

# JER INVESTORS TRUST INC (JERT)

## 8-K

Current report filing

Filed on 06/05/2007

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

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**FORM 8-K**

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

Date of Report (Date of earliest event reported): June 5, 2007 (May 30, 2007)

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**JER Investors Trust Inc.**

(Exact Name of Registrant as Specified in Charter)

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**Maryland**  
(State or other jurisdiction  
of incorporation)

**001-32564**  
(Commission File Number)

**75-3152779**  
(IRS Employer  
Identification No.)

**1650 Tysons Boulevard, Suite 1600, McLean, VA 22102**  
(Address of Principal Executive Offices)(Zip Code)

**Registrant's telephone number, including area code (703) 714-8000**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

On May 30, 2007, the date of the annual meeting of stockholders of JER Investors Trust Inc. (the "Company"), the Company's stockholders approved, and the Company amended, its Nonqualified Stock Option and Incentive Award Plan (the "Plan"), and the Company's stockholders also approved the adoption of a Nonqualified Stock Option and Incentive Award Plan for Manager Only (the "Manager Plan" and, together with the Plan, the "Plans"). The material features of the Plans are summarized below.

**General**

The Plans provide for the granting of (i) nonqualified stock options, (ii) stock appreciation rights, (iii) restricted stock, (iv) performance awards and (v) other stock-based and non-stock based awards under the Plans, as the Board of Directors of the Company (the "Board of Directors") or a designated committee thereof (the "Committee") may determine. In addition, the Plan provides for the granting of outperformance awards.

**Securities Subject to the Plans**

The Plans provide that (1) 106,250 shares may be awarded as restricted stock; (2) up to 1,000,000 shares may be issued as outperformance awards; and (3) 0.5% of the number of shares of Common Stock of the Company (the "Common Stock") outstanding as of the effective date of the Plans may be awarded as restricted stock, options or other awards under the Plans. The Plans also provide that the number of shares described in (3) above will increase each year by the lesser of 500,000 or 0.5% of the number of shares of Common Stock outstanding on the last day of the immediately preceding fiscal year. The aggregate number of shares of Common Stock as to which awards may be granted to any participant during any calendar year may not exceed 50% of the shares of Common Stock reserved for the purposes of the Plan (but this does not apply to shares of Common Stock as to which awards may be granted under the Manager Plan).

The Plans provide that, in the event that the Board of Directors determines that any transaction or other event affects the Common Stock such that an adjustment of outstanding awards is appropriate in order to prevent dilution or enlargement of the rights of participants under the awards, then the Committee will make such equitable adjustments as it deems necessary to the number and kind of shares of Common Stock (or other securities) which may thereafter be issued in connection with outstanding awards, the exercise price specified for the outstanding awards and the number and kind of shares of Common Stock (or other securities) authorized by or to be granted under the Plans, including the maximum grants to individuals in a specified period.

The aggregate number of shares of Common Stock that may be issued under the Plans is subject to a combined maximum limit, which means that if shares of Common Stock are issued under the Plan, less shares of Common Stock will be available for issuance under the Manager Plan. Correspondingly, if shares of Common Stock are issued under the Manager Plan, less shares of Common Stock will be available for issuance under the Plan.

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## **Eligibility**

Each natural person who performs services for the Company and is a director, officer, employee, consultant or advisor of the Company, or of any parent or subsidiary of the Company or J.E. Robert Company, Inc. will be eligible to be considered for awards under the Plan. JER Commercial Debt Advisors, LLC, the manager of the Company, and other non-natural persons who perform services for the Company are eligible to be considered for awards under the Manager Plan. Additional participants under the Plans may be selected from time to time by the Committee, in its sole discretion, and the Committee will determine, in its sole discretion, the number of shares of Common Stock covered by each award.

## **Outperformance Awards**

The Plan allows for the granting of outperformance awards to designated members of the Company's senior management team or other key employees of J.E. Robert Company, Inc. Outperformance awards are designed to deliver value only if the Company successfully creates value for stockholders based on the total return to stockholders in excess of a threshold amount as determined by the Committee in its sole discretion, subject to the following terms: (1) the threshold amount may not be less than 36% over a three-year performance period on a simple non-cumulative basis; and (2) the aggregate value of the outperformance awards may not exceed the lesser of (i) an amount equal to 10% of the amount by which the total return to stockholders exceeds the threshold amount or (ii) \$30 million. Earned outperformance awards will be paid in the form of Common Stock, which may be subject to additional vesting requirements, as the Committee determines. Subject to the restrictions set forth in the applicable award agreement, a participant who earns stock from an outperformance award, with respect to awards of stock (whether vested or unvested), will have all of the rights of a stockholder, including the right to vote the stock and the right to receive any cash or stock dividends on such stock.

## **Non-Officer Director Awards**

On the first business day after each annual stockholders' meeting of the Company during the term of the Plan, each person who is a non-officer director at the time of such meeting will be granted such amount of shares of restricted stock or restricted stock units as determined by the Committee prior to the applicable annual stockholders' meeting. One-half of the shares subject to each non officer director award will not be subject to a risk of forfeiture on the date of grant, and the other one-half of the shares will be subject to a risk of forfeiture for one year from the date of grant. In addition, the non-officer director will not be able to sell, assign, transfer, pledge, hypothecate or otherwise dispose of any of the shares subject to each non-officer director award for one year from the date of grant.

## **Effect of Change in Control**

Unless the Committee determines otherwise or as otherwise provided in an award agreement, if (i) a change in control (as defined in the Plans) occurs; (ii) some or all of the outstanding awards are not cancelled by the Committee; and (iii) within the 24-month period following the change in control, the Company (or, if applicable, its affiliate) terminates the employment (or service) of the holder of a then outstanding award other than for "Cause" (which term shall be defined in the award agreement) or the holder terminates his or her employment (or service) for "Good Reason" (which term shall be defined in the award agreement), such award will, immediately prior to such termination, become fully vested and, to the extent applicable, exercisable.

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For purposes of the Plans, a change in control will have been deemed to have occurred unless prior to the occurrence of such event, the Board of Directors determines that such event will not constitute a change in control.

**Amendment and Termination of the Plans**

The Board of Directors may at any time and from time to time alter, amend, suspend, or terminate the Plans in whole or in part; provided that no amendment which requires stockholder approval in order for the Plans to comply with a rule or regulation deemed applicable by the Committee, will be effective unless the same is approved by the requisite vote of the stockholders of the Company entitled to vote thereon.

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

The information in Item 1.01 is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

- 10.1 Nonqualified Stock Option and Incentive Award Plan
- 10.2 Nonqualified Stock Option and Incentive Award Plan for Manager Only

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**SIGNATURES**

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

Date: June 5, 2007

JER Investors Trust Inc.

