

# BROWN FORMAN CORP

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 10/24/1997

Address	850 DIXIE HWY LOUISVILLE, Kentucky 40210
Telephone	502-585-1100
CIK	0000014693
Industry	Beverages (Alcoholic)
Sector	Consumer/Non-Cyclical
Fiscal Year	04/30

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM S-8

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

## BROWN-FORMAN CORPORATION

(Exact name of registrant as specified in its charter)

DELAWARE  
(State of incorporation)

61-0143150  
(I.R.S. Employer Identification No.)

**850 DIXIE HIGHWAY, LOUISVILLE, KENTUCKY 40210**

(Address of Principal Executive Offices and Zip Code)

Stock Option Grants  
Brown-Forman Corporation Non-Employee Director  
Compensation Plan  
(Full title of the plan)

**MICHAEL B. CRUTCHER**

Senior Vice President  
General Counsel and Secretary  
Brown-Forman Corporation  
850 Dixie Highway  
Louisville, Kentucky 40210  
(502) 585-1100

**OGDEN NEWELL & WELCH**

Attention: James S. Welch  
1700 Citizens Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2874  
(502) 582-1601

(Names, addresses and telephone numbers of agents for service)

Exhibit Index appears on page 11

## 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
Options to purchase common stock	7,000/1/	\$51.97/2/	\$363,790.00	\$110.24

/1/ This Registration Statement also covers such indeterminable number of additional options which may be issued as a result of future adjustments made in accordance with the Brown-Forman Corporation Non-Employee Director Compensation Plan.

/2/ Estimated solely for purpose of calculating amount of registration fee which, calculated pursuant to Rule 457(h)(1) and (2), is based on the average of the high and low prices for shares of common stock of Brown- Forman Corporation on the New York Stock Exchange consolidated tape on October 22, 1997.

**PART I**

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

**Item 1. Plan Information**

**Item 2. Registrant Information and Employee Plan Annual Information**

As allowed by Rule 428(b)(1), the information specified in Items 1 and 2 of Form S-8 will be contained in a document sent or given to plan participants. This information is not filed as part of this Registration Statement.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The following documents are hereby incorporated by reference, except as superseded or modified herein:

- (a) Annual Report of Brown-Forman Corporation on Form 10-K for the year ended April 30, 1997 filed on July 22, 1997; and
- (b) Quarterly Report of Brown-Forman Corporation on Form 10-Q for the quarter ended July 31, 1997 filed on September 5, 1997.

All documents filed by Brown-Forman Corporation ("Brown-Forman" or the "Company") with the Securities and Exchange Commission pursuant to Sections 13(a), 13(d), 14 or 15(d) of the Securities Exchange Act of 1934 after the effective date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and shall be deemed to be a part hereof from the date of filing of such documents.

#### **Item 4. Description of Securities**

The securities to be issued are stock options granted in accordance with the Brown-Forman Non-Employee Director Omnibus Compensation Plan (the "Omnibus Plan"). Upon vesting and in accordance with the provisions of the Omnibus Plan and the terms of the grant made to each grantee, each option entitles the grantee to purchase one share of the Company's Class A or Class B Common Stock, as the case may be. The Company's Class A and Class B common stock is registered pursuant to Section 12 of the Securities Exchange Act of 1934 and is traded on the New York Stock Exchange. The options, except for transfers by the laws of descent and distribution, are non-transferable.

**Item 5. Interests of Named Experts and Counsel**

Not applicable.

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

The Company's Amended and Restated Certificate of Incorporation, in accordance with the laws of the State of Delaware, limits the personal liability of directors and officers of the Company.

Officers and directors of the Company are covered by insurance policies purchased by the Company under which they are insured (subject to exceptions and limitations specified in the policies) against expenses and liabilities arising out of actions, suits or proceedings to which they are parties by reason of being or having been such directors or officers.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits.**

Exhibit Number -----	Description of Documents -----
5	Opinion of Counsel, Ogden Newell & Welch, counsel to Registrant
23(a)	Consent of Coopers & Lybrand, LLP, independent accountants of Registrant
23(b)	Consent of Ogden Newell & Welch, counsel to Registrant (included in Exhibit 5)
24(a)	Power of attorney authorizing Steven B. Ratoff, Michael B. Crutcher, and Garrison R. Cox to sign the Registration Statement in any and all capacities on behalf of Owsley Brown II, Barry D. Bramley, Geo. Garvin Brown III, Donald G. Calder, Owsley Brown Frazier, Richard P. Mayer, Stephen E. O'Neil, William M. Street, and James S. Welch
24(b)	Certified resolution of Registrant's Board of Directors authorizing the execution of powers of attorney
99	Brown-Forman Non-Employee Director Compensation Plan

The following items were filed previously:

