

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**Concho Resources Inc.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**76-0818600**  
(I.R.S. Employer  
Identification No.)

**One Concho Center**  
**600 West Illinois Avenue**  
**Midland, Texas 79701**  
(Address, including Zip Code, of Registrant's Principal Executive Offices)

**Concho Resources Inc. 2019 Stock Incentive Plan**  
(Full Title of Plan)

**Travis L. Counts**  
**Senior Vice President, General Counsel and Corporate Secretary**  
**One Concho Center**  
**600 West Illinois Avenue**  
**Midland, Texas 79701**  
**(432) 683-7443**

(Name, address, zip code, and telephone number, including area code, of agent for service)

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

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

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 7(a)(2)(B) of the Securities Act. ☐

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	4,500,000 (1)	\$110.625 (2)	\$497,812,500 (2)	\$60,334.88

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such indeterminable number of additional shares of common stock of the Registrant as may become issuable to prevent dilution in the event of stock splits, stock dividends or similar transactions pursuant to the terms of the Concho Resources Inc. 2019 Stock Incentive Plan (the "Plan").
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act, based upon the average of the high and low prices of the common stock of the Registrant on the New York Stock Exchange on May 10, 2019.

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## EXPLANATORY STATEMENT

This Registration Statement on Form S-8 (this “Registration Statement”) is filed by Concho Resources Inc. (the “Registrant”), relating to an additional 4,500,000 shares of its common stock, par value \$0.001 per share (the “Common Stock”), issuable to eligible persons under the Concho Resources Inc. 2019 Stock Incentive Plan (the “Plan”) as a result of the adoption of an amendment and restatement of the Concho Resources Inc. 2015 Stock Incentive Plan. In accordance with General Instruction E to Form S-8, the Registrant hereby incorporates herein by reference the Registrant’s Registration Statements on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on August 30, 2007 (Commission File No. 333-145791), June 11, 2012 (Commission File No. 333-182046) and June 5, 2015 (Commission File No. 333-204765).

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

##### Item 1. Plan Information.

Not filed as part of the Registration Statement pursuant to the Note to Part I of Form S-8.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### Item 3. Incorporation of Documents by Reference.

The Registrant is registering additional securities under the Plan covered hereby for which registration statements on Form S-8 bearing Registration Nos. [333-204765](#), [333-182046](#) and [333-145791](#) are currently effective. Therefore, pursuant to General Instruction E of Form S-8, the Registrant elects to incorporate by reference the contents of such registration statements which constitute information required in this Registration Statement.

##### Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (“DGCL”) provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145 further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to

be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Delaware law provides that directors of a corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of their fiduciary duties as directors, except for liability:

- for any breach of their duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the DGCL relating to unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- for any transaction from which the director derived an improper personal benefit.

Our Restated Certificate of Incorporation provides that we shall indemnify our officers and directors to the extent provided in our Fourth Amended and Restated Bylaws (our "Bylaws"). In turn, our Bylaws provide that we will indemnify and hold harmless, to the full extent permitted by the DGCL, any of our officers or directors (including those persons serving as an officer or director of another entity at our request) who is party to a suit or other proceeding by reason of his or her position as an officer or director against all reasonably incurred expense, liability or loss. We may only indemnify an officer or director who brought the suit or proceeding if our board of directors had previously authorized such suit or proceeding. The rights to indemnification provided by our Bylaws include the right to advancement of expenses to the full extent permitted by the DGCL. In addition, our Bylaws allow us to indemnify our non-officer employees and agents to the extent (i) permitted by the DGCL and (ii) authorized by our Chief Executive Officer and at least one other authorized officer.

We have also entered into indemnification agreements with all of our directors and officers. These indemnification agreements are intended to permit indemnification to the fullest extent now or hereafter permitted by the DGCL. It is possible that the applicable law could change the degree to which indemnification is expressly permitted.

The indemnification agreements cover expenses (including attorneys' fees) incurred as a result of the fact that such person, in his or her capacity as a director, officer, trustee, employee or agent is made or threatened to be made a party to any suit or proceeding. The indemnification agreements

generally cover claims relating to the fact that the indemnified party is or was an officer, director, trustee, employee or agent of us, or is or was serving at our request in such a position for another entity. The indemnification agreements also obligate us to promptly advance all reasonable expenses incurred in connection with any claim. The indemnitee is, in turn, obligated to reimburse us for all amounts so advanced if it is later determined that the indemnitee is not entitled to indemnification. The indemnification provided under the indemnification agreements is not exclusive of any other indemnity rights; however, double payment to the indemnitee is prohibited.

We are not obligated to indemnify the indemnitee with respect to claims brought by the indemnitee against us without approval by our board of directors, except for claims regarding the indemnitee's rights under the indemnification agreement.

We have obtained director and officer liability insurance for the benefit of each of the indemnitees. These policies include coverage for losses for wrongful acts and omissions and to ensure our performance under the indemnification agreements. Each of the indemnitees are insured under such policies and provided with the same rights and benefits as are accorded to the most favorably insured of our directors and officers.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
4.1	<a href="#"><u>Fourth Amended and Restated Bylaws of Concho Resources Inc., as amended January 2, 2018 (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K on January 4, 2018, and incorporated herein by reference).</u></a>
5.1*	<a href="#"><u>Opinion of Gibson, Dunn &amp; Crutcher LLP.</u></a>
23.1*	<a href="#"><u>Consent of Grant Thornton LLP.</u></a>
23.2*	<a href="#"><u>Consent of Netherland, Sewell &amp; Associates, Inc.</u></a>
23.3*	<a href="#"><u>Consent of Cawley, Gillespie &amp; Associates, Inc.</u></a>
23.4*	<a href="#"><u>Consent of Gibson, Dunn &amp; Crutcher LLP (contained in Exhibit 5.1 hereto).</u></a>
24.1*	<a href="#"><u>Power of Attorney (included on signature page).</u></a>
99.1*	<a href="#"><u>Concho Resources Inc. 2019 Stock Incentive Plan</u></a>

\* Filed herewith.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Concho Resources Inc., certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Midland, in the State of Texas, on this 17<sup>th</sup> day of May, 2019.