(Registrant)

By: /s/ Tae-Sik Yoon

Name: Tae-Sik Yoon

Title: Chief Financial Officer

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Nonqualified Stock Option and Incentive Award Plan
10.2	Nonqualified Stock Option and Incentive Award Plan for Manager Only

**JER INVESTORS TRUST INC.**  
**NONQUALIFIED STOCK OPTION AND**  
**INCENTIVE AWARD PLAN**

**Adopted on May 30, 2007**



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**JER INVESTORS TRUST INC. NONQUALIFIED STOCK OPTION AND INCENTIVE AWARD PLAN**

**SECTION 1**

**PURPOSE OF PLAN; DEFINITIONS**

1.1 Purpose. The purpose of the Plan is to reinforce the long-term commitment to the Company's success of those Non-Officer Directors, officers, directors, employees, advisors, consultants, and other personnel who are or will be responsible for such success; to facilitate the ownership of the Company's stock by such Persons, thereby reinforcing the identity of their interests with those of the Company's stockholders; to assist the Company in attracting and retaining individuals with experience and ability and to benefit the Company's stockholders by encouraging high levels of performance by Persons whose performance is a key element in achieving the Company's continued success.

1.2 Definitions. For purposes of the Plan, the following terms shall be defined as set forth below:

(a) "Affiliate" means (i) any Person directly or indirectly controlling, controlled by or in common control with such other Person, (ii) any officer or general partner of such other Person and (iii) any legal entity for which such Person acts as an executive officer or general partner.

(b) "Award" or "Awards" means an award described in Section 5 hereof.

(c) "Award Agreement" means an agreement described in Section 6 hereof entered into between the Company and a Participant, setting forth the terms, conditions and any limitations applicable to the Award granted to the Participant.

(d) "Beneficial Owner" shall have the meaning set forth in Rule 13d-3 under the Exchange Act.

(e) "Board" means the Board of Directors of the Company.

(f) "Change in Control" of the Company shall be deemed to have occurred if an event set forth in any one of the following paragraphs (i)-(iii) shall have occurred unless prior to the occurrence of such event, the Board determines that such event shall not constitute a Change in Control:

- (i) any Person, other than Joseph E. Robert, Jr. (or his estate, heirs, testamentary trusts, executor, administrator, committee or other personal representative) or any Affiliate of the Company or J.E. Robert Company, Inc.) is or becomes Beneficial Owner, directly or indirectly, of securities of the Company representing fifty percent

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(50%) or more of the combined voting power of the then outstanding securities of the Company, excluding (A) any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (x) of paragraph (ii) below, and (B) any Person who becomes such a Beneficial Owner through the issuance of such securities with respect to purchases made directly from the Company; or

- (ii) consummation of a merger or consolidation of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger or consolidation of the Company (or any direct or indirect subsidiary of the Company) pursuant to applicable stock exchange requirements, other than (x) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) fifty percent (50%) or more of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (y) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the combined voting power of the then outstanding securities of the Company; or
- (iii) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the assets of the Company; or
- (iv) individuals who, as of the Effective Date, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of such Board; provided that any individual who becomes a director of the Company subsequent to the Effective Date and whose election or nomination for election

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by the Company's shareholders was approved by the vote of at least two-thirds of the directors then comprising the Incumbent Board shall be deemed a member of the Incumbent Board; and provided further, that any individual who was initially elected as a director of the Company as a result of an actual or threatened election contest, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act, or any other actual or threatened solicitation of proxies or consent by or on behalf of any Person other than the Board shall not be deemed a member of the Incumbent Board.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto.

(h) "Commission" means Securities and Exchange Commission.

(i) "Committee" means any committee the Board may appoint to administer the Plan. To the extent necessary and desirable, the Committee shall be composed entirely of individuals who meet (1) the qualifications referred to in Section 162(m) of the Code and Rule 16b-3 under the Exchange Act and (2) the New York Stock Exchange's requirements with respect to "independence". If at any time or to any extent the Board shall not administer the Plan, then the functions of the Board specified in the Plan shall be exercised by the Committee.

(j) "Company" means JER Investors Trust Inc., a Maryland corporation.

(k) "Disability" means, unless otherwise provided by the Committee in a Participant's Award Agreement, a disability which renders the Participant incapable of performing all of his or her material duties for a period of at least 180 consecutive or non-consecutive days during any twelve-month period. Notwithstanding the foregoing, no circumstances or condition shall constitute a Disability to the extent that, if it were, a 20% tax would be imposed under Section 409A of the Code; provided that, in such a case, the event or condition shall continue to constitute a Disability to the maximum extent possible (e.g., if applicable, in respect of vesting without an acceleration of distribution) without causing the imposition of such 20% tax.

(l) "Effective Date" means the date provided pursuant to Section 11 hereof.

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(n) "Fair Market Value" means, as of any given date, (i) the closing price of a share of the Company's Stock on the principal exchange on which shares of the Company's Stock are then trading, if any, on the trading day of the applicable Stock grant; or (ii)

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if such Stock is not traded on an exchange but is quoted on NASDAQ or a successor quotation system, (x) the last sales price (if the Stock is then listed as a National Market Issue under the NASDAQ National Market System) or (y) the mean between the closing representative bid and asked prices (in all other cases) for the Stock on the trading day of the applicable Stock grant as reported by NASDAQ or such successor quotation system; or (iii) if such Stock is not publicly traded on an exchange and not quoted on NASDAQ or a successor quotation system, the mean between the closing bid and asked prices for the Stock, on the day of the applicable stock grant, as determined in good faith by the Committee; or (D) if the Stock is not publicly traded, the fair market value established by the Committee using any reasonable method and acting in good faith.

(o) [Reserved]

(p) [Reserved]

(q) "Non-Officer Director" means a director of the Company who is not an officer or employee of the Company.

(r) "Non-Officer Director Restricted Stock Award" shall have the meaning set forth in Section 5.6 hereof.

(s) "144A Offering" means the offering, dated June 4, 2004, pursuant to Rule 144A of the Securities Act of 10,000,000 shares of Stock.

(t) "Participant" means any Non-Officer Director, the Manager, any employee of the Manager who is performing services for the Company and any director, officer, employee, consultant or advisor to the Company or to any parent, affiliate or subsidiary of the Company, or any other Person selected by the Committee, pursuant to the Committee's authority in Section 2 hereof, to receive Awards.

(u) "Person" means an individual, and, only to the extent allowed under Rule 701 of the Securities Act, a corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture or other entity of any kind.

(v) "Plan" means this JER Investors Trust Nonqualified Stock Option and Incentive Award Plan.

(w) "Restricted Stock" means Stock as described in Section 5.3 hereof.

(x) "Securities Act" means the Securities Act of 1933, as amended.

(y) "Stock" means the common stock, par value \$0.01 per share, of the Company.

(z) "Stock Appreciation Right" shall have the meaning set forth in Section 5.2 hereof.

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(aa) "Stock Option" means any option to purchase shares of Stock granted pursuant to the Plan. The Stock Options granted hereunder are not intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code.

(bb) "10% Stockholder" means an owner of Stock (as determined under Section 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of Stock of the Company or its parent of subsidiaries.