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
3(a)	Restated Certificate of Incorporation of the registrant, incorporated by reference to its 10-K filed on July 19, 1994
3(b)	Certificate of Amendment to Restated Certificate of Incorporation of Registrant, incorporated by reference to its 10-K filed on July 19, 1994
3(c)	Certificate of Ownership and Merger of Brown-Forman Corporation into Brown-Forman, Inc., incorporated by reference to its 10-K filed on July 19, 1994
3(d)	Certificate of Amendment to Restated and Amended Certificate of Incorporation of Brown-Forman Corporation, incorporated by reference to Registrant's 10-K filed on July 19, 1994
3(e)	Registrant's by-laws, as amended on May 25, 1988, incorporated by reference to its 10-K filed on July 26, 1993
4(a)	Credit Agreement dated as of November 30, 1994, among the Registrant and a group of banks, incorporated by reference to Registrant's 10-K filed on July 17, 1995
4(b)	Form of Indenture dated as of March 1, 1994, between the Registrant and The First National Bank of Chicago, as Trustee, incorporated by reference to Registrant's Form S-3 (Registration No. 33-52551) filed on March 8, 1994
4(c)	Amendment No. 1 dated as of February 23, 1996, to the Credit Agreement referenced above as 4(a), incorporated by reference to Registrant's 10-K filed July 3, 1996
4(d)	Brown-Forman Omnibus Compensation Plan, incorporated by reference to the Appendix of the Registrant's definitive proxy statement for the Annual Meeting of Stockholders held on July 27, 1995, filed July 3, 1995

## **Item 9. Undertakings**

The undersigned Registrant hereby undertakes:

- (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933; (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that (i) and (ii) do not apply if the Registration Statement is on Form S-3 or Form S-8 and the information required to be included in a post-effective amendment by (i) or (ii) is contained in periodic reports filed by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement;
- (2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;
- (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering; and
- (4) that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual reports pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that

time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. If a director, officer or controlling person of the Company asserts a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant, Brown-Forman Corporation, 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 Louisville, Commonwealth of Kentucky.

Dated: October 23, 1997

### **BROWN-FORMAN CORPORATION**

By: /s/ Owsley Brown II

-----  
Owsley Brown II  
Chairman and Chief Executive Officer  
Director

By: /s/ Garrison R. Cox

-----  
Garrison R. Cox  
Attorney-in-fact for  
Owsley Brown II

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

<i>Signature</i> -----	<i>Title</i> -----
<i>/s/ Steven B. Ratoff</i> -----	<i>Steven B. Ratoff</i> <i>Executive Vice President (Principal</i> <i>Financial Officer and Principal</i> <i>Accounting Officer)</i>
<i>/s/ Barry D. Bramley</i> * -----	<i>Barry D. Bramley</i> <i>Director</i>
<i>/s/ Geo. Garvin Brown III</i> * -----	<i>Geo. Garvin Brown III</i> <i>Director</i>
<i>/s/ Donald G. Calder</i> * -----	<i>Donald G. Calder</i> <i>Director</i>
<i>/s/ Owsley Brown Frazier</i> * -----	<i>Owsley Brown Frazier</i> <i>Director</i>
<i>/s/ Richard P. Mayer</i> * -----	<i>Richard P. Mayer</i> <i>Director</i>
<i>/s/ Stephen E. O'Neil</i> * -----	<i>Stephen E. O'Neil</i> <i>Director</i>
<i>/s/ William M. Street</i> * -----	<i>William M. Street</i> <i>Director</i>
<i>/s/ James S. Welch</i> * -----	<i>James S. Welch</i> <i>Director</i>
* By: <i>/s/ Garrison R. Cox</i> -----	

**Garrison R. Cox, Attorney-in-fact for each**

**EXHIBIT INDEX**

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24(b)	Certified resolution of Registrant's Board of Directors authorizing the execution of powers of attorney	16
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**Exhibit 5**

[Letterhead of Ogden Newell & Welch]

October 23, 1997

Brown-Forman Corporation  
850 Dixie Highway  
Louisville, Kentucky 40210

Re: Brown-Forman Corporation Non-Employee Director Compensation Plan Award of Stock Options  
Registration Statement on Form S-8

Dear Sirs:

We are acting as counsel for Brown-Forman Corporation, a Delaware corporation (the "Company") in connection with its registration under the Securities Act of 1933, as amended, of stock options ("Options") which are proposed to be granted pursuant to the Company's Non-Employee Director Compensation Plan (the "Plan"), and pursuant to the Company's Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission (the "Commission") with respect to the Options.

In rendering this opinion, we have examined instruments, documents, and records which we deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed the following: (a) the authenticity of original documents and the genuineness of all signatures; (b) the conformity to the originals of all documents submitted to us as copies; and (c) the truth, accuracy and completeness of the information, representations and warranties contained in the documents.

It is our opinion that:

(a) the Options issued pursuant to the Plan will be legally and validly issued, fully paid and non-assessible; and

(b) the shares to be received upon the proper exercise of the Options ("Option Shares") pursuant to the Plan will have been duly authorized and, subject to the effectiveness of the Registration Statement and compliance with applicable state securities laws, will be legally and validly issued, fully paid and non-assessible.

Insofar as this opinion relates to securities to be issued in the future, we have assumed that all applicable laws, rules and regulations in effect at the time of such issuance shall be the same as such laws, rules and regulations are in effect as of the date hereof.