### CONCHO RESOURCES INC.

By: /s/ Timothy A. Leach

Timothy A. Leach  
Chairman of the Board of Directors and Chief Executive Officer

We, the undersigned officers and directors of Concho Resources Inc., do hereby constitute and appoint Timothy A. Leach, Jack F. Harper, Travis L. Counts and Brenda R. Schroer, and each of them, our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for each of us and in each of our names, places and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary or desirable to be done in and about the premises, as fully to all intents and purposes as each of us might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or any of them, or his/her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Timothy A. Leach</u> Timothy A. Leach	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	May 17, 2019
<u>/s/ Brenda R. Schroer</u> Brenda R. Schroer	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	May 17, 2019
<u>/s/ Jacob P. Gobar</u> Jacob P. Gobar	Vice President and Chief Accounting Officer (Principal Accounting Officer)	May 17, 2019
<u>/s/ Steven L. Beal</u> Steven L. Beal	Director	May 17, 2019

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ Tucker S. Bridwell Tucker S. Bridwell	Director	May 17, 2019
/s/ William H. Easter III William H. Easter III	Director	May 17, 2019
/s/ Steven D. Gray Steven D. Gray	Director	May 17, 2019
/s/ Susan J. Helms Susan J. Helms	Director	May 17, 2019
/s/ Gary A. Merriman Gary A. Merriman	Director	May 17, 2019
/s/ Mark B. Puckett Mark B. Puckett	Director	May 17, 2019
/s/ John P. Surma John P. Surma	Director	May 17, 2019
/s/ E. Joseph Wright E. Joseph Wright	Director	May 17, 2019

May 17, 2019

Client: C-20923-00002

Concho Resources Inc.  
One Concho Center  
600 West Illinois Avenue  
Midland, Texas 79701

Re: *Registration Statement on Form S-8 Concerning Concho Resources Inc. 2019 Stock Incentive Plan*

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement"), of Concho Resources Inc., a Delaware corporation (the "Company"), to be filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to an additional 4,500,000 shares of the Company's common stock, par value \$0.001 per share (the "Shares") under the Concho Resources Inc. 2019 Stock Incentive Plan (the "Plan").

We have examined the Plan and the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary as the basis for the opinion set forth below. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Plan that would expand, modify or otherwise affect the terms of the Plan or the respective rights or obligations of the participants thereunder. Finally, we have assumed the accuracy of all other information provided to us by the Company during the course of our investigations, on which we have relied in issuing the opinion expressed below.

Based upon the foregoing examination and in reliance thereon, and subject to the qualifications, assumptions and limitations stated herein and in reliance on the statements of fact contained in the documents that we have examined, we are of the opinion that the Shares, when issued and sold in accordance with the terms of the Plan, and against payment therefor, and when the Registration Statement has become effective under the Securities Act, will be validly issued, fully paid and non-assessable.

We render no opinion herein as to matters involving the laws of any jurisdiction other than the Delaware General Corporation Law (the "DGCL"). We are not admitted to practice in the State of Delaware; however, we are generally familiar with the DGCL as currently in effect and have made such inquiries as we consider necessary to render the opinions above. This opinion is limited to the effect of the current state of the DGCL and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such law or the interpretations thereof or such facts.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated February 20, 2019, with respect to the consolidated financial statements and internal control over financial reporting of Concho Resources Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2018, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned reports in this Registration Statement.

/s/ GRANT THORNTON LLP

Oklahoma City, Oklahoma  
May 17, 2019



CONSENT OF INDEPENDENT PETROLEUM ENGINEERS AND GEOLOGISTS

As oil and gas consultants, we hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our reserves report for Concho Resources Inc. (the "Company") dated January 21, 2019, included in the Company's Annual Report on Form 10-K for the year ended December 31, 2018.

**NETHERLAND, SEWELL & ASSOCIATES, INC.**

By: /s/ C.H. (Scott) Rees III

C.H. (Scott) Rees III, P.E.

Chairman and Chief Executive Officer

Dallas, Texas

May 16, 2019

**CAWLEY, GILLESPIE & ASSOCIATES, INC.**

**PETROLEUM CONSULTANTS**

**302 FORT WORTH CLUB BUILDING  
306 WEST SEVENTH STREET  
FORT WORTH, TEXAS 76102-4987  
(817) 336-2461**

**CONSENT OF INDEPENDENT PETROLEUM ENGINEERS AND GEOLOGISTS**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report relating to the proved oil and gas reserves of Concho Resources Inc., dated January 23, 2019, which appears in Concho Resources Inc.'s Annual Report on Form 10-K for the year ended December 31, 2018.

**CAWLEY, GILLESPIE & ASSOCIATES, INC.**

/s/ J. Zane Meekins, P.E.

J. Zane Meekins, P.E.

Executive Vice President

Fort Worth, Texas  
May 7, 2019

**CONCHO RESOURCES INC.  
2019 STOCK INCENTIVE PLAN**

**I. PURPOSE OF THE STOCK INCENTIVE PLAN; PRIOR PLANS**

The purpose of the **CONCHO RESOURCES INC. 2019 STOCK INCENTIVE PLAN** (the “Stock Incentive Plan”) is to provide a means through which **CONCHO RESOURCES INC.**, a Delaware corporation (the “Company”), and its Affiliates may attract and retain able persons to serve as Directors or Consultants or to enter the employ of the Company and its Affiliates and to provide a means whereby those individuals upon whom the responsibilities of the successful administration and management of the Company and its Affiliates rest, and whose present and potential contributions to the Company and its Affiliates are of importance, can acquire and maintain stock ownership or other awards, thereby strengthening their concern for the welfare of the Company and its Affiliates and their desire to remain employed by, or continue providing services to, the Company and its Affiliates. A further purpose of the Stock Incentive Plan is to provide such individuals with additional incentive and reward opportunities designed to enhance the profitable growth of the Company and its Affiliates. Accordingly, the Stock Incentive Plan provides for granting Incentive Stock Options, Options that do not constitute Incentive Stock Options, Restricted Stock Awards, Performance Awards, or any combination of the foregoing, as is best suited to the circumstances of the particular employee, Consultant, or Director as provided herein.