(cc) "Termination of Service" means a Participant's termination of employment or other service, as applicable, with the Company and/or its Affiliates. Unless otherwise provided in the Award Agreement, cessation of service as an officer, employee, director or consultant, or other covered positions shall not be treated as a Termination of Service if the Participant continues without interruption to serve thereafter in another one (or more) of such other capacities, and Termination of Service shall be deemed to have occurred when service in the final covered capacity ceases.

## SECTION 2

### ADMINISTRATION

2.1 Administration. The Plan shall be administered in accordance with the requirements of Section 162(m) of the Code (but only to the extent necessary and desirable to maintain qualification of awards under the Plan under Section 162(m) of the Code) and, to the extent applicable, Rule 16b-3 under the Exchange Act, by the Board or, at the Board's sole discretion, by the Committee, which shall be appointed by the Board, and which shall serve at the pleasure of the Board.

2.2 Duties and Powers of the Committee. The Committee shall have the power and authority to grant Awards to Participants pursuant to the terms of the Plan, and, in its discretion, to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable; to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreements relating thereto); and to otherwise supervise the administration of the Plan.

In particular, the Committee shall have the authority to determine, in a manner consistent with the terms of the Plan:

(a) in addition to the Non-Officer Directors, those officers, employees, directors, consultants or advisors, if any, who shall be Participants;

(b) subject to Section 3 hereof, the number of shares of Stock to be covered by and the vesting schedule of each Stock Option granted hereunder;

(c) the terms and conditions of any Award granted hereunder, including the waiver or modification of any such terms or conditions, consistent with the provisions of the Plan (including, but not limited to, Section 8 hereof); and

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(d) the terms and conditions which shall govern all the Award Agreements, including the waiver or modification of any such terms or conditions.

2.3 Majority Rule. The Committee shall act by a majority of its members in attendance at a meeting at which a quorum is present or by a memorandum or other written instrument signed by all members of the Committee.

2.4 Compensation; Professional Assistance; Good Faith Actions. Members of the Committee may receive such compensation for their services as members as may be determined by the Board. All expenses and liabilities that members of the Committee or Board may incur in connection with the administration of this Plan shall be borne by the Company. The Committee may, with the approval of the Board, employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Committee, the Board, the Company and any officers and directors of the Company shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Committee or Board in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No member of the Committee or Board shall be personally liable for any action, determination or interpretation made in good faith with respect to this Plan or any Award, and all members of the Committee and Board shall be fully protected and indemnified to the fullest extent permitted by law, by the Company, in respect of any such action, determination or interpretation.

### SECTION 3

#### STOCK SUBJECT TO PLAN

3.1 Number and Source of Shares. Unless the Plan is subsequently amended, the maximum number of shares of Stock reserved and available for issuance at any time under the Plan may not exceed the sum of (i) 106,250 shares of Stock, which may be issued in the form of Restricted Stock Awards, (ii) 1,000,000 shares of Stock, which may be issued pursuant to Section 5.5 hereof and (iii) 0.5% of the number of shares of Stock outstanding at the Effective Date on a fully diluted basis subject to adjustment as provided herein, and as increased on the first day of each of the first five (5) fiscal years of the Company beginning after the Effective Date by a number of shares of Stock equal to the lesser of (x) 0.5% of the number of shares of Stock outstanding on the last day of the immediately preceding fiscal year or (y) 500,000 shares of Stock; provided, however, that, except in the case of the number of shares of Stock described in subparagraph (ii) above, such amount shall be reduced by the number of shares of Stock awarded under the JER Investors Trust Nonqualified Stock Option and Incentive Award Plan (Manager Only). Except in the case of Awards made pursuant to Section 5.5 hereof, the aggregate number of shares of Stock as to which Awards may be granted to any Participant during any calendar year may not, subject to adjustment as provided in this Section 3 exceed 50% of the shares of Stock reserved for the purposes of the Plan. In the case of Awards made pursuant to Section 5.5 hereof, the aggregate number of shares of Stock as to which Awards may be granted to any Participant may not, subject to adjustment as provided in this Section 3 exceed 50% of the shares of Stock reserved for the purposes of Section 5.5. The Stock which may be issued pursuant to an Award under the Plan may be treasury Stock, authorized but unissued Stock, or Stock acquired, subsequently or in anticipation of the transaction, in the open market to



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satisfy the requirements of the Plan. Awards may consist of any combination of such Stock, or, at the election of the Company, cash. If any shares of Stock subject to an Award are forfeited, cancelled, exchanged or surrendered or if an Award otherwise terminates or expires with or without a distribution of shares to the Participant, the shares of Stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, termination or expiration, count against the maximum number of shares for which Awards may be granted to the Participant under the preceding sentence.

3.2 Unrealized Awards. Subject to the limitations set forth in the last sentence of Section 3.1 hereof, if any shares of Stock subject to an Award are forfeited, cancelled, exchanged or surrendered or if an Award otherwise terminates or expires with or without a distribution of shares to the Participant, the shares of Stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, termination or expiration, again be available for grants under the Plan. In addition, if any shares of Stock are tendered in payment or satisfaction of the exercise price of any Award or the withholding obligation with respect to any Award, such shares of Stock shall again be available for grants under the Plan.

3.3 Adjustment of Awards. Upon the occurrence of any event which affects the shares of Stock in such a way that an adjustment of outstanding Awards is appropriate in order to prevent the dilution or enlargement of rights under the Awards (including, without limitation, any extraordinary dividend or other distribution (whether in cash or in kind), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, or share exchange, or other similar corporate transaction or event), the Committee shall make appropriate equitable adjustments, which may include, without limitation, adjustments to any or all of the number and kind of shares of Stock (or other securities) which may thereafter be issued in connection with such outstanding Awards and adjustments to any exercise price specified in the outstanding Awards and shall also make appropriate equitable adjustments to the number and kind of shares of Stock (or other securities) authorized by or to be granted under the Plan. Such other substitutions or adjustments shall be made respecting Awards hereunder as may be determined by the Committee, in its sole discretion. In connection with any event described in this paragraph, the Committee may provide, in its discretion, for the cancellation of any outstanding Award and payment in cash or other property in exchange therefor, equal to the difference, if any, between the Fair Market Value of the Stock or other property subject to the Award, and the exercise price, if any. Unless the Committee determines otherwise, if (i) a Change in Control occurs; (ii) some or all of the outstanding Awards are not cancelled pursuant to the preceding sentence; and (iii) within the 24-month period following the Change in Control, the Company (or, if applicable, its Affiliate) terminates the employment (or service) of the holder of a then outstanding Award other than for "Cause" (which term shall be defined in the Award Agreement) or the holder terminates his or her employment (or service) for "Good Reason" (which term shall be defined in the Award Agreement), such Award shall, immediately prior to such termination, become fully vested and, to the extent applicable, exercisable.