It should be noted that nothing in this opinion is intended to apply to any disposition of the Options or the Option Shares which any participant in the Plan may propose to make.

We consent to the filing of this opinion as an exhibit to the Registration Statement and as an exhibit to any filing made by the Company under the Securities or "Blue Sky" laws of any state or jurisdiction.

This opinion is furnished to you in connection with the filing of the Registration Statement and is not to be used, circulated, quoted or otherwise relied upon for any other purpose, except as expressly provided in the preceding paragraph, without our express written consent, and no party other than you is entitled to rely upon it. This opinion is rendered to you as of the date hereof, and we undertake no obligation to advise you of any change, whether legal or factual.

Very truly yours,

*/s/ Ogden Newell & Welch*

*OGDEN NEWELL & WELCH*

**EXHIBIT 23(a)**

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We consent to the incorporation by reference in this Registration Statement of Brown-Forman Corporation on Form S-8 of our report dated May 27, 1997 on our audits of the consolidated financial statements and financial statement schedule of Brown-Forman Corporation as of April 30, 1997, 1996, and 1995, and for the years ended April 30, 1997, 1996, and 1995, which report is included in the Company's Annual Report on Form 10-K filed July 22, 1997.

*/s/ COOPERS & LYBRAND L.L.P.*

*Louisville, Kentucky*

*October 23, 1997*

**EXHIBIT 24(a)**

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, as of the 24th day of July, 1997, the undersigned each constitutes and appoints Steven B. Ratoff, Michael B. Crutcher, and Garrison R. Cox, and each of them, his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him in his name, place and stead, in any and all capacities:

(a) to sign and file with the Securities and Exchange Commission one or more Registration Statements on Form S-8 relating to the Brown-Forman Non-Employee Director Compensation Plan (the "Plan"), and any and all related amendments, exhibits, or appendices (including post-effective amendments); and

(b) to prepare, execute, and file with the appropriate securities commissions in states or other jurisdictions any forms or filings (including any amendments or exhibits) necessary or useful in complying with state or foreign securities laws in the issuance of shares under the Plan,

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 to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute(s), may lawfully do or cause to be done by virtue of this power of attorney.

**BROWN-FORMAN CORPORATION**

By: /s/ Owsley Brown II  
Owsley Brown II  
Chairman & Chief Executive Officer

/s/ Barry D. Bramley  
Barry D. Bramley

/s/ Geo. Garvin Brown III  
Geo. Garvin Brown III

Director

Director

/s/ Owsley Brown II  
Owsley Brown II  
Director

/s/ Donald G. Calder  
Donald G. Calder  
Director

/s/ Owsley Brown Frazier  
Owsley Brown Frazier  
Director

/s/ Richard P. Mayer  
Richard P. Mayer  
Director

/s/ Stephen E. O'Neil  
Stephen E. O'Neil  
Director

/s/ William M. Street  
William M. Street  
Director

/s/ James S. Welch  
James S. Welch  
Director

**EXHIBIT 24(b)**

**RESOLUTIONS ADOPTED BY THE BOARD OF DIRECTORS OF  
BROWN-FORMAN CORPORATION EFFECTIVE AS OF JULY 24, 1997**

WHEREAS, the Securities Act of 1933 requires the filing of a registration statement on Form S-8 (the "Registration Statement") by the Company relating to the Brown-Forman Non-Employee Director Compensation Plan (the "Plan");

NOW, THEREFORE, BE IT RESOLVED, that the appropriate officers of the Company, with the assistance of its accountants and counsel, are hereby authorized to prepare, execute, and file with the Securities and Exchange Commission on behalf of the Company the Registration Statement;

BE IT FURTHER RESOLVED, that Michael B. Crutcher, Senior Vice President, General Counsel, and Secretary of the Company, be and hereby is appointed and designated as a person duly authorized to receive communications and notices from the Securities and Exchange Commission with respect to any documents relating to the Registration Statement; and

BE IT FURTHER RESOLVED, that the Company and each director and officer who may be required to execute any filings or documents relating to the Registration Statement and any amendments thereof or appendices thereto be, and hereby is, authorized to execute a power of attorney appointing Steven B. Ratoff, Michael B. Crutcher, and Garrison R. Cox, and each of them, his true and lawful attorneys and agents:

(a) to execute in his name, and on behalf of the Plan, any and all documents relating to the Plan, and to file the same with the Securities and Exchange Commission; and

(b) to execute in his name, and on behalf of the Plan, any and all documents relating to the Plan, and to file the same with any state or foreign securities commission.

I, Garrison R. Cox, being duly elected and acting Assistant Vice President and Assistant Secretary of Brown-Forman Corporation, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Directors of said corporation, and that said resolution is still in full force and effect.

In testimony whereof, witness my hand this 23rd day of October, 1997.

*/s/ Garrison R. Cox  
Garrison R. Cox  
Assistant Vice President  
and Assistant Secretary  
Brown-Forman Corporation*

## EXHIBIT 99

### BROWN-FORMAN NON-EMPLOYEE DIRECTORS' COMPENSATION PLAN

#### Brown-Forman Corporation

July 24, 1997

Unless the context clearly requires otherwise, references to "Sections" and "Articles" are to sections and articles of this plan, and capitalized terms have the meaning assigned to them below. All references to statutes or regulations mean those statutes or regulations as amended from time to time, and any successors to those statutes or regulations.