The Stock Incentive Plan as set forth herein constitutes an amendment and restatement of the Company’s 2015 Stock Incentive Plan as in effect immediately prior to the Effective Date (the “Prior Plan”). The Prior Plan constituted an amendment and restatement of the Company’s 2006 Stock Incentive Plan as amended and restated effective as of April 19, 2012 (the “2012 Plan”). The 2012 Plan constituted an amendment and restatement of the Company’s 2006 Stock Incentive Plan as originally adopted in 2006 (the “2006 Plan”), which originally adopted plan constituted an amendment and restatement of the Concho Equity Holdings Corp. 2004 Stock Option Plan (the “2004 Plan”). Except as provided in the following sentence, the Stock Incentive Plan shall supersede and replace in its entirety the Prior Plan. Notwithstanding any provisions herein to the contrary, (a) each stock option granted under the 2004 Plan prior to June 1, 2006, shall be subject to the terms and provisions applicable to such stock option under the 2004 Plan, as in effect immediately prior to June 1, 2006, subject to adjustments in the number and class of shares of capital stock subject to each such stock option, and in the exercise price thereof, in connection with the Company’s assumption of the 2004 Plan and such stock option, as provided in the 2006 Plan, and (b) each other award granted under the Prior Plan prior to the Effective Date shall be subject to the terms and provisions applicable to such award under the Prior Plan as in effect immediately prior to the Effective Date, except that any such award that is an Option shall also be subject to the provisions of Paragraph VII(f) of the Plan.

## II. DEFINITIONS

The following definitions shall be applicable throughout the Stock Incentive Plan unless specifically modified by any paragraph:

**"Affiliate"** means any corporation, partnership, limited liability company or partnership, association, trust, or other organization which, directly or indirectly, controls, is controlled by, or is under common control with, the Company. For purposes of the preceding sentence, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity or organization, shall mean the possession, directly or indirectly, of the power (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of the controlled entity or organization or (ii) to direct or cause the direction of the management and policies of the controlled entity or organization, whether through the ownership of voting securities or by contract or otherwise.

**"Award"** means, individually or collectively, any Option, Restricted Stock Award, or Performance Award.

**"Board"** means the Board of Directors of the Company.

**"Code"** means the Internal Revenue Code of 1986, as amended. Reference in the Stock Incentive Plan to any section of the Code shall be deemed to include any amendments or successor provisions to such section and any regulations under such section.

**"Committee"** means a committee of the Board that is selected by the Board as provided in Paragraph IV(a).

**"Common Stock"** means the common stock, par value \$0.001 per share, of the Company, or any security into which such common stock may be changed by reason of any transaction or event of the type described in Paragraph X.

**"Company"** means Concho Resources Inc., a Delaware corporation.

**"Consultant"** means any person who is not an employee or a Director and who is providing advisory or consulting services to the Company or any Affiliate.

**"Corporate Change"** shall have the meaning assigned to such term in Paragraph X(c) of the Stock Incentive Plan.

**"Director"** means an individual who is a member of the Board.

**"Effective Date"** means March 25, 2019.

An **"employee"** means any person (including a Director) in an employment relationship with the Company or any Affiliate.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Fair Market Value"** means, as of any specified date, the mean of the high and low sales prices of the Common Stock, if the Common Stock is listed on a national stock exchange registered under section 6(a) of the Exchange Act, reported on the stock exchange composite tape on that date (or such other reporting service approved by the Committee); or, if no prices are reported on that date, on the last preceding date on which such prices of the Common Stock are so reported.

If the Common Stock is traded over the counter at the time a determination of its fair market value is required to be made hereunder, its fair market value shall be deemed to be equal to the average between the reported high and low or closing bid and asked prices of Common Stock on the most recent date on which Common Stock was publicly traded. In the event Common Stock is not publicly traded at the time a determination of its value is required to be made hereunder, the determination of its fair market value shall be made by the Committee in such manner as it deems appropriate and as is consistent with the requirements of section 409A of the Code.

***“Incentive Stock Option”*** means an incentive stock option within the meaning of section 422 of the Code.

***“Option”*** means an Award granted under Paragraph VII of the Stock Incentive Plan and includes both Incentive Stock Options to purchase Common Stock and Options that do not constitute Incentive Stock Options to purchase Common Stock.

***“Option Agreement”*** means a written agreement between the Company and a Participant with respect to an Option.

***“Participant”*** means an employee, Consultant, or Director who has been granted an Award.

***“Performance Award”*** means an Award granted under Paragraph IX of the Stock Incentive Plan.

***“Performance Award Agreement”*** means a written agreement between the Company and a Participant with respect to a Performance Award.

***“Performance Measure”*** means one or more performance measures established by the Committee that are based on (i) the price of a share of Common Stock, (ii) earnings per share, (iii) market share, (iv) revenues or sales, (v) net income or net income margin (before or after taxes), (vi) cash flow, cash flow from operations or return on investment, (vii) earnings or earnings margin before or after interest, taxes, depreciation, amortization, exploration and/or abandonment costs, (viii) economic value added, (ix) return on capital, assets, net assets or equity, (x) operating income, operating income margin or operating margin, (xi) debt level or debt reduction, (xii) cost reduction targets, (xiii) the amount of oil and/or gas reserves, (xiv) oil and/or gas reserve additions and/or replacements, (xv) costs of finding and/or developing oil and/or gas reserves, (xvi) oil and/or gas replacement ratios, (xvii) oil and/or gas production or production growth, (xviii) total stockholders’ return, (xix) capital expenditures, (xx) lease operating expenses, (xxi) general and administrative expenses, (xxii) net asset value, (xxiii) operating costs, or (xxiv) any combination of the foregoing. The performance measures described in the preceding sentence may be absolute, relative to one or more other companies, relative to one or more indexes, or measured by reference to the Company alone, one or more business units or Affiliates of the Company alone, or the Company together with one or more of its business units or Affiliates. In addition, subject to any limitations under section 162(m) of the Code, such performance measures may be subject to adjustment by the Committee for changes in accounting principles, to satisfy regulatory requirements and other specified extraordinary, unusual or infrequent items or events.

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**“Restricted Stock Agreement”** means a written agreement between the Company and a Participant with respect to a Restricted Stock Award.

**“Restricted Stock Award”** means an Award granted under Paragraph VIII of the Stock Incentive Plan.

**“Rule 16b-3”** means Securities Exchange Commission Rule 16b-3 promulgated under the Exchange Act, as such may be amended from time to time, and any successor rule, regulation, or statute fulfilling the same or a similar function.