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## SECTION 4

### ELIGIBILITY

Each employee of the Manager and its Affiliates who is performing services for the Company and each Non-Officer Director, officer, director, employee, consultant or advisor of the Company or any parent, affiliate or subsidiary of the Company (who is a natural person) shall be eligible for Awards under the Plan. Additional Participants under the Plan may be selected from time to time by the Committee, in its sole discretion, and the Committee shall determine, in its sole discretion, the number of shares covered by each Award.

## SECTION 5

### AWARDS

Awards may include, but are not limited to, those described in this Section 5. The Committee may grant Awards singly or in combination with other Awards, as the Committee may in its sole discretion determine. Subject to the other provisions of this Plan, Awards may also be granted in combination or in replacement of, or as alternatives to, grants or rights under this Plan and any other employee (or director) benefit or compensation plan of the Company.

5.1 Stock Options. A Stock Option is a right to purchase a specified number of shares of Stock, at a specified price during such specified time as the Committee shall determine.

(a) A Stock Option may be exercised, in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares of Stock to be purchased; provided, however, that subsequent to the grant of any Stock Option, the Committee may, at any time before complete termination of such Stock Option, accelerate, in its discretion, the time or times at which such Stock Option may be exercised in whole or in part (without reducing the term of such Stock Option). All Award Agreements shall provide for a minimum vesting period of at least one (1) year (subject to such shorter vesting periods expressly set forth herein (i.e. upon certain Changes in Control)).

(b) Each Option, to the extent that the applicable optionee has not had a Termination of Service and the Option has not otherwise lapsed, expired, terminated or been forfeited, shall first become exercisable according to the terms and conditions set forth in the applicable Award Agreement. Unless otherwise provided in the Award Agreement or herein, no Option (or portion thereof) shall ever be exercisable if the optionee has a Termination of Service before the time at which such Option (or portion thereof) would otherwise have become exercisable, and any Option that would otherwise become exercisable after such Termination of Service shall not become exercisable and shall be forfeited upon such termination.

(c) [Reserved]

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(d) The Committee shall determine, in its sole discretion, the exercise price of each Stock Option, which price shall be at least 100% of the Fair Market Value of the share of Stock subject to such Stock Option on the date of grant.

(e) The exercise price of a Stock Option may be paid in cash or its equivalent, by certified or bank check, by delivery of a promissory note or other instrument acceptable to the Committee, as determined by the Committee. As determined by the Committee, in its sole discretion, payment in whole or in part may also be made (i) by means of any cashless exercise procedure approved by the Committee, or (ii) in the form of unrestricted Stock already owned by the Participant which has a Fair Market Value on the date of surrender equal to the aggregate option price of the Stock as to which such Stock Option shall be exercised. No fractional shares of Stock will be issued or accepted.

5.2 Stock Appreciation Rights. A Stock Appreciation Right is a right to receive, upon surrender of the right, an amount payable in cash or shares of Stock or a combination of the foregoing under such terms and conditions as the Committee shall determine. The amount payable in cash or shares of Stock with respect to each right shall be equal in value to a percentage (up to and including 100%) of the amount by which the Fair Market Value per share of Stock on the exercise date exceeds the Fair Market Value per share of Stock on the date of grant of the Stock Appreciation Right. The applicable percentage shall be established by the Committee. The Award Agreement may state whether the purchase amount payable is to be paid wholly in cash, wholly in shares of Stock or in any combination of the foregoing; if the Award Agreement does not so state the manner of payment, the Committee shall determine such manner of payment at the time of payment. The amount payable in shares of Stock, if any, is determined with reference to the Fair Market Value per share of Stock on the date of exercise.

5.3 Restricted Stock. Restricted Stock is Stock that is issued to a Participant and is subject to such terms, conditions and restrictions as the Committee deems appropriate, which may include, but are not limited to, restrictions upon the sale, assignment, transfer or other disposition of the Restricted Stock and the requirement of forfeiture of the Restricted Stock upon termination of employment or service under certain specified conditions. The Committee may provide for the lapse of any such term or condition or waive any term or condition based on such factors or criteria as the Committee may determine. Subject to the restrictions stated in this Section 5.3 and in the applicable Award Agreement, the Participant shall have, with respect to Awards of Restricted Stock, all of the rights of a stockholder of the Company, including the right to vote the Restricted Stock and the right to receive any cash or stock dividends on such Stock. The Company may require that the stock certificates evidencing Restricted Stock granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Restricted Stock, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

5.4 Performance Awards. Performance Awards may be granted under this Plan from time to time based on such terms and conditions as the Committee deems appropriate provided that such Awards shall not be inconsistent with the terms and purposes of this Plan and may be designed to comply with Section 162(m) of the Code. Performance Awards are Awards which are contingent upon the performance of all or a portion of the Company and/or its subsidiaries and/or which are contingent upon the individual performance of a Participant.

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Performance Awards may be in the form of performance units, performance shares and such other forms of Performance Awards as the Committee shall determine. The Committee shall determine the performance measurements and criteria for such Performance Awards, which shall be based on one or more of the following: earnings, cash flow, customer satisfaction, revenues, financial return ratios, market performance, shareholder return and/or value, operating profits (including EBITDA), net profits, earnings per share, profit returns and margins, stock price, working capital, and changes between years or periods that are determined with respect to any of the above-listed performance criteria. The performance period may extend over one to five calendar years, and may overlap one another. Performance criteria may be measured solely on a corporate, subsidiary or business unit basis, or a combination thereof. Further, performance criteria may reflect absolute entity performance or a relative comparison of entity performance to the performance of a peer group of entities or other external measure of the selected performance criteria. The formula for any such award may include or exclude items to measure specific objectives, such as losses from discontinued operations, extraordinary gains or losses, the cumulative effect of accounting changes, acquisitions or divestitures, foreign exchange impacts and any unusual, nonrecurring gain or loss, and will be based on accounting rules and related Company accounting policies and practices in effect on the date these awards are approved by the Committee. The Company may require that the stock certificates evidencing Performance Awards granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Performance Awards, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

#### 5.5 Outperformance Awards.

(a) Outperformance Awards are Awards that are based on value created for shareholders in excess of the Outperformance Hurdle (as defined below) over a three (3) year performance period. The term "Outperformance Hurdle" shall mean a rate of total return to shareholders ("TRS") determined by the Committee in its sole discretion, which shall not be less than 36% over the three (3) year performance period on a simple non-cumulative basis.

(b) Outperformance Awards may be granted under this Section of the Plan to designated members of the Company's senior management team based on such terms and conditions as the Committee deems appropriate provided that such Awards shall not be inconsistent with the terms and purposes of this Section and may be designed to comply with Section 162(m) of the Code.

(c) The aggregate value of the Outperformance Awards may not exceed the lesser of: (i) an amount equal to 10% of the amount by which TRS exceeds the Outperformance Hurdle or (ii) \$30 million.