#### ARTICLE 1 - ESTABLISHMENT, OBJECTIVES, AND DURATION

1.1 ESTABLISHMENT: Brown-Forman Corporation, a Delaware corporation (the "Company"), hereby establishes a compensation plan to be known as the "Brown-Forman Non-Employee Directors' Compensation Plan" (the "Plan"), as set out in this document. The Plan permits the Plan Administrator to grant Awards (as defined below).

1.2 OBJECTIVES: The Plan's objectives are:

- (a) to compensate the Company's Non-Employee Directors using the Company's common stock to improve the linkage between the interests of the Directors and those of the Company's shareholders;
- (b) to provide, in conjunction with cash retainers and meeting fees, appropriate compensation for Board service; and
- (c) to allow Directors to share in the Company's success.

1.3 DURATION: Subject to the Board's right to amend or terminate the Plan at any time pursuant to Article 11, the Plan shall take effect as of the Effective Date, and remain in effect indefinitely.

## ARTICLE 2 - DEFINITIONS

Whenever used in the Plan, the following terms shall have the following meanings:

2.1 "Award" means, individually or collectively, a grant under this Plan.

2.2 "Award Agreement" means an agreement entered into by the Company and a Participant setting forth the terms of Awards granted under this Plan.

2.3 "Award Opportunity" means the total Award which a Participant may earn under the Plan, as established by the Plan Administrator.

2.4 "Beneficial Owner" or "Beneficial Ownership" shall have the meaning ascribed to such term in Rule 13d-3 under the Exchange Act.

2.5 "Board" means the Company's board of directors.

2.6 "Change in Control" of the Company means, and shall be deemed to have occurred upon, any of the following events:

(a) a merger, consolidation, or other reorganization of the Company in which one or both classes of outstanding Common Stock are converted into or exchanged for a different class of securities of the Company, a class of securities of any other issuer (other than a direct or indirect wholly owned Company subsidiary), cash, or other property;

(b) a sale, lease, or exchange of all or substantially all of the Company's assets to any

other corporation or entity (other than a direct or indirect wholly owned Company subsidiary);

(c) the adoption by the Company's shareholders of a plan of liquidation and dissolution; or

(d) as a result of or in connection with a contested election of directors, the persons who were Directors before such election cease to comprise a Board majority.

2.7 "Code" means the Internal Revenue Code of 1986.

2.8 "Company" means Brown-Forman Corporation, a Delaware corporation, and the Company's Subsidiaries, as well as any successor to any of such entities as provided in Section 14.4.

2.9 "Director" means any individual who is a Board member.

2.10 "Disability" shall mean a disability that the Plan Administrator has reason to believe will be of extended duration, and that results in the Non-Employee Director relinquishing his/her position on the Board of Directors.

2.11 "Effective Date" means July 24, 1997.

2.12 "Employee" means any non-union employee of the Company.

2.13 "Exchange Act" means the Securities Exchange Act of 1934.

2.14 "Fair Market Value" means the closing sale price on the principal securities exchange on which the Shares are traded on the relevant date (or, if no Shares traded on the relevant date, the last previous day on which a sale was reported).

2.15 "Freestanding SAR" means an SAR granted independently of any Options, as described in Section 6.4.

2.16 "Incentive Stock Option" or "ISO" means an option to buy Shares granted under Section 6.3 which is designated an Incentive Stock Option and which is intended to meet the requirements of Code Section 422.

2.17 "Indexed Option" means an Option with an exercise price which either increases by a fixed percentage over time or changes by reference to a published index.

2.18 "Insider" means an individual who is, on the relevant date, an officer, Director, or 10% beneficial owner of any class of the Company's equity securities that is registered pursuant to Section 12 of the Exchange Act, all as defined under Section 16 of the Exchange Act.

2.19 "Non-employee Director" means a Director who is not an Employee.

2.20 "Nonqualified Stock Option" or "NQSO" means an option to buy Shares granted under Section 6.3 which is not intended to meet the requirements of Code Section 422.

2.21 "Option" means an Incentive Stock Option, Indexed Option or a Nonqualified Stock Option, as described in Section 6.3.

2.22 "Option Price" means the price at which a Participant may buy a Share under an Option.

2.23 "Participant" means a Non-Employee Director who has outstanding an Award granted under the Plan. The term "Participant" shall not include Employee Directors.

2.24 "Performance Period" means such period of time as determined by the Plan Administrator.

2.25 "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock is limited in some way (based on the passage of time, the achievement of performance goals, or upon the

occurrence of other events as determined by the Plan Administrator), and during which the Shares are subject to a substantial risk of forfeiture, as provided in Section 6.2.

2.26 "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof.

2.27 "Plan Administrator" means such persons or committees appointed by the Board or the Compensation Committee to administer the Plan with respect to grants of Awards.

2.28 "Plan Year" means the Company's Fiscal Year.