**“Stock Incentive Plan”** means the Concho Resources Inc. 2019 Stock Incentive Plan, as amended from time to time.

### III. EFFECTIVE DATE AND DURATION OF THE STOCK INCENTIVE PLAN

This amendment and restatement of the Stock Incentive Plan shall be effective as of the Effective Date, provided this amendment and restatement is approved by the stockholders of the Company at the 2019 annual meeting of the Company’s stockholders. If this amendment and restatement is not so approved by the stockholders, then this amendment and restatement shall be void *ab initio*, and the Stock Incentive Plan shall continue in effect as if this amendment and restatement had not occurred, and any awards previously granted under the Stock Incentive Plan shall continue in effect under the terms of the grant; provided, further, that thereafter awards may continue to be granted pursuant to the terms of the Stock Incentive Plan, as in effect prior to this amendment and restatement and as may be otherwise amended hereafter. No further Awards may be granted under the Stock Incentive Plan after 10 years from the Effective Date. The Stock Incentive Plan shall remain in effect until all Options granted under the Stock Incentive Plan have been exercised or expired, all Restricted Stock Awards granted under the Stock Incentive Plan have vested or been forfeited, and all Performance Awards have been satisfied or expired.

### IV. ADMINISTRATION

(a) **Composition of Committee**. The Stock Incentive Plan shall be administered by a committee of, and appointed by, the Board that shall be comprised solely of two or more Directors who are both (i) outside Directors (within the meaning of section 162(m) of the Code and applicable interpretive authority thereunder) and (ii) non-employee Directors (within the meaning of Rule 16b-3).

(b) **Powers**. Subject to the express provisions of the Stock Incentive Plan, the Committee shall have authority, in its discretion, to determine which employees, Consultants, or Directors shall receive an Award, the time or times when such Award shall be made, the type of Award that shall be made, the number of shares of Common Stock to be subject to each Option or Restricted Stock Award, and the number of shares of Common Stock to be subject to or the value of each Performance Award. In making such determinations, the Committee shall take into account the nature of the services rendered by the respective employees, Consultants, or Directors, their present and potential contribution to the Company’s success, and such other factors as the Committee in its sole discretion shall deem relevant.

(c) **Additional Powers**. The Committee shall have such additional powers as are delegated to it by the other provisions of the Stock Incentive Plan. Subject to the express provisions of the Stock Incentive Plan, this shall include the power to construe the Stock Incentive Plan and the respective agreements executed hereunder, to prescribe, amend, suspend or waive rules and regulations relating to the Stock Incentive Plan, to determine the terms, restrictions, and provisions of the agreement relating to each Award, including such terms, restrictions, and provisions as shall be requisite in the judgment of the Committee to cause designated Options to qualify as Incentive Stock Options, and to make all other determinations necessary or advisable for administering the Stock Incentive Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Stock Incentive Plan or in any agreement relating to an Award in the manner and to the extent the Committee shall deem expedient to carry the Stock Incentive Plan or any such agreement into effect. All determinations and decisions made by the Committee on the matters referred to in this Paragraph IV and in construing the provisions of the Stock Incentive Plan shall be conclusive.

(d) **Delegation of Authority by the Committee**. Notwithstanding the preceding provisions of this Paragraph IV or any other provision of the Stock Incentive Plan to the contrary, subject to the constraints of applicable law, the Committee may from time to time, in its sole discretion, delegate to the Chief Executive Officer of the Company the administration (or interpretation of any provision) of the Stock Incentive Plan, and the right to grant Awards under the Stock Incentive Plan, insofar as such administration (and interpretation) and power to grant Awards relates to any person who is not then subject to section 16 of the Exchange Act (including any successor section to the same or similar effect). Any such delegation may be effective only so long as the Chief Executive Officer of the Company is a member of the Board, and the Committee may revoke such delegation at any time. The Committee may put any conditions and restrictions on the powers that may be exercised by the Chief Executive Officer of the Company upon such delegation as the Committee determines in its sole discretion. In the event of any conflict in a determination or interpretation under the Stock Incentive Plan as between the Committee and the Chief Executive Officer of the Company, the determination or interpretation, as applicable, of the Committee shall be conclusive.

## **V. SHARES SUBJECT TO THE STOCK INCENTIVE PLAN; AWARD LIMITS; GRANT OF AWARDS**

(a) **Shares Subject to the Stock Incentive Plan and Award Limits**. Subject to adjustment in the same manner as provided in Paragraph X with respect to shares of Common Stock subject to Options then outstanding, the aggregate maximum number of shares of Common Stock that may be issued under the Stock Incentive Plan, and the aggregate maximum number of shares of Common Stock that may be issued under the Stock Incentive Plan through Incentive Stock Options, shall not exceed 15,000,000 shares (which number includes the number of shares of Common Stock previously issued pursuant to an award (or made subject to an award that has not expired or been terminated) granted under the Prior Plan, the 2012 Plan, the 2006 Plan or the 2004 Plan). Shares shall be deemed to have been issued under the Stock Incentive Plan only to the extent actually issued and delivered pursuant to an Award. To the extent that an Award lapses or the rights of its holder terminate, any shares of Common Stock subject to such Award shall again be available for the grant of an Award under the Stock Incentive Plan. In addition, shares issued under the Stock Incentive Plan and forfeited back to the Stock Incentive Plan, shares

surrendered in payment of the exercise price or purchase price of an Award, and shares withheld for payment of applicable employment taxes and/or withholding obligations associated with an Award shall again be available for the grant of an Award under the Stock Incentive Plan. Notwithstanding any provision in the Stock Incentive Plan to the contrary, (i) the maximum number of shares of Common Stock that may be subject to Awards denominated in shares of Common Stock granted under the Stock Incentive Plan to any one individual during the period beginning on the Effective Date and ending on the last day of the term of the Stock Incentive Plan may not exceed 50% of the number of additional shares made subject to the Stock Incentive Plan effective as of the Effective Date (subject to adjustment from time to time in accordance with the provisions of the Stock Incentive Plan) and (ii) the maximum amount of compensation that may be paid under all Performance Awards that are not denominated in shares of Common Stock (including the Fair Market Value of any shares of Common Stock paid in satisfaction of such Performance Awards) granted to any one individual during any calendar year may not exceed \$15,000,000, and any payment due with respect to a Performance Award shall be paid no later than 10 years after the date of grant of such Performance Award. The limitations set forth in the preceding sentence shall be applied in a manner that will permit Awards that are intended to provide “performance-based” compensation for purposes of section 162(m) of the Code to satisfy the requirements of such section, including, without limitation, counting against such maximum number of shares, to the extent required under section 162(m) of the Code and applicable interpretive authority thereunder, any shares subject to Awards granted to employees that are canceled or repriced. In addition, and notwithstanding any provision herein to the contrary, the aggregate grant date fair value (computed as of the date of grant in accordance with applicable financial accounting rules) of all Awards granted to any individual, non-employee Director during any single calendar year beginning on or after January 1, 2019 shall not exceed \$600,000; provided, however, that such limitation shall be (x) \$900,000 in the first year an individual becomes a non-employee Director and (y) determined without regard to grants of Awards, if any, made to a non-employee director during any period in which such individual was an employee or Consultant.