(d) Earned Outperformance Awards shall be paid in the form of Stock, which may be subject to additional vesting requirements, as the Committee shall determine. Subject to the restrictions stated in the applicable Award Agreement, the Participant shall have, with respect to Awards of Stock (whether vested or unvested), all of the rights of a stockholder of the Company, including the right to vote the Stock and the right to receive any cash or stock dividends on such Stock. The Company may require that the stock certificates evidencing

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Outperformance Awards granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Outperformance Awards, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

5.6 Automatic Non Officer Director Awards.

(a) Non Officer Director Restricted Stock Awards. On the first business day after the first annual stockholders' meeting of the Company in 2007, and on the first business day after each such annual meeting of the Company thereafter during the term of the Plan, each Person who is a Non Officer Director at the time of such meeting shall be granted such amount of shares of Restricted Stock or restricted stock units as determined by the Committee prior to the applicable annual shareholders' meeting (each restricted stock award or restricted stock unit award, a "Non Officer Director Award"). A Non-Officer Director shall not transfer or otherwise dispose of his Non Officer Director Award prior to the lapsing of restrictions and unless he is a member of the Board as of such date of lapse. One-half of the shares subject to each Non Officer Director Award shall not be subject to a risk of forfeiture on the date of grant, and the other one-half of the shares shall be subject to a risk of forfeiture for one year from the date of grant. In addition, the Non Officer Director shall not be able to sell, assign, transfer, pledge, hypothecate or otherwise dispose of any of the shares subject to each Non Officer Director Award for one year from the date of grant.

(b) [Reserved]

(c) Award Agreements. Each recipient of a Non Officer Director Award shall enter into an Award Agreement with the Company, which agreement shall set forth, among other things, the number of shares subject to, and the transfer restrictions of, each Non Officer Director Award, which provisions shall not be inconsistent with the terms of this Section 5.6 and Section 6.1 hereof. The Award Agreement with respect to such Non Officer Director Award shall also set forth such other terms and conditions with respect to the award as the Committee may determine.

5.7 Other Awards. The Committee may from time to time grant other Stock based and non Stock based Awards under the Plan, including without limitation those Awards pursuant to which shares of Stock are or may in the future be acquired, Awards denominated in shares of Stock, securities convertible into shares of Stock, restricted share units, performance units, phantom securities, dividend equivalent rights, any other equity-based incentive award and cash. Other Stock-based Awards may be granted as free-standing awards or in tandem with other awards under the Plan. The Committee shall determine the terms and conditions of such other Stock, Stock-based and non-Stock-based Awards provided that such Awards shall not be inconsistent with the terms and purposes of this Plan.

5.8 Prohibition on Re-Pricing. Notwithstanding anything to the contrary contained herein, without the approval of a majority of the Company's shareholders (i) no Stock Option or Stock Appreciation Right issued hereunder may be amended to reduce the exercise price thereof below the exercise price of such Stock Option or Stock Appreciation Right on the date of grant and (ii) no Stock Option or Stock Appreciation Right may be granted in exchange for the cancellation or surrender of a Stock Option or Stock Appreciation Right having a lower exercise price.

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## SECTION 6

### AWARD AGREEMENTS

Each Award under this Plan shall be evidenced by an Award Agreement setting forth the number of shares of Stock or other securities, and such other terms and conditions applicable to the Award (and not inconsistent with this Plan) as are determined by the Committee.

6.1 Terms of Award Agreements. Award Agreements shall include the following terms:

Term. The term of each Award (as determined by the Committee); provided that, no Award shall be exercisable more than ten years after the date such Award is granted;

Exercise Price. The exercise price per share of Stock purchasable under an Award (as determined by the Committee in its sole discretion at the time of grant); provided that, the exercise price shall not be less than the par value of the shares of Stock; provided, further, that Awards intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, shall not be less than 100% of the Fair Market Value of the share of Stock on such date; provided further, with respect to Stock Options, the exercise price shall not be less than 100% of Fair Market Value.

Exercisability. Provisions regarding the exercisability of Awards (which shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at or after grant);

Method of Exercise. Provisions describing the method of exercising Awards;

Termination of Employment or Service: Provisions describing the treatment of an Award in the event of the retirement, disability, death or other termination of a Participant's employment or service with the Company, including but not limited to, terms relating to the vesting, time for exercise, forfeiture and cancellation of an Award in such circumstances;

Rights as Stockholder: A provision that a Participant shall have no rights as a stockholder with respect to any securities covered by an Award until the date the Participant becomes the holder of record. Except as provided in Sections 3.3 and 5.3 hereof, no adjustment shall be made for dividends or other rights, unless the Award Agreement specifically requires such adjustment, in which case, grants of dividend equivalents or similar rights shall not be considered to be a grant of any other stockholder right;

Nontransferability. A provision that, except under the laws of descent and distribution, as permitted by Rule 701 of the Securities Act, if applicable, or as permitted by the

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Administrator in its sole discretion, the Participant shall not be permitted to sell, transfer, pledge or assign any Award, and all Awards shall be exercisable, during the Participant's lifetime, only by the Participant; provided, however, that the Participant shall be permitted to transfer one or more Stock Options to a trust controlled by the Participant during the Participant's lifetime for estate planning purposes; and

Other Terms. Such other terms as are necessary and appropriate to effectuate an Award to the Participant, including but not limited to, (1) vesting provisions, (2) deferral elections, (3) any requirements for continued employment or service with the Company, (4) any other restrictions or conditions (including performance requirements) on the Award and the method by which restrictions or conditions lapse, (5) effect on the Award of a Change in Control, (6) the right of the Company and such other persons as the Committee shall designate ("Designees") to repurchase from a Participant, and such Participant's permitted transferees, all shares of Stock issued or issuable to such Participant in connection with an Award in the event of such Participant's termination of employment or service, (7) rights of first refusal granted to the Company and Designees, if any, (8) holdback and other registration right restrictions in the event of a public registration of any equity securities of the Company and (9) any other terms and conditions which the Committee shall deem necessary and desirable.

6.2 Replacement, Substitution, and Reloading. Award Agreements may also include provisions permitting the replacement or substitution of outstanding Awards or securities held by the Participant in order to exercise or realize rights under other Awards, or in exchange for the grant of new Awards under similar or different terms, and for the grant of reload Stock Options upon exercise of outstanding Stock Options.

## **SECTION 7**

**[RESERVED]**

## **SECTION 8**

### **AMENDMENT AND TERMINATION**

The Board may at any time and from time-to-time alter, amend, suspend or terminate the Plan in whole or in part; provided that, no amendment that requires stockholder approval in order for the Plan to comply with a rule or regulation deemed applicable by the Committee shall be effective unless the same shall be approved by the requisite vote of the stockholders of the Company entitled to vote thereon. Notwithstanding the foregoing, no amendment shall affect adversely any of the rights of any Participant, without such Participant's consent, under any Award or Loan theretofore granted under the Plan.

## **SECTION 9**

### **UNFUNDED STATUS OF PLAN**

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company.

