contained in the Original Report.

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

On August 7, 2021, on the approval and recommendation of the Compensation Committee of the Board of Directors of Orbsat Corp (the "Company"), the Company entered into amendments (each an "Amendment") to the current employment agreements (each, an "Employment Agreement") of Charles M. Fernandez, the Company's Executive Chairman and Chief Executive Officer; David Phipps, a Director and the Company's President and the Chief Executive Officer of Global Operations; Sarwar Uddin, the Company's Chief Financial Officer; and Theresa Carlise, the Company's Chief Accounting Officer, Treasurer and Secretary.

The Amendment for Mr. Fernandez amends his Employment Agreement in order to, among other things, increase Mr. Fernandez's compensation by (i) providing for medical plan coverage for Mr. Fernandez and his family at the expense of the Company, and (ii) providing for an auto allowance \$1,000 per month. The Amendment for Mr. Phipps amends his Employment Agreement in order to, among other things, (i) change Mr. Phipps' title to "President of Orbsat Corp and Chief Executive Officer of Global Operations" and (ii) increasing Mr. Phipps' compensation by providing for an auto allowance \$1,000 a month. The Amendment for Mr. Uddin amends his Employment Agreement in order to, among other things, increase Mr. Uddin's compensation by providing for an allowance of \$600 per month for the payment of medical plan coverage for Mr. Uddin and his family. The Amendment for Ms. Carlise amends her Employment Agreement in order to, among other things, change Ms. Carlise's title to "Chief Accounting Officer, Secretary and Treasurer."

The foregoing descriptions of the Amendments for Messrs. Fernandez, Phipps and Uddin and Ms. Carlise, and the Company's obligations thereunder, do not purport to be complete and are qualified in their entirety by reference to the full text of the Amendments, each of which is included herewith as Exhibit 10.1, 10.2, 10.3 and 10.4

respectively, and each of which is incorporated herein by reference.

On August 10, 2021, the Company's Board of Directors adopted an Amended and Restated 2020 Equity Incentive Plan (the "A&R 2020 Plan") that amended the Company's 2020 Equity Incentive Plan by (i) revising the definition of "Consultant"; (ii) establishing that the A&R 2020 Plan is administered by the "Committee" (defined below), (iii) removing certain discretionary powers of the Board; (iv) clarifying that the exercise price of stock options is set at "Fair Market Value"; (v) removing the one-year shareholder approval requirements; (vi) removing all references to "Incentive Stock Options" or "ISOs" from the A&R 2020 Plan and clarifying that ISOs are not issuable under the A&R 2020 Plan; (vii) making conforming revisions to reflect the 1-for-5 reverse split that was effective on May 28, 2021; and (viii) making corrections and other conforming, minor or ministerial changes and revisions deemed necessary by the Company's management. The "Committee" is defined in the A&R 2020 Plan as the Compensation Committee of the Board or such other committee as may be designated by the Board from time to time to administer the Plan, or, if no such committee has been designated at the time of any grants, it shall mean the Board.

The foregoing descriptions of the A&R 2020 Plan and the amendments incorporated therein does not purport to be complete and is qualified in its entirety by reference to the full text of the A&R 2020 Plan, which is included herewith as Exhibit 10.5 and is incorporated herein by reference.

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#### Item 9.01. Financial Statements and Exhibits.

##### Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1*	<a href="#">Amendment No. 1 Employment Agreement, dated August 7, 2021, by and between Orbsat Corp and Charles M. Fernandez.</a>
10.2*	<a href="#">Amendment No. 1 Employment Agreement, dated August 7, 2021, by and between Orbsat Corp and David Phipps.</a>
10.3*	<a href="#">Amendment No. 1 Employment Agreement, dated August 7, 2021, by and between Orbsat Corp and Sarwar Uddin.</a>
10.4*	<a href="#">Amendment No. 1 Employment Agreement, dated August 7, 2021, by and between Orbsat Corp and Theresa Carlise.</a>
10.5	<a href="#">Amended and Restated 2020 Equity Incentive Plan</a>

\* Filed under the same exhibit number as an exhibit to the Original Report and incorporated herein by reference.