(b) **Grant of Awards.** The Committee may from time to time grant Awards to one or more employees, Consultants, or Directors determined by it to be eligible for participation in the Stock Incentive Plan in accordance with the terms of the Stock Incentive Plan.

(c) **Stock Offered.** Subject to the limitations set forth in Paragraph V(a), the stock to be offered pursuant to the grant of an Award may be authorized but unissued Common Stock or Common Stock previously issued and outstanding and reacquired by the Company. Any of such shares that remain unissued and that are not subject to outstanding Awards at the termination of the Stock Incentive Plan shall cease to be subject to the Stock Incentive Plan but, until termination of the Stock Incentive Plan, the Company shall at all times make available a sufficient number of shares to meet the requirements of the Stock Incentive Plan. The shares of the Company’s stock to be issued pursuant to any Award may be represented by physical stock certificates or may be uncertificated. Notwithstanding references in the Stock Incentive Plan to certificates, the Company may deliver uncertificated shares of Common Stock in connection with any Award.



## VI. ELIGIBILITY

Awards may be granted only to persons who, at the time of grant, are employees, Consultants, or Directors. An Award may be granted on more than one occasion to the same person, and, subject to the limitations set forth in the Stock Incentive Plan, such Award may include an Incentive Stock Option, an Option that is not an Incentive Stock Option, a Restricted Stock Award, a Performance Award, or any combination thereof.

## VII. STOCK OPTIONS

(a) **Option Period**. The term of each Option shall be as specified by the Committee at the date of grant, but in no event shall an Option be exercisable after the expiration of 10 years from the date of grant.

(b) **Limitations on Exercise of Option**. An Option shall be exercisable in whole or in such installments and at such times as determined by the Committee.

(c) **Special Limitations on Incentive Stock Options**. An Incentive Stock Option may be granted only to an individual who is employed by the Company or any "parent corporation" or "subsidiary corporation" (as such terms are defined in section 424 of the Code) of the Company at the time the Option is granted. To the extent that the aggregate fair market value (determined at the time the respective Incentive Stock Option is granted) of stock with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year under all incentive stock option plans of the Company and its parent and subsidiary corporations, within the meaning of section 424 of the Code, exceeds \$100,000 or such other amount as may be prescribed under section 422 of the Code or applicable regulations or rulings from time to time, such Incentive Stock Options shall be treated as Options that do not constitute Incentive Stock Options. The Committee shall determine, in accordance with applicable provisions of the Code, Treasury regulations, and other administrative pronouncements, which of a Participant's Incentive Stock Options will not constitute Incentive Stock Options because of such limitation and shall notify the Participant of such determination as soon as practicable after such determination. No Incentive Stock Option shall be granted to an individual if, at the time the Option is granted, such individual owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of its parent or subsidiary corporation, within the meaning of section 422(b)(6) of the Code, unless (i) at the time such Option is granted, the option price is at least 110% of the Fair Market Value of the Common Stock subject to the Option and (ii) such Option by its terms is not exercisable after the expiration of five years from the date of grant. Except as otherwise provided in sections 421 or 422 of the Code, an Incentive Stock Option shall not be transferable otherwise than by will or the laws of descent and distribution and shall be exercisable during the Participant's lifetime only by such Participant or the Participant's guardian or legal representative.

(d) **Option Agreement**. Each Option shall be evidenced by an Option Agreement in such form and containing such provisions not inconsistent with the provisions of the Stock Incentive Plan as the Committee from time to time shall approve, including, without limitation, provisions to qualify an Option as an Incentive Stock Option under section 422 of the Code. Each Option Agreement shall specify the effect of termination of (i) employment, (ii) the

consulting or advisory relationship, or (iii) membership on the Board, as applicable, on the exercisability of the Option. An Option Agreement may provide for the payment of the option price, in whole or in part, by the delivery of a number of shares of Common Stock (plus cash if necessary) having a Fair Market Value equal to such option price. Moreover, an Option Agreement may provide for a “cashless exercise” of the Option by establishing procedures satisfactory to the Committee with respect thereto. The terms and conditions of the respective Option Agreements need not be identical. The Committee may, in its sole discretion, amend an outstanding Option Agreement from time to time in any manner that is not inconsistent with the provisions of the Stock Incentive Plan (including, without limitation, an amendment that accelerates the time at which the Option, or a portion thereof, may be exercisable), provided that, except as otherwise provided in the Stock Incentive Plan or the applicable Option Agreement, any such amendment shall not materially reduce the rights of a Participant without the consent of such Participant.

(e) **Option Price and Payment**. The price at which a share of Common Stock may be purchased upon exercise of an Option shall be determined by the Committee but, subject to the special limitations on Incentive Stock Options set forth in Paragraph VII(c) and to adjustment as provided in Paragraph X, such purchase price shall not be less than the Fair Market Value of a share of Common Stock on the date such Option is granted. The Option or portion thereof may be exercised by delivery of an irrevocable notice of exercise to the Company, as specified by the Committee. The purchase price of the Option or portion thereof shall be paid in full in the manner prescribed by the Committee. Separate stock certificates shall be issued by the Company for those shares acquired pursuant to the exercise of an Incentive Stock Option and for those shares acquired pursuant to the exercise of any Option that does not constitute an Incentive Stock Option.

(f) **Restrictions on Repricing of Options**. Subject to the provisions of Paragraph X, the terms of outstanding Option Agreements may not be amended without the approval of the stockholders of the Company so as to (i) reduce the option price of any outstanding Options, (ii) grant a new Option or other Award in substitution for, or upon the cancellation of, any previously granted Option that has the effect of reducing the exercise price thereof, (iii) exchange any Option for shares of Common Stock, cash or other consideration when the exercise price per share of Common Stock under such Option exceeds the Fair Market Value of the underlying shares, or (iv) take any other action that would be considered a “repricing” of an Option under the listing standards of the New York Stock Exchange or, if the Common Stock is not then-listed on such exchange, to the extent applicable, on any other national securities exchange on which the Common Stock is listed. Subject to Paragraph X and the last sentence of Paragraph VII(d), the Committee shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding Award to increase the per share exercise price of any outstanding Options or to cancel and replace any outstanding Options with the grant of Options having a per share exercise price that is equal to or greater than the per share exercise price of the original Options.