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## SECTION 10

### GENERAL PROVISIONS

10.1 Securities Laws Compliance. Shares of Stock shall not be issued pursuant to the exercise of any Award granted hereunder unless the exercise of such Award and the issuance and delivery of such shares of Stock pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act, the Exchange Act and the requirements of any stock exchange upon which the Stock may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance. The Plan is a compensatory benefit plan within the meaning of Rule 701 under the Securities Act. The issuance of shares of Stock underlying Awards to natural Persons in accordance with the Plan is intended to qualify for the exemption from registration under the Securities Act provided by Rule 701. Nothing contained herein shall be construed to prohibit the Company from relying on any other exemption from registration to which it may be entitled under the Securities Act in connection with the issuance of shares of Stock underlying Awards in accordance with the Plan.

10.2 Certificate Legends. The Committee may require each person purchasing shares pursuant to a Stock Option to represent to and agree with the Company in writing that such person is acquiring the shares of Stock subject thereto without a view to distribution thereof. The certificates for such Stock may include any legend which the Committee deems appropriate to reflect any restrictions on transfer.

10.3 Transfer Restrictions. All certificates for shares of Stock delivered under the Plan shall be subject to such stock-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Commission, any stock exchange upon which the Stock is then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

10.4 Company Actions; No Right to Employment. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is necessary and desirable; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan shall not confer upon any employee, consultant or advisor of the Company any right to continued employment or service with the Company, as the case may be, nor shall it interfere in any way with the right of the Company to terminate the employment or service of any of its employees, consultants or advisors at any time.

10.5 Payment of Taxes. Each Participant shall, no later than the date as of which the value of an Award first becomes includible in the gross income of the Participant for federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Committee regarding payment of, any federal, state, or local taxes of any kind required by law to be withheld with respect to the Award. The obligations of the Company under the Plan shall be



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conditional on the making of such payments or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

**SECTION 11**

**EFFECTIVE DATE OF PLAN**

The Board adopted the Plan on April 13, 2007, and the stockholders of the Company approved the Plan on May 30, 2007. The Plan became effective on May 30, 2007 (the "Effective Date").

**SECTION 12**

**TERM OF PLAN**

No Award shall be granted pursuant to the Plan on or after the tenth anniversary of the Effective Date, but Awards theretofore granted may extend beyond that date.

**JER INVESTORS TRUST INC.**  
**NONQUALIFIED STOCK OPTION AND INCENTIVE AWARD PLAN**  
**(MANAGER ONLY)**

**Adopted on May 30, 2007**

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**JER INVESTORS TRUST INC.  
NONQUALIFIED STOCK OPTION AND INCENTIVE AWARD PLAN  
(MANAGER ONLY)**

**SECTION 1**

**PURPOSE OF PLAN; DEFINITIONS**

1.1 Purpose. The purpose of the Manager Plan is to compensate the Manager for its successful efforts in raising capital for the Company and to provide performance-based compensation in order to provide incentive to the Manager to enhance the value of the Company's Stock and to benefit the Company's stockholders by encouraging high levels of performance by Persons whose performance is a key element in achieving the Company's continued success.

1.2 Definitions. To the extent not defined herein, all capitalized terms shall have the meaning ascribed in the JER Investors Trust Nonqualified Stock Option and Incentive Award Plan (the "Non-Manager Plan").

**SECTION 2**

**ADMINISTRATION**

2.1 Administration. This JER Investors Trust Nonqualified Stock Option and Incentive Award Plan (Managers Only) (the "Manager Plan") shall be administered in accordance with the requirements of Rule 16b-3 under the Exchange Act, by the Board or, at the Board's sole discretion, by the Committee, which shall be appointed by the Board, and which shall serve at the pleasure of the Board.

2.2 Duties and Powers of the Committee. The Committee shall have the power and authority to grant Awards to the Participants pursuant to the terms of the Manager Plan, and, in its discretion, to adopt, alter and repeal such administrative rules, guidelines and practices governing the Manager Plan as it shall from time to time deem advisable; to interpret the terms and provisions of the Manager Plan and any Award issued under the Manager Plan (and any agreements relating thereto); and to otherwise supervise the administration of the Manager Plan.

In particular, the Committee shall have the authority to determine, in a manner consistent with the terms of the Manager Plan:

(a) subject to Section 3 hereof, the number of shares of Stock to be covered by and the vesting schedule of each Stock Option granted hereunder;

(b) the terms and conditions of any Award granted hereunder, including the waiver or modification of any such terms or conditions, consistent with the provisions of the Manager Plan (including, but not limited to, Section 8 hereof); and

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(c) the terms and conditions which shall govern all the Award Agreements, including the waiver or modification of any such terms or conditions.

2.3 Majority Rule. The Committee shall act by a majority of its members in attendance at a meeting at which a quorum is present or by a memorandum or other written instrument signed by all members of the Committee.

2.4 Compensation; Professional Assistance; Good Faith Actions. Members of the Committee may receive such compensation for their services as members as may be determined by the Board. All expenses and liabilities that members of the Committee or Board may incur in connection with the administration of this Manager Plan shall be borne by the Company. The Committee may, with the approval of the Board, employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Committee, the Board, the Company and any officers and directors of the Company shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Committee or Board in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No member of the Committee or Board shall be personally liable for any action, determination or interpretation made in good faith with respect to this Manager Plan or any Award, and all members of the Committee and Board shall be fully protected and indemnified to the fullest extent permitted by law, by the Company, in respect of any such action, determination or interpretation.

### **SECTION 3**

#### **STOCK SUBJECT TO PLAN**

3.1 Number and Source of Shares. Unless the Plan is subsequently amended, the number of shares of Stock reserved and available for issuance at any time under the Manager Plan shall be limited to the number of shares of Stock reserved and available for issuance under the Non-Manager Plan. The Stock which may be issued pursuant to an Award under the Manager Plan may be treasury Stock, authorized but unissued Stock, or Stock acquired, subsequently or in anticipation of the transaction, in the open market to satisfy the requirements of the Manager Plan. Awards may consist of any combination of such Stock, or, at the election of the Company, cash.

3.2 Unrealized Awards. Subject to the limitations set forth in the last sentence of Section 3.1 hereof, if any shares of Stock subject to an Award are forfeited, cancelled, exchanged or surrendered or if an Award otherwise terminates or expires with or without a distribution of shares to the Participant, the shares of Stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, termination or expiration, again be available for grants under the Manager Plan. In addition, if any shares of Stock are tendered in payment or satisfaction of the exercise price of any Award or the withholding obligation with respect to any Award, such shares of Stock shall again be available for grants under the Manager Plan.