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#### Signature

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

#### **ORBSAT CORP**

By: /s/ Charles M. Fernandez

Name: Charles M. Fernandez

Title: Executive Chairman & Chief Executive Officer

Dated: October 01, 2021

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**Orbsat Corp**  
**Amended and Restated 2020 Equity Incentive Plan**

**Section 1. Establishment and Purpose**

1.1 The purpose of the Plan is to attract and retain outstanding individuals as Employees, Directors and Consultants of the Company and its Subsidiaries, to recognize the contributions made to the Company and its Subsidiaries by Employees, Directors and Consultants, and to provide such Employees, Directors and Consultants with additional incentive to expand and improve the profits and achieve the objectives of the Company and its Subsidiaries, by providing such Employees, Directors and Consultants with the opportunity to acquire or increase their proprietary interest in the Company through receipt of Awards.

**Section 2. Definitions.**

As used in the Plan, the following terms shall have the meanings set forth below:

2.1 “Award” means any award or benefit granted under the Plan, which shall be a Stock Option, a Stock Award, a Stock Unit Award or an SAR.

2.2 “Award Agreement” means, as applicable, a Stock Option Agreement, Stock Award Agreement, Stock Unit Award Agreement or SAR Agreement evidencing an Award granted under the Plan.

2.3 “Board” means the Board of Directors of the Company.

2.4 “Change in Control” has the meaning set forth in Section 9.2 of the Plan.

2.5 “Code” means the Internal Revenue Code of 1986, as amended from time to time

2.6 “Committee” means the Compensation Committee of the Board or such other committee as may be designated by the Board from time to time to administer the Plan, or, if no such committee has been designated at the time of any grants, it shall mean the Board.

2.7 “Company” means Orbsat Corp, a Nevada corporation.

2.8 “Consultant” means any person, including an advisor, who is engaged by the Company or a Subsidiary to render consulting or advisory services and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a “Consultant” for purposes of the Plan.

2.9 “Director” means a director of the Company who is not an employee of the Company or a Subsidiary.

2.10 “Effective Date” means August 21, 2020.

2.11 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

2.12 “Fair Market Value” means as of any date, the closing price of a Share on the national securities exchange on which the Shares are listed, or, if the Shares are not listed on a national securities exchange, the over-the-counter market on which the Shares trades, or, if the Shares is not listed on a national securities exchange or an over-the-counter market, as determined by the Board as of such date in accordance with the requirements of Code Section 422 or 409A, as applicable, or, if no trading occurred on such date, as of the trading day immediately preceding such date.

2.13 “Incentive Stock Option” or “ISO” means a Stock Option granted under Section 5 of the Plan that meets the requirements of Section 422(b) of the Code or any successor provision.

2.14 “Employee” means an employee of the Company or any Subsidiary selected to participate in the Plan in accordance with Section 3. A Employee may also include a person who is granted an Award in connection with the hiring of the person prior to the date the person becomes an employee of the Company or any Subsidiary, provided that such Award shall not vest prior to the commencement of employment.

2.15 “Family Member” unless otherwise defined by applicable tax laws, shall mean any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the Participant’s household (other than a tenant or employee of the Participant), a trust in which such persons have more than fifty percent (50%) of the beneficial interest, a foundation in which such persons (or the Participant) control the management of assets, and any other entity in which such persons (or the Participant) own more than fifty percent (50%) of the voting interests.

2.16 “Founder” means the Company’s founder David Phipps.

2.17 “Non-Qualified Stock Option” or “NSO” means a Stock Option granted under Section 5 of the Plan that is not an Incentive Stock Option.

2.18 “Participant” means an Employee, Director or Consultant selected to receive an Award or Option under the Plan.

2.19 “Plan” means this Amended and Restated 2020 Equity Incentive Plan.

2.20 “Shares” means shares of common stock of the Company.

2.21 “Stock Appreciation Right” or “SAR” means a grant of a right to receive Shares or cash under Section 8 of the Plan.

2.22 “Stock Award” means a grant of Shares under Section 6 of the Plan.

2.23 “Stock Option” means a Non-Qualified Stock Option granted under Section 5 of the Plan.

2.24 “Stock Unit Award” means a grant of a right to receive Shares or cash under Section 7 of the Plan.

2.25 “Subsidiary” means an entity of which the Company is the direct or indirect beneficial owner of not less than 50% of all issued and outstanding equity interest of such entity.