(g) **Stockholder Rights and Privileges**. The Participant shall be entitled to all the privileges and rights of a stockholder only with respect to such shares of Common Stock as have been purchased under the Option and for which shares of stock have been delivered to the Participant.

(h) **Options in Substitution for Options Granted by Other Employers**. Options may be granted under the Stock Incentive Plan from time to time in substitution for options held by individuals providing services to corporations or other entities who become employees, Consultants, or Directors as a result of a merger or consolidation or other business transaction with the Company or any Affiliate.

## VIII. RESTRICTED STOCK AWARDS

(a) **Forfeiture Restrictions to be Established by the Committee**. Shares of Common Stock that are the subject of a Restricted Stock Award shall be subject to restrictions on transferability by the Participant and an obligation of the Participant to forfeit and surrender the shares to the Company under certain circumstances (the “Forfeiture Restrictions”). The Forfeiture Restrictions shall be determined by the Committee in its sole discretion, and the Committee may provide that the Forfeiture Restrictions shall lapse upon (i) the attainment of one or more Performance Measures, (ii) the Participant’s continued employment with the Company or one of its Affiliates or continued service as a Consultant or Director for a specified period of time, (iii) the occurrence of any event or the satisfaction of any other condition specified by the Committee in its sole discretion, or (iv) a combination of any of the foregoing. Each Restricted Stock Award may have different Forfeiture Restrictions, in the discretion of the Committee.

(b) **Other Terms and Conditions**. Unless provided otherwise in a Restricted Stock Agreement, the Participant shall have the right to receive dividends with respect to Common Stock subject to a Restricted Stock Award, to vote Common Stock subject thereto, and to enjoy all other stockholder rights, except that (i) the Participant shall not be entitled to delivery of the stock certificate until the Forfeiture Restrictions have expired, (ii) the Company shall retain custody of the stock until the Forfeiture Restrictions have expired, (iii) the Participant may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of or encumber the stock until the Forfeiture Restrictions have expired, (iv) a breach of the terms and conditions established by the Committee pursuant to the Restricted Stock Agreement shall result in a forfeiture of the Restricted Stock Award, and (v) with respect to the payment of any dividend with respect to shares of Common Stock subject to a Restricted Stock Award directly to the Participant, each such dividend shall be paid no later than the end of the calendar year in which the dividends are paid to stockholders of such class of shares or, if later, the fifteenth day of the third month following the date the dividends are paid to stockholders of such class of shares. At the time a Restricted Stock Award is granted, the Committee may, in its sole discretion, prescribe additional terms, conditions, or restrictions relating to Restricted Stock Awards, including, but not limited to, rules pertaining to the termination of employment or service as a Consultant or Director (by retirement, disability, death, or otherwise) of a Participant prior to expiration of the Forfeitures Restrictions. Such additional terms, conditions, or restrictions shall be set forth in a Restricted Stock Agreement made in conjunction with the Award.

(c) **Payment for Restricted Stock**. The Committee shall determine the amount and form of any payment for Common Stock received pursuant to a Restricted Stock Award, provided that in the absence of such a determination, a Participant shall not be required to make any payment for Common Stock received pursuant to a Restricted Stock Award, except to the extent otherwise required by law.

(d) **Committee's Discretion to Accelerate Vesting of Restricted Stock Awards**. Subject to any limitations imposed under section 162(m) of the Code, the Committee may, in its discretion and as of a date determined by the Committee, fully vest any or all Common Stock awarded to a Participant pursuant to a Restricted Stock Award and, upon such vesting, all Forfeiture Restrictions applicable to such Restricted Stock Award shall terminate as of such date. Any action by the Committee pursuant to this Subparagraph may vary among individual Participants and may vary among the Restricted Stock Awards held by any individual Participant.

(e) **Restricted Stock Agreements**. At the time any Award is made under this Paragraph VIII, the Company and the Participant shall enter into a Restricted Stock Agreement setting forth each of the matters contemplated hereby and such other matters as the Committee may determine to be appropriate. The terms and provisions of the respective Restricted Stock Agreements need not be identical. Subject to the restriction set forth in the first sentence of Subparagraph (d) above, the Committee may, in its sole discretion, amend an outstanding Restricted Stock Agreement from time to time in any manner that is not inconsistent with the provisions of the Stock Incentive Plan, provided that, except as otherwise provided in the Stock Incentive Plan or the applicable Restricted Stock Agreement, any such amendment shall not materially reduce the rights of a Participant without the consent of such Participant.

## **IX. PERFORMANCE AWARDS**

(a) **Performance Period**. The Committee shall establish, with respect to and at the time of each Performance Award, the number of shares of Common Stock subject to, or the maximum value of, the Performance Award and the performance period over which the performance applicable to the Performance Award shall be measured.

(b) **Performance Measures**. A Performance Award shall be awarded to a Participant contingent upon future performance of the Company or any Affiliate, division, or department thereof under a Performance Measure during the performance period. With respect to Performance Awards that are intended to constitute "performance-based" compensation under section 162(m) of the Code, the Committee shall establish the initial Performance Measures applicable to such performance within any time period required under section 162(m) of the Code and applicable authority thereunder. The Committee, in its sole discretion, may provide for an adjustable Performance Award value based upon the level of achievement of Performance Measures.

(c) **Awards Criteria**. In determining the value of Performance Awards, the Committee shall take into account a Participant's responsibility level, performance, potential, other Awards, and such other considerations as it deems appropriate. The Committee, in its sole discretion, may provide for a reduction in the value of a Participant's Performance Award during the performance period.

(d) **Payment**. Following the end of the performance period, the holder of a Performance Award shall be entitled to receive payment of an amount not exceeding the number of shares of Common Stock subject to, or the maximum value of, the Performance Award, based on the achievement of the Performance Measures for such performance period, as determined and certified in writing by the Committee. Payment of a Performance Award may be made in cash,

Common Stock, or a combination thereof, as determined by the Committee. Payment shall be made in a lump sum or in installments as prescribed by the Committee. If a Performance Award covering shares of Common Stock is to be paid in cash, such payment shall be based on the Fair Market Value of the Common Stock on the payment date or such other date as may be specified by the Committee in the Performance Award Agreement. A Participant shall not be entitled to the privileges and rights of a stockholder with respect to a Performance Award covering shares of Common Stock until payment has been determined by the Committee and such shares have been delivered to the Participant.