2.29 "Restricted Stock" means an Award granted to a Participant pursuant to Section 6.2.

2.30 "Retirement" shall mean the relinquishment of the Director's position on the Board on or after age 60.

2.31 "Shares" means the shares of the Company's Class A or Class B Common Stock, or any combination of Class A or Class B Common Stock, as the Plan Administrator determines.

2.32 "Stock Appreciation Right" or "SAR" means an Award, granted alone or in connection with a related Option, designated as an SAR, pursuant to Section 6.4.

2.33 "Subsidiary" means any corporation, partnership, joint venture, affiliate, or other entity in which the Company has a majority voting interest, and which the Plan Administrator designates as a participating entity in the Plan.

2.34 "Tandem SAR" means an SAR granted in connection with a related Option pursuant to Section 6.4. A holder exercising a Tandem SAR must forfeit the right to buy a Share under the related Option; conversely, a holder of

a Tandem SAR buying a Share under the Option will have the Tandem SAR canceled proportionately.

### **ARTICLE 3 - ADMINISTRATION**

#### **3.1 THE PLAN ADMINISTRATOR:**

(a) Disinterested Administration: For Non-Employee Directors, the Plan Administrator shall be a committee comprising two or more Employee Directors. If for any reason such committee does not qualify to administer the Plan as contemplated under any Regulation or rule of law, the Board may appoint a new committee so as to comply with such regulation or rule.

(b) Code Compliance: Awards to Non-Employee Directors are intended to qualify under appropriate section of the Code.

**3.2 AUTHORITY:** Except as limited by law or by the Company's Certificate of Incorporation or By-laws, and subject to the Plan's terms, the Plan Administrator shall have full power to:

(a) determine the sizes and types of Awards;

(b) determine the terms and conditions of Awards in a manner consistent with the Plan;

(c) construe and interpret the Plan and any agreement or instrument entered into under the Plan;

(d) establish, amend, or waive rules and regulations for the Plan's administration;

(e) (subject to Article 11) amend the terms and conditions of any outstanding Award to the extent such terms and conditions are within the Plan Administrator's discretion;

(f) determine the length of the Performance Period(s) and vesting periods; and

(g) make all other determinations which may be necessary or advisable to administer the Plan as it applies to Employees.

**3.3 DECISIONS BINDING:** All determinations and decisions made by the Plan Administrator pursuant to the Plan and all related Board orders and resolutions shall be final, conclusive, and binding on all persons, including the Company, its shareholders, Employees, Participants, and their estates and beneficiaries.

#### **ARTICLE 4 - SHARES SUBJECT TO THE PLAN**

No shares are reserved for Plan use. Shares issued under this plan will be obtained by purchase on the open market.

#### **ARTICLE 5 - ELIGIBILITY AND PARTICIPATION**

**5.1 EMPLOYEE ELIGIBILITY:** No Employee, including Employees who are Directors, is eligible for participation in this Plan.

**5.2 NON-EMPLOYEE DIRECTOR ELIGIBILITY:** Directors who are not Employees are automatically eligible to participate in this Plan.

**5.3 ACTUAL PARTICIPATION:** The Plan Administrator may from time to time select, from all eligible Non-Employee Directors, those to whom Awards shall be granted and shall determine the nature and amount of each Award Opportunity and Award.

#### **5.4 RIGHTS NOT AFFECTED OR CREATED:**

(a) Rights Not Affected: Nothing in the Plan shall interfere with or limit in any way the Company's right to terminate any Director's position on the Board at any time, nor confer upon any Participant

any right to continue as a member or officer of the Board.

(b) No Right to Award: A Non-Employee Director's status confers no right on that Participant to receive an Award under this Plan, or, having received any Award, to receive a future Award.

**5.5 PRO RATA PLAN YEAR OR PERFORMANCE PERIOD PARTICIPATION:** The Plan

Administrator may allow Directors who join the Board after the Plan Year or Performance Period begins to participate under this Article on a full year or pro rata basis. Such situations include, but are not limited to:

(a) newly added positions to the Board during a Plan Year; or

(b) the replacement of a Director due to disability, retirement, death, or other termination or removal from the Board during a Plan Year.

**5.6 AWARD OPPORTUNITIES:**

(a) Timing: As soon as practicable in each Plan Year or Performance Period, the Plan Administrator shall establish an Award Opportunity for each Participant.

(b) Measures: An Award Opportunity may be a function of one or more performance measures and goals selected by the Plan Administrator.

**5.7 AWARD DETERMINATIONS:**

(a) The Award shall be computed for each Participant as determined by the Plan Administrator.

(b) Award amounts may vary as the Plan Administrator shall, from time to time, determine, unless otherwise limited by the Plan.

## ARTICLE 6 - AWARDS OF COMMON STOCK

### 6.1 GENERALLY:

(a) Grant of Awards: Subject to Article 4, the Plan Administrator, at any time and from time to time, may, in its discretion, grant or award Options, Restricted Stock, Freestanding SAR's, Tandem SAR's, or any combination thereof to Participants in such amounts as the Plan Administrator shall determine. The Plan Administrator may apply Performance Periods and performance measures, and may set threshold, target, and maximum goals for each type of Award, as it chooses.