2.26 “Termination of Service” means a termination of a Participant’s service with the Company or a Subsidiary, as applicable, for any reason, including, without limitation, disability or death. In the event Termination of Service shall constitute a payment event with respect to any Award subject to Code Section 409A, Termination of Service shall only be deemed to occur upon a “separation from service” as such term is defined under Code Section 409A.

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### **Section 3. Administration.**

#### 3.1 The Committee.

The Plan shall be administered by the Committee, which shall be comprised of at least two members of the Board who satisfy the “non-employee director” definition set forth in Rule 16b-3 under the Exchange Act, unless the Board otherwise determines.

#### 3.2 Authority of the Committee.

(a) The Committee, in its sole discretion, shall determine the Employees, Directors and Consultants to whom, and the time or times at which Awards will be granted, the form and amount of each Award, the expiration date of each Award, the time or times within which the Awards may be exercised, the cancellation of the Awards and the other limitations, restrictions, terms and conditions applicable to the grant of the Awards. The terms and conditions of the Awards need not be the same with respect to each Participant or with respect to each Award.

(b) To the extent permitted by applicable law, regulation, and rules of a stock exchange on which the Shares are listed or traded, the Committee may delegate its authority to grant Awards to Employees and to determine the terms and conditions thereof to such officer of the Company as it may determine in its discretion, on such terms and conditions as it may impose, except with respect to Awards to officers subject to Section 16 of the Exchange Act.

(c) The Committee may, subject to the provisions of the Plan, establish such rules and regulations as it deems necessary or advisable for the proper administration of the Plan, and may make determinations and may take such other action in connection with or in relation to the Plan as it deems necessary or advisable. Each determination or other action made or taken pursuant to the Plan, including interpretation of the Plan and the specific terms and conditions of the Awards granted hereunder, shall be final and conclusive for all purposes and upon all persons.

(d) No member of the Board or the Committee shall be liable for any action taken or determination made hereunder in good faith. Service on the Committee shall constitute service as a Director so that the members of the Committee shall be entitled to indemnification and reimbursement as Directors of the Company pursuant to the Company’s Certificate of Incorporation and By-Laws.

#### 3.3 Award Agreements.

(a) Each Award shall be evidenced by a written Award Agreement specifying the terms and conditions of the Award. In the sole discretion of the Committee, the Award Agreement may condition the grant of an Award upon the Participant’s entering into one or more of the following agreements with the Company: (i) an agreement not to compete with the Company and its Subsidiaries which shall become effective as of the date of the grant of the Award and remain in effect for a specified period of time following termination of the Participant’s employment with the Company; (ii) an agreement to cancel any employment agreement, fringe benefit or compensation arrangement in effect between the Company and the Participant; and (iii) an agreement to retain the confidentiality of certain information. Such agreements may contain such other terms and conditions as the Committee shall determine. If the Participant shall fail to enter into any such agreement at the request of the Committee, then the Award granted or to be granted to such Participant shall be forfeited and cancelled.

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### **Section 4. Shares Subject to Plan.**

#### 4.1 Total Number of Shares.

(a) The total number of Shares that may be issued under the Plan shall be 800,000. Such Shares may be either authorized but unissued shares or treasury shares, and shall be adjusted in accordance with the provisions of Section 4.3 of the Plan.

(b) The number of Shares delivered by a Participant or withheld by the Company on behalf of any such Participant as full or partial payment of an Award, including the exercise price of a Stock Option or of any required withholding taxes, shall not again be available for issuance pursuant to subsequent Awards, and shall count towards the aggregate number of Shares that may be issued under the Plan. Any Shares purchased by the Company with proceeds from a Stock Option exercise shall not again be available for issuance pursuant to subsequent Awards, shall count against the aggregate number of Shares that may be issued under the Plan and shall not increase the number of shares available under the Plan.

(c) If there is a lapse, forfeiture, expiration, termination or cancellation of any Award for any reason (including for reasons described in Section 3.3), or if Shares are issued under such Award and thereafter are reacquired by the Company pursuant to rights reserved by the Company upon issuance thereof, the Shares subject to such Award or reacquired by the Company shall again be available for issuance pursuant to subsequent Awards, and shall not count towards the aggregate number of Shares that may be issued under the Plan.