(e) **Termination of Award**. A Performance Award shall terminate if the Participant does not remain continuously in the employ of the Company and its Affiliates or does not continue to perform services as a Consultant or a Director for the Company and its Affiliates at all times during the applicable performance period through the payment date, except as may be determined by the Committee.

(f) **Performance Award Agreements**. At the time any Award is made under this Paragraph IX, the Company and the Participant shall enter into a Performance Award Agreement setting forth each of the matters contemplated hereby and such additional matters as the Committee may determine to be appropriate, including, in the discretion of the Committee, the payment of dividend equivalents on any shares of Common Stock at the time of payment of the Performance Award (or at such other time designated by the Committee) for the period beginning on the date of grant and ending on the date of payment of the Performance Award (or for such other period designated by the Committee). The terms and provisions of the respective Performance Award Agreements need not be identical.

## **X. RECAPITALIZATION OR REORGANIZATION**

(a) **No Effect on Right or Power**. The existence of the Stock Incentive Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization, or other change in the Company's or any Affiliate's capital structure or its business, any merger, consolidation or other business combination of the Company or any Affiliate, any issue of debt or equity securities ahead of or affecting Common Stock or the rights thereof, the dissolution or liquidation of the Company or any Affiliate, any sale, lease, exchange, or other disposition of all or any part of its assets or business, or any other corporate act or proceeding.

(b) **Subdivision or Consolidation of Shares; Stock Dividends**. The shares with respect to which Awards may be granted are shares of Common Stock as presently constituted, but if, and whenever, prior to the expiration of an Award theretofore granted, the Company shall effect a subdivision or consolidation of shares of Common Stock or the payment of a stock dividend on Common Stock without receipt of consideration by the Company, the number of shares of Common Stock with respect to which such Award may thereafter be exercised or satisfied, as applicable, (i) in the event of an increase in the number of outstanding shares, shall be proportionately increased, and the purchase price per share, if any, shall be proportionately reduced, and (ii) in the event of a reduction in the number of outstanding shares, shall be proportionately reduced, and the purchase price per share, if any, shall be proportionately increased. Any fractional share resulting from such adjustment shall be rounded up to the next whole share.

(c) **Recapitalizations and Corporate Changes**. If the Company recapitalizes, reclassifies its capital stock or otherwise changes its capital structure or another change or event occurs that constitutes an “equity restructuring” pursuant to Accounting Standards Codification Topic 718, *Compensation — Stock Compensation*, or any successor accounting standard (a “recapitalization”), (A) the Committee shall equitably adjust the number and class of shares of Common Stock (or other securities or property) covered by each outstanding Award and the terms and conditions, including the exercise price and performance criteria (if any), of such Award to equitably reflect such recapitalization and shall adjust the number and class of shares of Common Stock (or other securities or property) with respect to which Awards may be granted after such recapitalization and (B) the Committee shall make a corresponding and proportionate adjustment with respect to the maximum number of shares of Common Stock (or other securities) that may be delivered with respect to Awards under the Plan as provided in Paragraph V(a), the individual Award limitations set forth in Paragraph V(a) and the class of shares of Common Stock (or other securities) available for grant under the Plan. If (i) the Company shall not be the surviving entity following the consummation of any merger, consolidation or other business combination or reorganization (or survives only as a subsidiary of an entity), (ii) the Company sells, leases, or exchanges all or substantially all of its assets to any other person or entity, (iii) the Company is dissolved and liquidated, (iv) any person or entity, including a “group” as contemplated by section 13(d)(3) of the Exchange Act, acquires or gains ownership or control (including, without limitation, the power to vote) of more than 50% of the outstanding shares of the Company’s voting stock (based upon voting power), or (v) the individuals who, as of the Effective Date, constitute members of the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board (provided, however, that any individual becoming a director subsequent to such date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered for purposes of this definition as though such individual was a member of the Incumbent Board, but excluding, for these purposes, any such individual whose initial assumption of office as a director 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 any individual, entity or group other than the Board) (each such event in clauses (i) through (v) above is referred to herein as a “Corporate Change”), then (x) no sooner than effective as of the consummation by the Company of such merger, consolidation, combination, reorganization, sale, lease, or exchange of assets or dissolution and liquidation or such change in the Board or (y) no later than 30 days after a Corporate Change of the type described in clause (iv), the Committee, acting in its sole discretion without the consent or approval of any Participant, shall effect one or more of the following alternatives in an equitable and appropriate manner to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Stock Incentive Plan, which alternatives may vary among individual Participants and which may vary among Options held by any individual Participant: (1) accelerate the time at which Options then outstanding may be exercised so that such Options may be exercised in full for a limited period of time on or before a specified date fixed by the Committee, after which specified date all such unexercised Options and all rights of Participants thereunder shall terminate, (2) require the mandatory surrender to the Company by all or selected Participants of some or all of the outstanding Options held by such Participants (irrespective of whether such Options are then

exercisable under the provisions of the Stock Incentive Plan) as of a date specified by the Committee, in which event the Committee shall thereupon cancel such Options, and the Company shall pay (or cause to be paid) to each Participant an amount of cash per share equal to the excess, if any, of the amount calculated in Subparagraph (d) below (the "Change of Control Value") of the shares subject to such Options over the exercise price(s) under such Options for such shares, or (3) make such adjustments to Options then outstanding as the Committee deems appropriate to reflect such Corporate Change and to prevent the dilution or enlargement of rights (provided, however, that the Committee may determine in its sole discretion that no adjustment is necessary to such Options then outstanding), including, without limitation, adjusting such an Option to provide that the number and class of shares of Common Stock covered by such Option shall be adjusted so that such Option shall thereafter cover securities of the surviving or acquiring corporation or other property (including, without limitation, cash) as determined by the Committee in its sole discretion.

(d) **Change of Control Value**. For the purposes of clause (2) in Subparagraph (c) above, the "Change of Control Value" shall equal the amount determined in the following clause (i), (ii) or (iii), whichever is applicable: (i) the per share price offered to stockholders of the Company in any such merger, consolidation, or other business combination, reorganization, sale of assets or dissolution and liquidation transaction, (ii) the per share price offered to stockholders of the Company in any tender offer or exchange offer whereby a Corporate Change takes place, or (iii) if such Corporate Change occurs other than pursuant to a tender or exchange offer, the fair market value per share of the shares into which such Options being surrendered are exercisable, as determined by the Committee as of the date determined by the Committee to be the date of cancellation and surrender of such Options. In the event that the consideration offered to stockholders of the Company in any transaction described in this Subparagraph (d) or Subparagraph (c) above consists of anything other than cash, the Committee shall determine the fair cash equivalent of the portion of the consideration offered which is other than cash.