(b) Source of Shares: The source of Shares delivered to Participants under this Plan shall be limited to Shares purchased by the Company from time to time for the purpose of funding the operation of this Plan. The Company shall maintain a separate accounting of Shares purchased for this purpose.

(c) Termination of Employment: Each Participant's Award Agreement shall set out the extent to which the Participant may (as the case may be):

(1) receive unvested Restricted Shares;

(2) exercise Options; or

(3) exercise SAR's

following termination of employment with the Company and/or its Subsidiaries. Under no circumstances will an Award vest prior to one year from the date of grant.

Such provisions shall be determined in the Plan Administrator's sole discretion, shall be included in the Award Agreement entered into with each Participant, need not be uniform among all Awards

granted or issued pursuant to this Article, and may reflect distinctions based on the reasons for termination of employment.

(d) Other Restrictions: Subject to Article 7, the Plan Administrator may impose such other conditions and/or restrictions on any Long-Term Incentive Awards granted pursuant to the Plan as the Plan Administrator deems advisable, including time-based restrictions on vesting following the attainment of the performance goals, and/or restrictions under applicable Federal or state securities laws.

## 6.2 RESTRICTED STOCK:

(a) Award Agreement: Each Restricted Stock grant shall be evidenced by an Award Agreement that shall specify the Period(s) of Restriction, the number of Shares of Restricted Stock granted, and such other terms as the Plan Administrator shall determine.

(b) Non-Transferability: Except as provided in this Article, the Shares of Restricted Stock granted herein may not be sold, transferred, pledged, assigned, or otherwise alienated until the end of the applicable Period of Restriction established by the Plan Administrator and specified in the Award Agreement, or upon earlier satisfaction of any other conditions, as specified by the Plan Administrator and set out in the Award Agreement. During a Participant's lifetime, only that Participant may exercise any rights with respect to the Restricted Stock granted to that Participant.

(c) Other Restrictions on Restricted Stock:

(1) The Company shall keep custody of the certificates representing Shares of Restricted Stock until all conditions and/or restrictions applicable to such Shares have been satisfied.

(2) Except as otherwise provided in this Article, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan shall become freely transferable by the Participant after the last day of the applicable Period of Restriction.

(d) Voting Rights: During the Period of Restriction, Participants holding Shares of Restricted Stock may exercise full voting rights with respect to those Shares.

(e) Dividends and Other Distributions:

(1) During the Period of Restriction, Participants holding Shares of Restricted Stock may be credited with regular cash dividends paid with respect to the underlying Shares while they are so held. The Plan Administrator may apply any restrictions to the dividends that it deems appropriate.

(2) If any dividend constitutes a "derivative security" or an "equity security" pursuant to Rule 16(a) under the Exchange Act, such dividend shall be subject to a vesting period equal to the remaining vesting period of the Shares of Restricted Stock with respect to which the dividend is paid.

### 6.3 STOCK OPTIONS:

(a) Award Agreement: Each Option grant shall be evidenced by an Award Agreement that shall specify the Option Price, the Option's duration, the number of Shares to which the Option pertains, and such other terms as the Plan Administrator shall determine. The Award Agreement shall also specify whether the Option is intended to be an ISO, Indexed Option, or an NQSO, and what Performance Period (if any) applies. Even if an option is designated as an ISO, it shall be treated as an NQSO to the extent the Fair Market Value of the

Shares with respect to which ISO's are exercisable for the first time by any Participant exceeds \$100,000.

(b) Option Price and Duration: The Option Price for each grant of an Option under this Plan shall be at least 100% of the Fair Market Value of a Share on the date the Option is granted. Options may be Indexed Options. Each Option granted to an Employee shall expire as the Plan Administrator shall determine at the time of grant -- but no Option shall be exercisable later than the tenth anniversary of its grant.

(c) Exercise of Options: Options granted under this Section shall be exercisable at such times and be subject to such restrictions and conditions as the Plan Administrator shall in each instance approve, which need not be the same for each grant or for each Participant.

(d) Payment:

(1) Options granted under this Section shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares.

(2) The Option Price upon exercise of any Option shall be payable to the Company in full either:

(A) in cash or its equivalent, or

(B) by tendering previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the total Option Price (but only if the Shares which are tendered have been held by the Participant for at least six months)

before their tender to satisfy the Option Price); or

(C) by a combination of (A) and (B).

(3) The Plan Administrator also may allow cashless exercise as permitted under Federal Reserve Board's Regulation T, subject to applicable securities law restrictions, or by any other means which the Plan Administrator determines to be consistent with the Plan's purpose and applicable law.

(4) As soon as practicable after receipt of a written notification of exercise and full payment, the Company shall deliver to the Participant, in the Participant's name, Share certificates in an appropriate amount based upon the number of Shares bought under the Option(s).