#### 4.2 Shares Under Awards.

Of the Shares authorized for issuance under the Plan pursuant to Section 4.1:

(a) The maximum number of Shares as to which an Employee (other than the CEO and President to whom no annual limit is applicable) may receive Stock Options or SARs in any calendar year is 40,000, except that the maximum number of Shares as to which an Employee (other than the CEO and President to whom no annual limit is applicable) may receive Stock Options or SARs in the calendar year in which such Employee begins employment with the Company or its Subsidiaries is 10,000, or as specified in Employee’s employment agreement.

(b) The maximum number of Shares that may be subject to Stock Options is full amount of Shares authorized under Section 4.1.

(c) The maximum number of Shares that may be used for Stock Awards and/or Stock Unit Awards that may be granted to any Employee (other than the Founder, CEO and President to whom no annual limit is applicable) in any calendar year is 40,000, or, in the event the Award is settled in cash, an amount equal to the Fair Market Value of such number of Shares on the date on which the Award is settled.

(d) The maximum number of Shares subject to Awards granted under the Plan or otherwise during any one calendar year to any Director for service on the Board (other than the Founder, CEO and President, if serving on the Board, to whom no annual limit is applicable), taken together with any cash fees paid by the

Company to such Director during such calendar year for service on the Board, will not exceed \$100,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

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(e) The maximum number of Shares subject to Stock Options or SARs, granted under the Plan or otherwise during any one calendar year to any Consultant for services, taken together with any cash fees paid by the Company to such Consultant during such calendar year for services, will not exceed \$100,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

The numbers of Shares described herein shall be as adjusted in accordance with Section 4.3 of the Plan.

#### 4.3 Adjustment.

In the event of any reorganization, recapitalization, stock split, stock distribution, merger, consolidation, split-up, spin-off, combination, subdivision, consolidation or exchange of shares, any change in the capital structure of the Company or any similar corporate transaction, the Committee shall make such adjustments as it deems appropriate, in its sole discretion, to preserve the benefits or intended benefits of the Plan and Awards granted under the Plan. Such adjustments may include: (a) adjustment in the number and kind of shares reserved for issuance under the Plan; (b) adjustment in the number and kind of shares covered by outstanding Awards; (c) adjustment in the exercise price of outstanding Stock Options or SARs or the price of Stock Awards or Stock Unit Awards under the Plan; (d) adjustments to any of the shares limitations set forth in Section 4.1 or 4.2 of the Plan; and (e) any other changes that the Committee determines to be equitable under the circumstances.

### Section 5. Grants of Stock Options.

#### 5.1 Grant.

Subject to the terms of the Plan, the Committee may from time to time grant Stock Options to Participants. Stock Options granted under the Plan shall be NSOs. The Committee may not grant ISOs under the Plan.

#### 5.2 Stock Option Agreement.

The grant of each Stock Option shall be evidenced by a written Stock Option Agreement specifying the type of Stock Option granted, the exercise period, the exercise price, the terms for payment of the exercise price, the expiration date of the Stock Option, the number of Shares to be subject to each Stock Option and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.

#### 5.3 Exercise Price and Exercise Period.

With respect to each Stock Option granted to a Participant:

(a) The per Share exercise price of each Stock Option shall be the Fair Market Value of the Shares subject to the Stock Option on the date on which the Stock Option is granted, but such exercise price shall not be less than its par value.

(b) Each Stock Option shall become exercisable as provided in the Stock Option Agreement; provided that the Committee shall have the discretion to accelerate the date as of which any Stock Option shall become exercisable.

(c) No dividends or dividend equivalents shall be paid with respect to any Shares subject to a Stock Option prior to the exercise of the Stock Option.

(d) Each Stock Option shall expire, and all rights to purchase Shares thereunder shall expire, on the tenth anniversary of the date the Stock Option was granted, unless an earlier expiration date is specified in the Award Agreement.

#### 5.4 Reserved.

#### 5.5 Exercise of Stock Options.

(a) A Participant entitled to exercise a Stock Option may do so by delivering written notice to that effect specifying the number of Shares with respect to which the Stock Option is being exercised and any other information the Committee may prescribe. All notices or requests provided for herein shall be delivered to the Chief Financial Officer of the Company.