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3.3 Adjustment of Awards. Upon the occurrence of any event which affects the shares of Stock in such a way that an adjustment of outstanding Awards is appropriate in order to prevent the dilution or enlargement of rights under the Awards (including, without limitation, any extraordinary dividend or other distribution (whether in cash or in kind), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, or share exchange, or other similar corporate transaction or event), the Committee shall make appropriate equitable adjustments, which may include, without limitation, adjustments to any or all of the number and kind of shares of Stock (or other securities) which may thereafter be issued in connection with such outstanding Awards and adjustments to any exercise price specified in the outstanding Awards and shall also make appropriate equitable adjustments to the number and kind of shares of Stock (or other securities) authorized by or to be granted under the Manager Plan. Such other substitutions or adjustments shall be made respecting Awards hereunder as may be determined by the Committee, in its sole discretion. In connection with any event described in this paragraph, the Committee may provide, in its discretion, for the cancellation of any outstanding Award and payment in cash or other property in exchange therefor, equal to the difference, if any, between the Fair Market Value of the Stock or other property subject to the Award, and the exercise price, if any. Unless the Committee determines otherwise, if (i) a Change in Control occurs; (ii) some or all of the outstanding Awards are not cancelled pursuant to the preceding sentence; and (iii) within the 24-month period following the Change in Control, the Company (or, if applicable, its Affiliate) terminates the services of the Manager other than for "Cause" (which term shall be defined in the Award Agreement), any then outstanding Award shall, immediately prior to such termination, become fully vested and, to the extent applicable, exercisable.

#### **SECTION 4**

##### **ELIGIBILITY**

So long as the Manager is performing services for the Company, the Manager shall be eligible for Awards under the Manager Plan. Additional Participants who are non-natural persons may be selected from time to time by the Committee, in its sole discretion, to participate in the Manager Plan and the Committee shall determine, in its sole discretion, the number of shares covered by each Award.

#### **SECTION 5**

##### **AWARDS**

Awards may include, but are not limited to, those described in this Section 5. The Committee may grant Awards singly or in combination with other Awards, as the Committee may in its sole discretion determine. Subject to the other provisions of this Manager Plan, Awards may also be granted in combination or in replacement of, or as alternatives to, grants or rights under this Manager Plan and any other employee (or director) benefit or compensation plan of the Company.

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5.1 Stock Options. A Stock Option is a right to purchase a specified number of shares of Stock, at a specified price during such specified time as the Committee shall determine.

(a) A Stock Option may be exercised, in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares of Stock to be purchased; provided, however, that subsequent to the grant of any Stock Option, the Committee may, at any time before complete termination of such Stock Option, accelerate, in its discretion, the time or times at which such Stock Option may be exercised in whole or in part (without reducing the term of such Stock Option). All Award Agreements shall provide for a minimum vesting period of at least one (1) year (subject to such shorter vesting periods expressly set forth herein (i.e. upon certain Changes in Control)).

(b) Each Option, to the extent that the applicable optionee has not had a Termination of Service and the Option has not otherwise lapsed, expired, terminated or been forfeited, shall first become exercisable according to the terms and conditions set forth in the applicable Award Agreement. Unless otherwise provided in the Award Agreement or herein, no Option (or portion thereof) shall ever be exercisable if the optionee has a Termination of Service before the time at which such Option (or portion thereof) would otherwise have become exercisable, and any Option that would otherwise become exercisable after such Termination of Service shall not become exercisable and shall be forfeited upon such termination.

(c) [Reserved]

(d) The Committee shall determine, in its sole discretion, the exercise price of each Stock Option, which price shall be at least 100% of the Fair Market Value of the share of Stock subject to such Stock Option on the date of grant.

(e) The exercise price of a Stock Option may be paid in cash or its equivalent, by certified or bank check, by delivery of a promissory note or other instrument acceptable to the Committee, as determined by the Committee. As determined by the Committee, in its sole discretion, payment in whole or in part may also be made (i) by means of any cashless exercise procedure approved by the Committee, or (ii) in the form of unrestricted Stock already owned by the Participant which has a Fair Market Value on the date of surrender equal to the aggregate option price of the Stock as to which such Stock Option shall be exercised. No fractional shares of Stock will be issued or accepted.

5.2 Stock Appreciation Rights. A Stock Appreciation Right is a right to receive, upon surrender of the right, an amount payable in cash or shares of Stock or a combination of the foregoing under such terms and conditions as the Committee shall determine. The amount payable in cash or shares of Stock with respect to each right shall be equal in value to a percentage (up to and including 100%) of the amount by which the Fair Market Value per share of Stock on the exercise date exceeds the Fair Market Value per share of Stock on the date of grant of the Stock Appreciation Right. The applicable percentage shall be established by the Committee. The Award Agreement may state whether the purchase amount payable is to be paid wholly in cash, wholly in shares of Stock or in any combination of the foregoing; if the Award Agreement does not so state the manner of payment, the Committee shall determine such manner of payment at the time of payment. The amount payable in shares of Stock, if any, is determined with reference to the Fair Market Value per share of Stock on the date of exercise.

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5.3 Restricted Stock. Restricted Stock is Stock that is issued to a Participant and is subject to such terms, conditions and restrictions as the Committee deems appropriate, which may include, but are not limited to, restrictions upon the sale, assignment, transfer or other disposition of the Restricted Stock and the requirement of forfeiture of the Restricted Stock upon termination of employment or service under certain specified conditions. The Committee may provide for the lapse of any such term or condition or waive any term or condition based on such factors or criteria as the Committee may determine. Subject to the restrictions stated in this Section 5.3 and in the applicable Award Agreement, the Participant shall have, with respect to Awards of Restricted Stock, all of the rights of a stockholder of the Company, including the right to vote the Restricted Stock and the right to receive any cash or stock dividends on such Stock. The Company may require that the stock certificates evidencing Restricted Stock granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Restricted Stock, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

5.4 Performance Awards. Performance Awards may be granted under this Manager Plan from time to time based on such terms and conditions as the Committee deems appropriate provided that such Awards shall not be inconsistent with the terms and purposes of this Manager Plan. Performance Awards are Awards which are contingent upon the performance of all or a portion of the Company and/or its subsidiaries and/or which are contingent upon the individual performance of a Participant. Performance Awards may be in the form of performance units, performance shares and such other forms of Performance Awards as the Committee shall determine. The Committee shall determine the performance measurements and criteria for such Performance Awards, which shall be based on one or more of the following: earnings, cash flow, customer satisfaction, revenues, financial return ratios, market performance, shareholder return and/or value, operating profits (including EBITDA), net profits, earnings per share, profit returns and margins, stock price, working capital, and changes between years or periods that are determined with respect to any of the above-listed performance criteria. The performance period may extend over one to five calendar years, and may overlap one another. Performance criteria may be measured solely on a corporate, subsidiary or business unit basis, or a combination thereof. Further, performance criteria may reflect absolute entity performance or a relative comparison of entity performance to the performance of a peer group of entities or other external measure of the selected performance criteria. The formula for any such award may include or exclude items to measure specific objectives, such as losses from discontinued operations, extraordinary gains or losses, the cumulative effect of accounting changes, acquisitions or divestitures, foreign exchange impacts and any unusual, nonrecurring gain or loss, and will be based on accounting rules and related Company accounting policies and practices in effect on the date these awards are approved by the Committee. The Company may require that the stock certificates evidencing Performance Awards granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Performance Awards, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

5.5 [Reserved]



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5.6 [Reserved]

5.7 Other Awards. The Committee may from time to time grant other Stock based and non Stock based Awards under the Manager Plan, including without limitation those Awards pursuant to which shares of Stock are or may in the future be acquired, Awards denominated in shares of Stock, securities convertible into shares of Stock, restricted share units, performance units, phantom securities, dividend equivalent rights, any other equity-based incentive award and cash. Other Stock-based Awards may be granted as free-standing awards or in tandem with other awards under the Manager Plan. The Committee shall determine the terms and conditions of such other Stock, Stock-based and non-Stock-based Awards provided that such Awards shall not be inconsistent with the terms and purposes of this Manager Plan.