(e) Restrictions on Share Transferability: The Plan Administrator may impose such restrictions on any Shares acquired pursuant to the exercise of an Option granted under this Section as it may deem advisable, including, without limitation, restrictions under applicable Federal securities laws, under the requirements of any stock exchange or market upon which such Shares are then listed and/or traded, and under any blue sky or state securities laws applicable to such Shares.

(f) Non-transferability: During a Participant's lifetime, only the Participant may exercise any Option granted to such Participant. Participants may not sell, pledge, assign, or otherwise alienate their Options. Participants may transfer Options only by will or by the laws of descent and distribution.

#### 6.4 STOCK APPRECIATION RIGHTS ("SAR'S"):

(a) Award Agreement: Each SAR grant shall be evidenced by an Award Agreement specifying the grant price, the SAR's duration, and such other terms as the Plan Administrator shall determine.

(b) Grant Prices and Duration of SAR's: The grant price of a Freestanding SAR shall equal the Fair Market Value of a Share on the date of the SAR grant. The grant price of Tandem SAR's shall equal the Option Price of the related Option. The term of an SAR granted under the Plan shall be determined by the Plan Administrator -- but such term shall not exceed ten years.

(c) Exercise of Tandem SAR's:

(1) Tandem SAR's may be exercised for all or part of the Shares subject to the related Option upon the surrender of the right to exercise the equivalent portion of the related Option. A Tandem SAR may be exercised only with respect to the Shares for which its related Option is then exercisable.

(2) Notwithstanding any other contrary Plan provision, with respect to a Tandem SAR granted in connection with an ISO:

(A) the Tandem SAR will expire no later than the expiration of the underlying ISO;

(B) the payout value with respect to the Tandem SAR may not exceed 100% of the difference between the Option Price of the underlying ISO and the Fair Market Value of the Shares subject to the underlying ISO at the time the Tandem SAR is exercised; and

(C) the Tandem SAR may be exercised only when the Fair Market Value

of the Shares subject to the ISO exceeds the Option Price of the ISO.

(d) Exercise of Freestanding SAR's: Freestanding SAR's may be exercised upon whatever terms and conditions the Plan Administrator imposes upon them.

(e) Payment of SAR Amount:

(1) Upon exercise of an SAR, a Participant shall be entitled to receive payment from the Company in an amount determined by multiplying:

(A) the difference between the Fair Market Value of a Share on the date of exercise and the grant price; by

(B) the number of Shares with respect to which the SAR is exercised.

(2) The Plan Administrator may allow for payment upon SAR exercise to be in cash, in Shares of equivalent value, or in some combination of cash and Shares.

(f) Rule 16b-3 Requirements: Notwithstanding any other Plan term, the Plan Administrator may impose such conditions on exercise of an SAR (including limiting the exercise to specified periods) as may be required to comply with Section 16 of the Exchange Act.

(g) Non-transferability: Except as otherwise provided in an Award Agreement:

(1) During a Participant's lifetime, only the Participant may exercise any SAR granted to such Participant.

(2) Participants may not sell, pledge, assign, or otherwise alienate their SAR's.

(3) Participants may transfer SAR's only by will or by the laws of descent and distribution.

#### **ARTICLE 7 - PERFORMANCE MEASURES**

7.1 **GENERALLY:** The Plan Administrator may establish performance goals for each Plan Year and Performance Period for each type of Award to be awarded or granted under this Plan. The goals may be expressed as a percentage of corporate, division, business unit, and/or individual goals or financial measures, or such other measures as the Plan Administrator shall, from time to time, determine, unless otherwise limited by the Plan.

7.2 **PERFORMANCE THRESHOLD:** The Plan Administrator may establish minimum levels of performance which must be achieved during a Plan Year or Performance Period before any Awards shall be paid to Participants. Such minimum levels of performance may be expressed as a percentage of corporate, division, business unit, and/or individual goals or financial measures, or such other measures as the Plan Administrator shall, from time to time, determine, unless otherwise limited by the Plan.

7.3 **MAXIMUM AWARDS:** Subject to Section 4, the Plan Administrator may establish guidelines governing the maximum Awards that Participants may earn (either in the aggregate or among individual Participants) during each Plan Year or Performance Period. Such guidelines may be expressed as a percentage of corporate, division, business unit, and/or individual goals or financial measures, or such other measures as the Plan Administrator shall, from time to time, determine, unless otherwise limited by the Plan.

#### **ARTICLE 8 - BENEFICIARY DESIGNATION**

8.1 Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid if the Participant dies before receiving any or all of such benefit.

8.2 Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime.

8.3 Absent such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

#### **ARTICLE 9 - DEFERRALS AND SPECIAL AWARDS/GRANTS**

The Plan Administrator may permit a Participant to defer receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the satisfaction of any requirements or goals with respect to Awards, the exercise of an Option or SAR, or the lapse or waiver of restrictions with respect to Restricted Stock. If any such deferral election is required or permitted, the Plan Administrator shall establish rules and procedures for such payment deferrals. Such rules and procedures shall be consistent with the appropriate provisions of Code where applicable.

#### **ARTICLE 10 - CHANGE IN CONTROL**

10.1 TREATMENT OF OUTSTANDING AWARDS: Upon the occurrence of a Change in Control, unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges:

(a) Any and all Options and SAR's granted shall become immediately and shall remain exercisable throughout their entire term.