(b) The Committee in its sole discretion may make available one or more of the following alternatives for the payment of the Stock Option exercise price: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted an exercise notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the Shares subject to the Stock Option to pay the exercise price; (iii) by directing the Company to withhold such number of Shares otherwise issuable in connection with the exercise of the Stock Option having an aggregate Fair Market Value equal to the exercise price; or (iv) by delivering previously acquired Shares that are acceptable to the Committee and that have an aggregate Fair Market Value on the date of exercise equal to the Stock Option exercise price, except as otherwise may be determined by the Committee in the exercise of its discretion.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the Stock Option exercise price.

(c) Except to the extent inconsistent with the terms of the applicable Award Agreement and/or the provisions of Section 9, the following terms and conditions shall apply with respect to a Participant's Termination of Service, as applicable:

(i) The Participant's rights, if any, to exercise any vested Stock Option and/or SAR shall terminate ninety (90) days after the date of such Termination of Service, provided that if such termination is on account of the Participant's death or disability (as defined under Code Section 422(c)(6)), one (1) year after the date of such Termination of Service; and

(ii) Upon such applicable date the Participant (or other legal representative) shall forfeit any rights or interests in or with respect to any such Award. Notwithstanding the foregoing, the Committee, in its sole discretion, may provide for a different time period in the Award Agreement, or may extend the time period, following a Termination of Service, during which the Participant has the right to exercise any vested NSO or SAR, which time period may not extend beyond the expiration date of the Award term.

### Section 6. Stock Awards.

## 6.1 Grant.

The Committee may, in its discretion, (a) grant Shares under the Plan to any Participant without consideration from such Participant or (b) sell Shares under the Plan to any Participant for such amount of cash, Shares or other consideration as the Committee deems appropriate.

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## 6.2 Stock Award Agreement.

Each Shares granted or sold hereunder shall be subject to such restrictions, conditions and other terms as the Committee may determine at the time of grant or sale, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Award Agreement, and the following specific rules:

(a) The Award Agreement shall specify whether the Shares are granted or sold to the Participant and such other provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.

(b) The restrictions to which the Shares awarded hereunder are subject shall lapse as provided in Stock Award Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant.

(c) Except as provided in this subsection (c) and unless otherwise set forth in the related Stock Award Agreement, the Participant receiving a grant of or purchasing Shares shall thereupon be a shareholder of the Company with respect to such Shares and shall have the rights of a shareholder of the Company with respect to such Shares, including the right to vote such Shares and to receive dividends and other distributions paid with respect to such Shares; provided that any dividends or other distributions payable with respect to the Stock Award shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Award Agreement. Any such dividends or other distributions held by the Company attributable to the portion of a Stock Award that is forfeited shall also be forfeited.

## Section 7. Stock Unit Awards.

### 7.1 Grant.

The Committee may, in its discretion, grant Stock Unit Awards to any Participant. Each Stock Unit subject to the Award shall entitle the Participant to receive, on the date or the occurrence of an event (including the attainment of performance goals) as described in the Stock Unit Award Agreement, a Share or cash equal to the Fair Market Value of a Share on the date of such event as provided in the Stock Unit Award Agreement.

### 7.2 Stock Unit Agreement.

Each Stock Unit Award shall be subject to such restrictions, conditions and other terms as the Committee may determine at the time of grant, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Unit Award Agreement and the following specific rules:

(a) The Stock Unit Agreement shall specify such provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.

(b) The restrictions to which the Shares of Stock Units awarded hereunder are subject shall lapse as provided in Stock Unit Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant.

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(c) Except as provided in this subsection (c) and unless otherwise set forth in the Stock Unit Agreement, the Participant receiving a Stock Unit Award shall have no rights of a shareholder of the Company, including voting or dividends or other distributions rights, with respect to any Stock Units prior to the date they are settled in Shares; provided that a Stock Unit Award Agreement may provide that until the Stock Units are settled in Shares or cash, the Participant shall be entitled to receive on each dividend or distribution payment date applicable to the Shares an amount equal to the dividends or other distributions that the Participant would have received had the Stock Units held by the Participant as of the related record date been actual Shares. Such amounts shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Unit Award Agreement. Such amounts held by the Company attributable to the portion of the Stock Unit Award that is forfeited shall also be forfeited.