(e) **Other Changes in the Common Stock**. In the event of changes in the outstanding Common Stock by reason of recapitalizations, reorganizations, mergers, consolidations, combinations, split-ups, split-offs, spin-offs, exchanges, or other relevant changes in capitalization or distributions (other than ordinary dividends) to the holders of Common Stock occurring after the date of the grant of any Award and not otherwise provided for by this Paragraph X, such Award and any agreement evidencing such Award shall be subject to adjustment by the Committee at its sole discretion as to the number and price of shares of Common Stock or other consideration subject to such Award in an equitable and appropriate manner so as to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under such Award. In the event of any such change in the outstanding Common Stock or distribution to the holders of Common Stock, or upon the occurrence of any other event described in this Paragraph X, the aggregate maximum number of shares available under the Stock Incentive Plan, the aggregate maximum number of shares that may be issued under the Stock Incentive Plan through Incentive Stock Options, and the maximum number of shares that may be subject to Awards granted to any one individual shall be appropriately adjusted to the extent, if any, determined by the Committee, whose determination shall be conclusive.

(f) **Stockholder Action**. Any adjustment provided for in the above Subparagraphs shall be subject to any stockholder action required by applicable law or regulation or the Company's certificate of incorporation or bylaws.

(g) **No Adjustments Unless Otherwise Provided**. Except as hereinbefore expressly provided, the issuance by the Company of shares of stock of any class or securities convertible into shares of stock of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Company convertible into such shares or other securities, and in any case whether or not for fair value, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Common Stock subject to Awards theretofore granted or the purchase price per share, if applicable.

## **XI. AMENDMENT AND TERMINATION OF THE STOCK INCENTIVE PLAN**

The Board in its discretion may terminate the Stock Incentive Plan at any time with respect to any shares of Common Stock for which Awards have not theretofore been granted. The Board shall have the right to alter or amend the Stock Incentive Plan or any part thereof from time to time; provided that no change in the Stock Incentive Plan may be made that would materially impair the rights of a Participant with respect to an Award theretofore granted without the consent of the Participant, and provided, further, that the Board may not, without approval of the stockholders of the Company, (a) amend the Stock Incentive Plan to increase the aggregate maximum number of shares that may be issued under the Stock Incentive Plan, increase the aggregate maximum number of shares that may be issued under the Stock Incentive Plan through Incentive Stock Options, or change the class of individuals eligible to receive Awards under the Stock Incentive Plan, or (b) amend or delete Paragraph VII(f).

## **XII. MISCELLANEOUS**

(a) **No Right to an Award**. Neither the adoption of the Stock Incentive Plan nor any action of the Board or of the Committee shall be deemed to give any individual any right to be granted an Award, or any other rights hereunder except as may be evidenced by an Award agreement duly executed on behalf of the Company, and then only to the extent and on the terms and conditions expressly set forth therein. The Stock Incentive Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of funds or assets to assure the performance of its obligations under any Award.

(b) **No Employment/Membership Rights Conferred**. Nothing contained in the Stock Incentive Plan shall (i) confer upon any employee or Consultant any right with respect to continuation of employment or of a consulting or advisory relationship with the Company or any Affiliate or (ii) interfere in any way with the right of the Company or any Affiliate to terminate his or her employment or consulting or advisory relationship at any time. Nothing contained in the Stock Incentive Plan shall confer upon any Director any right with respect to continuation of membership on the Board.



(c) **Other Laws; Withholding**. The Company shall not be obligated to issue any Common Stock pursuant to any Award granted under the Stock Incentive Plan at any time when the shares covered by such Award have not been registered under the Securities Act of 1933, as amended, and such other state and federal laws, rules, and regulations as the Company or the Committee deems applicable and, in the opinion of legal counsel for the Company, there is no exemption from the registration requirements of such laws, rules, and regulations available for the issuance and sale of such shares. No fractional shares of Common Stock shall be delivered, nor shall any cash in lieu of fractional shares be paid unless otherwise determined by the Committee. Unless other arrangements have been made that are acceptable to the Company, the Company shall have the right to deduct or withhold, or cause to be deducted or withheld, or to permit a Participant to elect to have deducted or withheld, from any Award, from any payment due or transfer made under any Award or from any compensation or other amount owing to a Participant, the amount (in cash, Common Stock (including Common Stock that would otherwise be issued with respect to such Award) or other property) of any applicable taxes required by law to be withheld, to require any payments required to enable it to satisfy its withholding obligations and to take such other action as may be necessary in the opinion of the Company to satisfy its withholding obligations with respect to such Award.

(d) **No Restriction on Corporate Action**. Nothing contained in the Stock Incentive Plan shall be construed to prevent the Company or any Affiliate from taking any action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Stock Incentive Plan or any Award made under the Stock Incentive Plan. No Participant, beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

(e) **Restrictions on Transfer**. An Award (other than an Incentive Stock Option, which shall be subject to the transfer restrictions set forth in Paragraph VII(c)) shall not be transferable otherwise than (i) by will or the laws of descent and distribution, (ii) pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder, or (iii) with the consent of the Committee.

(f) **Clawback**. Notwithstanding any provisions in the Stock Incentive Plan to the contrary, any portion of the payments and benefits provided under the Stock Incentive Plan or the sale of shares of Common Stock shall be subject to a clawback or other recovery by the Company to the extent necessary to comply with applicable law including, without limitation, the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any Securities and Exchange Commission rule.

(g) **Delayed Payment Restriction**. Notwithstanding any provision in the Stock Incentive Plan or an Award agreement to the contrary, if any payment or benefit provided for under an Award would be subject to additional taxes and interest under section 409A of the Code if the Participant's receipt of such payment or benefit is not delayed in accordance with the requirements of section 409A(a)(2)(B)(i) of the Code, then such payment or benefit shall not be provided to the Participant (or the Participant's estate, if applicable) until the earlier of (i) the date of the Participant's death or (ii) the date that is six months after the date of the Participant's separation from service with the Company.

(h) **Governing Law**. The Stock Incentive Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflicts of laws principles thereof.