(b) Any restriction periods and restrictions imposed on Restricted Shares shall lapse.

(c) The target payout opportunities attainable under all outstanding Awards shall be deemed to have been earned through the effective date of the Change in Control. The vesting of all Awards shall be accelerated as of the effective date of the Change in Control. provided, however, that no payouts will be accelerated based on Awards granted less than six months before the effective date of the Change in Control.

(d) Subject to Article 11, the Plan Administrator may modify the Awards as determined by the Plan Administrator to be appropriate before the effective date of the Change in Control.

10.2 ACCELERATION OF AWARD VESTING: Notwithstanding any provision of this Plan or any Award Agreement provision to the contrary, the Plan Administrator may at any time accelerate the vesting of any Award granted under the Plan to a Participant, including without limitation acceleration to such a date that would result in said Awards becoming immediately vested.

10.3 OPTIONAL GROSS-UP FOR EXCISE TAXES: If, for any reason, any part or all of the amounts payable to a Participant pursuant to this Plan (or otherwise, if the Company or any of its Subsidiaries pays amounts after there has been a Change in Control) are deemed to be "excess parachute payments" within the meaning of Code Section 280G(b)(1), the Plan Administrator may, in its sole discretion, provide in the Award Agreement that the Company shall pay to such Participant, in addition to any other amounts the Participant may be entitled to receive pursuant to this Plan, an amount which after all Federal, state, and local taxes (of whatever kind) imposed on the Participant with respect to such amount are subtracted therefrom, equals the excise taxes imposed on such excess parachute payments under Code Section 4999.

- 10.4 TERMINATION, AMENDMENT, AND MODIFICATIONS OF CHANGE IN CONTROL PROVISIONS: Notwithstanding any other Plan term or any Award Agreement term, this Article may not be terminated, amended, or modified on or after the date of a Change in Control to affect adversely any Award already granted under the Plan without the prior written consent of the Participant with respect to said Participant's outstanding Awards -- but the Board, upon recommendation of the Plan Administrator, may terminate, amend, or modify this Article at any time and from time to time before the date of a Change in Control.

## **ARTICLE 11 - AMENDMENT, MODIFICATION, AND TERMINATION**

- 11.1 GENERALLY:
- (a) The Board may at any time and from time to time, alter, amend, suspend, or terminate the Plan in whole or in part -- but no amendment needing shareholder approval in order for the Plan to continue to comply with Rule 16b-3 under the Exchange Act shall be effective unless such amendment shall be approved by the requisite vote of Company shareholders entitled to vote on it.
- (b) The Plan Administrator may not cancel outstanding Awards and issue substitute Awards without the written consent of the Participant holding such Award.
- 11.2 OUTSTANDING AWARDS: No termination, amendment, or modification of the Plan shall adversely affect in any material way any outstanding Award under the Plan without the written consent of the Participant holding such Award.

## **ARTICLE 12 - WITHHOLDING**

- 12.1 TAX WITHHOLDING: The Company may deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal,

state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of this Plan.

- 12.2       SHARE WITHHOLDING: With respect to withholding required upon the exercise of Options or SAR's, upon the lapse of restrictions on Restricted Stock, or upon any other taxable event arising as a result of Awards granted hereunder, Participants may elect, subject to the approval of the Plan Administrator, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the statutory total tax which could be imposed on the transaction. All such elections shall be irrevocable, shall be made in writing, shall be signed by the Participant, and shall be subject to any restrictions or limitations that the Plan Administrator deems appropriate.

## ARTICLE 13 - INDEMNIFICATION

- 13.1       GENERALLY: The Company shall indemnify and hold harmless each current and former Director against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such Director in connection with or resulting from any claim, action, suit, or proceeding to which such Director may be a party or in which such Director may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by such Director in settlement thereof, with the Company's approval, or paid by such Director in satisfaction of any judgment in any such action, suit, or proceeding against such Director -- but only if such Director gives the Company an opportunity, at its own expense, to handle and defend the same before such Director undertakes to handle and defend it personally.
- 13.2       NON-EXCLUSIVITY: This right of indemnification shall not exclude any other indemnification rights to which such persons may be entitled under the Company's

Certificate of Incorporation of Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

## ARTICLE 14 - LEGAL CONSTRUCTION

- 14.1 SEVERABILITY: If any Plan section is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.
- 14.2 REQUIREMENTS OF LAW: The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.
- 14.3 SECURITIES LAW COMPLIANCE: With respect to Insiders, transactions under this Plan are intended to comply with all applicable conditions or Rule 16b-3. To the extent any Plan provision or action by the Plan Administrator fails to so comply, it shall be deemed void, to the extent permitted by law and deemed advisable by the Plan Administrator.
- 14.4 SUCCESSORS: All Company obligations under the Plan with respect to Awards granted shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the Company's business and/or assets.
- 14.5 GOVERNING LAW: To the extent not preempted by Federal law, the Plan, and all agreements made under it, shall be construed in accordance with and governed by the laws of the State of Delaware.