## Section 8. SARs.

### 8.1 Grant.

The Committee may grant SARs to Participants. Upon exercise, an SAR entitles the Participant to receive from the Company the number of Shares having an aggregate Fair Market Value equal to the excess of the Fair Market Value of one Share as of the date on which the SAR is exercised over the exercise price, multiplied by the number of Shares with respect to which the SAR is being exercised. The Committee, in its discretion, shall be entitled to cause the Company to elect to settle any part or all of its obligations arising out of the exercise of an SAR by the payment of cash in lieu of all or part of the Shares it would otherwise be obligated to deliver in an amount equal to the Fair Market Value of such Shares on the date of exercise. Cash shall be delivered in lieu of any fractional Shares. The terms and conditions of any such Award shall be determined at the time of grant.

### 8.2 SAR Agreement.

(a) Each SAR shall be evidenced by a written SAR Agreement specifying the terms and conditions of the SAR as the Committee may determine, including the SAR exercise price, expiration date of the SAR, the number of Shares to which the SAR pertains, the form of settlement and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.

(b) The per Share exercise price of each SAR shall not be less than 100% of the Fair Market Value of a Share on the date the SAR is granted.

(c) Each SAR shall expire and all rights thereunder shall cease on the date fixed by the Committee in the related SAR Agreement, which shall not be later than the ten years after the date of grant; provided however, if a Participant is unable to exercise an SAR because trading in the Shares is prohibited by law or the Company's insider-trading policy, the SAR exercise date shall be extended to the date that is 30 days after the expiration of the trading prohibition.

(d) Each SAR shall become exercisable as provided in the related SAR Agreement; provided that notwithstanding any other Plan provision, the Committee shall have the discretion to accelerate the date as of which any SAR shall become exercisable.

(e) No dividends or dividend equivalents shall be paid with respect to any SAR prior to the exercise of the SAR.

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(f) A person entitled to exercise an SAR may do so by delivery of a written notice in accordance with procedures established by the Committee specifying the number of Shares with respect to which the SAR is being exercised and any other information the Committee may prescribe. As soon as reasonably practicable after the exercise of an SAR, the Company shall (i) issue the total number of full Shares to which the Participant is entitled and cash in an amount equal to the Fair Market Value, as of the date of exercise, of any resulting fractional Share, and (ii) if the Committee causes the Company to elect to settle all or part of its obligations arising out of the exercise of the SAR in cash, deliver to the Participant an amount in cash equal to the Fair Market Value, as of the date of exercise, of the Shares it would otherwise be obligated to deliver.

## **Section 9. Change in Control.**

### **9.1 Effect of a Change in Control.**

(a) Notwithstanding any of the provisions of the Plan or any outstanding Award Agreement, upon a Change in Control of the Company (as defined in Section 9.2), the Board is authorized and has sole discretion to provide that (i) all outstanding Awards shall become fully exercisable, (ii) all restrictions applicable to all Awards shall terminate or lapse and (iii) performance goals applicable to any Awards shall be deemed satisfied at the highest level, as applicable, in order that Participants may realize the benefits thereunder.

(b) In addition to the Committee's authority set forth in Section 3, upon such Change in Control of the Company, the Committee is authorized and has sole discretion as to any Award, either at the time such Award is granted hereunder or any time thereafter, to take any one or more of the following actions without Participant consent: (i) provide for the purchase of any vested or unvested outstanding Stock Option, for an amount of cash equal to the difference between the exercise price and the then Fair Market Value of the Shares covered thereby; (ii) make such adjustment to any such Award then outstanding as the Board deems appropriate to reflect such Change in Control; and (iii) cause any such Award then outstanding to be assumed by or substituted for another form of Award issued by the surviving corporation after such Change in Control.

### **9.2 Definition of Change in Control.**

"Change in Control" of the Company shall be deemed to have occurred if at any time during the term of an Award granted under the Plan any of the following events occurs:

(a) any Person (other than the Company, a trustee or other fiduciary holding securities under an employee benefit plan of the Company, or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of Shares) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors ("Person" and "Beneficial Owner" being defined in Rule 13d-3 of the General Rules and Regulations of the Exchange Act);

(b) the Company is party to a merger, consolidation, reorganization or other similar transaction with another corporation or other Person unless, following such transaction, more than 50% of the combined voting power of the outstanding securities of the surviving, resulting or acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such transaction, in substantially the same proportions as their ownership, immediately prior to such transaction, of the Company's outstanding securities entitled to vote generally in the election of directors;

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(c) the election to the Board, without the recommendation or approval of two-thirds of the incumbent Board, of the lesser of: (i) three Directors; or (ii) Directors constituting a majority of the number of Directors of the Company then in office; provided, however, that Directors whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of Directors of the Company will not be considered as incumbent members of the Board for purposes of this Section; or

(d) there is a complete liquidation or dissolution of the Company, or the Company sells all or substantially all of its business and/or assets to another corporation or other Person unless, following such sale, more than 50% of the combined voting power of the outstanding securities of the acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such sale, in substantially the same proportions as their ownership, immediately prior to such sale, of the Company's outstanding securities entitled to vote generally in the election of directors.