5.8 Prohibition on Re-Pricing. Notwithstanding anything to the contrary contained herein, without the approval of a majority of the Company's shareholders (i) no Stock Option or Stock Appreciation Right issued hereunder may be amended to reduce the exercise price thereof below the exercise price of such Stock Option or Stock Appreciation Right on the date of grant and (ii) no Stock Option or Stock Appreciation Right may be granted in exchange for the cancellation or surrender of a Stock Option or Stock Appreciation Right having a lower exercise price.

## SECTION 6

### AWARD AGREEMENTS

Each Award under this Manager Plan shall be evidenced by an Award Agreement setting forth the number of shares of Stock or other securities, and such other terms and conditions applicable to the Award (and not inconsistent with this Manager Plan) as are determined by the Committee.

6.1 Terms of Award Agreements. Award Agreements shall include the following terms:

Term. The term of each Award (as determined by the Committee); provided that, no Award shall be exercisable more than ten years after the date such Award is granted;

Exercise Price. The exercise price per share of Stock purchasable under an Award (as determined by the Committee in its sole discretion at the time of grant); provided that, the exercise price shall not be less than the par value of the shares of Stock; provided, further, that Awards intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, shall not be less than 100% of the Fair Market Value of the share of Stock on such date; provided further, with respect to Stock Options, the exercise price shall not be less than 100% of Fair Market Value.

Exercisability. Provisions regarding the exercisability of Awards (which shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at or after grant);

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Method of Exercise. Provisions describing the method of exercising Awards;

Termination of Service: Provisions describing the treatment of an Award in the event of the termination of a Participant's service with the Company, including but not limited to, terms relating to the vesting, time for exercise, forfeiture and cancellation of an Award in such circumstances;

Rights as Stockholder: A provision that a Participant shall have no rights as a stockholder with respect to any securities covered by an Award until the date the Participant becomes the holder of record. Except as provided in Sections 3.3 and 5.3 hereof, no adjustment shall be made for dividends or other rights, unless the Award Agreement specifically requires such adjustment, in which case, grants of dividend equivalents or similar rights shall not be considered to be a grant of any other stockholder right;

Nontransferability. A provision that, except as permitted by the Administrator in its sole discretion, the Participant shall not be permitted to sell, transfer, pledge or assign any Award, and all Awards shall be exercisable only by the Participant; and

Other Terms. Such other terms as are necessary and appropriate to effectuate an Award to the Participant, including but not limited to, (1) vesting provisions, (2) deferral elections, (3) any requirements for continued service with the Company, (4) any other restrictions or conditions (including performance requirements) on the Award and the method by which restrictions or conditions lapse, (5) effect on the Award of a Change in Control, (6) the right of the Company and Designees to repurchase from a Participant, and such Participant's permitted transferees, all shares of Stock issued or issuable to such Participant in connection with an Award in the event of such Participant's termination of service, (7) rights of first refusal granted to the Company and Designees, if any, (8) holdback and other registration right restrictions in the event of a public registration of any equity securities of the Company and (9) any other terms and conditions which the Committee shall deem necessary and desirable.

6.2 Replacement, Substitution, and Reloading. Award Agreements may also include provisions permitting the replacement or substitution of outstanding Awards or securities held by the Participant in order to exercise or realize rights under other Awards, or in exchange for the grant of new Awards under similar or different terms, and for the grant of reload Stock Options upon exercise of outstanding Stock Options.

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**SECTION 7**

**[RESERVED]**

**SECTION 8**

**AMENDMENT AND TERMINATION**

The Board may at any time and from time-to-time alter, amend, suspend or terminate the Manager Plan in whole or in part; provided that, no amendment that requires stockholder approval in order for the Manager Plan to comply with a rule or regulation deemed applicable by the Committee shall be effective unless the same shall be approved by the requisite vote of the stockholders of the Company entitled to vote thereon. Notwithstanding the foregoing, no amendment shall affect adversely any of the rights of any Participant, without such Participant's consent, under any Award or Loan theretofore granted under the Manager Plan.

**SECTION 9**

**UNFUNDED STATUS OF PLAN**

The Manager Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company.

**SECTION 10**

**GENERAL PROVISIONS**

10.1 Securities Laws Compliance. Shares of Stock shall not be issued pursuant to the exercise of any Award granted hereunder unless the exercise of such Award and the issuance and delivery of such shares of Stock pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act, the Exchange Act and the requirements of any stock exchange upon which the Stock may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance. Nothing contained herein shall be construed to prohibit the Company from relying on any other exemption from registration to which it may be entitled under the Securities Act in connection with the issuance of shares of Stock underlying Awards in accordance with the Manager Plan.

10.2 Certificate Legends. The Committee may require each person purchasing shares pursuant to a Stock Option to represent to and agree with the Company in writing that such person is acquiring the shares of Stock subject thereto without a view to distribution thereof. The certificates for such Stock may include any legend which the Committee deems appropriate to reflect any restrictions on transfer.

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10.3 Transfer Restrictions. All certificates for shares of Stock delivered under the Manager Plan shall be subject to such stock-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Commission, any stock exchange upon which the Stock is then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

10.4 Company Actions; No Right to Employment. Nothing contained in the Manager Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is necessary and desirable; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Manager Plan shall not confer upon any Participant any right to continued service with the Company, as the case may be, nor shall it interfere in any way with the right of the Company to terminate the service of any of its consultants or advisors at any time.

10.5 Payment of Taxes. Each Participant shall, no later than the date as of which the value of an Award first becomes includible in the gross income of the Participant for federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Committee regarding payment of, any federal, state, or local taxes of any kind required by law to be withheld with respect to the Award. The obligations of the Company under the Manager Plan shall be conditional on the making of such payments or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

## **SECTION 11**

### **EFFECTIVE DATE OF PLAN**

The Board adopted the Manager Plan on April 13, 2007, and the stockholders of the Company approved the Manager Plan on May 30, 2007. The Manager Plan became effective on May 30, 2007 (the "Effective Date").

## **SECTION 12**

### **TERM OF PLAN**

No Award shall be granted pursuant to the Manager Plan on or after the tenth anniversary of the Effective Date, but Awards theretofore granted may extend beyond that date.