In no event, however, shall a Change in Control be deemed to have occurred, with respect to a Participant, if that Participant is part of a purchasing group which consummates the Change in Control transaction. A Participant shall be deemed "part of a purchasing group" for purposes of the preceding sentence if the Participant is an equity participant or has agreed to become an equity participant in the purchasing company or group (except for (a) passive ownership of less than 3% of the shares of the purchasing company; or (b) ownership of equity participation in the purchasing company or group which is otherwise not deemed to be significant, as determined prior to the Change in Control by a majority of the disinterested Directors).

## **Section 10. Payment of Taxes**

(a) In connection with any Award, and as a condition to the issuance or delivery of any Shares to the Participant in connection therewith, the Company shall require the Participant to pay the Company the minimum amount of federal, state, local or foreign taxes required to be withheld, and in the Company's sole discretion, the Company may permit the Participant to pay the Company up to the maximum individual statutory rate of applicable withholding.

(b) The Company in its sole discretion may make available one or more of the following alternatives for the payment of such taxes: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the Shares subject to the Award to pay the withholding taxes; (iii) by directing the Company to withhold such number of Shares otherwise issuable in connection with the Award having an aggregate Fair Market Value equal to the minimum amount of tax required to be withheld; (iv) by delivering previously acquired Shares of the Company that are acceptable to the Board that have an aggregate Fair Market Value equal to the amount required to be withheld; or (v) by certifying to ownership by attestation of such previously acquired Shares.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the required withholding taxes.

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## **Section 11. Section 409A.**

Notwithstanding any other provision of the Plan, the Committee shall have no authority to issue an Award under the Plan with terms and/or conditions which would cause such Award to constitute non-qualified "deferred compensation" under Section 409A of the Code unless such Award shall be structured to be exempt from or comply with all requirements of Code Section 409A. The Plan and all Award Agreements are intended to comply with the requirements of Section 409A of the Code (or to be exempt therefrom) and shall be so interpreted and construed and no amount shall be paid or distributed from the Plan unless and until such payment complies with all requirements of Code Section 409A. It is the intent of the Company that the provisions of this Agreement and all other plans and programs sponsored by the Company be interpreted to comply in all respects with Code Section 409A, however, the Company shall have no liability to the Participant, or any successor or beneficiary thereof, in the event taxes, penalties or excise taxes may ultimately be determined to be applicable to any payment or award under the Plan.

## **Section 12. Postponement.**

The Committee may postpone any grant or settlement of an Award or exercise of a Stock Option or SAR for such time as the Committee in its sole discretion may deem necessary in order to permit the Company:

- (a) to effect, amend or maintain any necessary registration of the Plan or the Shares issuable pursuant to an Award, including upon the exercise of a Stock Option or SAR, under the Securities Act of 1933, as amended, or the securities laws of any applicable jurisdiction;
- (b) to permit any action to be taken in order to (i) list such Shares on a stock exchange if Shares are then listed on such exchange or (ii) comply with restrictions or regulations incident to the maintenance of a public market for its Shares, including any rules or regulations of any stock exchange on which the Shares are listed; or
- (c) to determine that such Shares and the Plan are exempt from such registration or that no action of the kind referred to in (b) (ii) above needs to be taken; and the Company shall not be obligated by virtue of any terms and conditions of any Award or any provision of the Plan to sell or issue Shares in violation of the Securities Act of 1933 or the law of any government having jurisdiction thereof.

Any such postponement shall not extend the term of an Award and shall comply with all requirements of Code Section 409A, and neither the Company nor its Directors or officers shall have any obligation or liability to a Participant, the Participant's successor or any other person with respect to any Shares as to which the Award shall lapse because of such postponement.

## **Section 13. Nontransferability.**

Awards granted under the Plan, and any rights and privileges pertaining thereto, may not be transferred, assigned, pledged or hypothecated in any manner, or be subject to execution, attachment or similar process, by operation of law or otherwise, except (i) by will or by the laws of descent and distribution, or (ii) where permitted under applicable tax rules, by gift to any Family Member of the Participant, subject to compliance with applicable laws. An Award may be exercisable during the lifetime of the Participant only by such Participant or by the Participant's guardian or legal representative unless it has been transferred by gift to a Family Member of the Participant, in which case it shall be exercisable solely by such transferee. Notwithstanding any such transfer, the Participant shall continue to be subject to the withholding requirements provided for under Section 10.

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## **Section 14. Delivery of Shares.**

Shares issued pursuant to a Stock Award, the exercise of a Stock or SAR or the settlement of a Stock Unit Award shall be represented by share certificates or on a non-certificated basis, with the ownership of such Shares by the Participant evidenced solely by book entry in the records of the Company's transfer agent; provided, however, that upon the written request of the Participant, the Company shall issue, in the name of the Participant, share certificates representing such Shares. Notwithstanding the foregoing, Shares granted pursuant to a Stock Award shall be held by the Secretary of the Company until such time as the Shares are forfeited or settled.

## **Section 15. Termination or Amendment of Plan and Award Agreements**

### **15.1 Termination or Amendment of Plan.**

(a) Except as described in Section 15.3 below, the Board may terminate, suspend, or amend the Plan, in whole or in part, from time to time, without the approval of the shareholders of the Company, unless such approval is required by applicable law, regulation or rule of any stock exchange on which the Shares are listed. No amendment or termination of the Plan shall adversely affect the right of any Participant under any outstanding Award in any material way without the written consent of the Participant, unless such amendment or termination is required by applicable law, regulation or rule of any stock exchange on which the Shares are listed. Subject to the foregoing, the Committee may correct any defect or supply an omission or reconcile any inconsistency in the Plan or in any Award granted hereunder in the manner and to the extent it shall deem desirable, in its sole discretion, to effectuate the Plan.

(b) The Board shall have the authority to amend the Plan to the extent necessary or appropriate to comply with applicable law, regulation or accounting rules in order to permit Participants who are located outside of the United States to participate in the Plan.

### **15.2 Amendment of Award Agreements.**

The Committee shall have the authority to amend any Award Agreement at any time; provided however, that no such amendment shall adversely affect the right of any Participant under any outstanding Award Agreement in any material way without the written consent of the Participant, unless such amendment is required by applicable law, regulation or rule of any stock exchange on which the Shares are listed.

### **15.3 No Repricing of Stock Options.**

Notwithstanding the foregoing, and except as described in Section 4.3, there shall be no amendment to the Plan or any outstanding Stock Option Agreement or SAR Agreement that results in the repricing of Stock Options or SARs without shareholders' approval. For this purpose, repricing includes (i) a reduction in the exercise price of the Stock Option or SARs or (ii) the cancellation of a Stock Option in exchange for cash, Stock Options or SARs with an exercise price less than the exercise price of the cancelled Options or SARs, other Awards or any other consideration provided by the Company, but does not include any adjustment described in Section 4.3.

## **Section 16. No Contract of Employment**

Neither the adoption of the Plan nor the grant of any Award under the Plan shall be deemed to obligate the Company or any Subsidiary to continue the employment of any Participant for any particular period, nor shall the granting of an Award constitute a request or consent to postpone the retirement date of any Participant.

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**Section 17. Applicable Law.**

All questions pertaining to the validity, construction and administration of the Plan and all Awards granted under the Plan shall be determined in conformity with the laws of the state of Nevada, without regard to the conflict of law provisions of any state.

**Section 18. Effective Date and Term of Plan**

18.1 Effective Date.

The Plan shall be effective as of the Effective Date. The Plan is intended to supersede and replace any and all prior equity plans sponsored by the Company with respect to any authorized shares not made subject to any award under such plans prior to the effective date of this Plan. Any outstanding awards under prior plans shall continue to be subject to and governed by the terms of such plans.

18.2 Term of Plan.

Notwithstanding anything to the contrary contained herein, no Awards shall be granted on or after the tenth anniversary of the adoption of this Plan.

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