

## **EXHIBIT 3<sup>1</sup>**

### **(Management Incentive Plans)**

- 3-A:** No Change
- 3-B:** Redline of Smurfit-Stone Container Corporation Equity Incentive Plan against version filed with the Plan Supplement
- 3-C:** Redline of Equity Incentive Plan – Option Award Notice and Stock Option Agreement against version filed with the Plan Supplement
- 3-D:** Redline of Equity Incentive Plan – Restricted Stock Unit Award Agreement against version filed with the Plan Supplement
- 3-E:** Redline of Smurfit-Stone Container Corporation 2009 Long-Term Incentive Plan against version filed with the Plan Supplement
- 3-F:** No Change

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<sup>1</sup> The Debtors expressly reserve the right, at any time prior to the Effective Date, to supplement, modify or amend this Exhibit 3.

**Exhibit 3-B**

**Smurfit-Stone Container Corporation Equity Incentive Plan**

# SMURFIT-STONE CONTAINER CORPORATION

## EQUITY INCENTIVE PLAN

### I INTRODUCTION

**1.1 Purposes.** The purposes of the Smurfit-Stone Container Corporation Equity Incentive Plan (this “Plan”) are (i) to align the interests of the Company’s stockholders and the recipients of awards under this Plan by increasing the proprietary interest of such recipients in the Company’s growth and success, (ii) to advance the interests of the Company by attracting and retaining directors, officers, other employees and consultants and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders.

**1.2 Certain Definitions.**

“**Agreement**” shall mean the written agreement evidencing an award hereunder between the Company and the recipient of such award.

“**Bankruptcy Court**” shall have the meaning set forth in Section 5.1.

“**Bankruptcy Proceedings**” shall mean the bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware with respect to In re: Smurfit-Stone Container Corp., Case No. 09-10235 (BLS).

“**Board**” shall mean the Board of Directors of the Company.

“**Change in Control**” shall have the meaning set forth in Section 5.8(b).

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Committee**” shall mean the Committee designated by the Board, consisting of two or more members of the Board, each of whom may be (i) a “Non-Employee Director” within the meaning of Rule 16b-3 under the Exchange Act, (ii) an “outside director” within the meaning of Section 162(m) of the Code and (iii) “independent” within the meaning of the rules of the principal national stock exchange on which the Common Stock is then traded.

“**Common Stock**” shall mean the common stock, par value [**\$0.01**] per share, of the Company, and all rights appurtenant thereto.

“**Company**” shall mean Smurfit-Stone Container Corporation, a Delaware corporation, or any successor thereto.

“**Emergence Equity Awards**” shall mean stock option, restricted stock or other equity compensation awards granted in connection with the Company’s emergence from bankruptcy following the confirmation of the Plan of Reorganization.

**“Employment Agreement”** shall mean the Employment Agreement or Employment Security Agreement, if any, (as amended, if applicable) between the Company and the recipient of an award.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.

**“Fair Market Value”** shall mean the closing transaction price of a share of Common Stock as reported on the principal national stock exchange on which the Common Stock is traded on the date as of which such value is being determined or, if there shall be no reported transactions for such date, on the next preceding date for which transactions were reported; provided, however, that if the Common Stock is not listed on a national stock exchange or if Fair Market Value for any date cannot be so determined, Fair Market Value shall be determined by the Committee by whatever means or method as the Committee, in the good faith exercise of its discretion, shall at such time deem appropriate and in compliance with Section 409A of the Code; provided further that, with respect to the Emergence Equity Awards, Fair Market Value shall mean the average of the closing transaction prices of a share of Common Stock as reported on the principal national stock exchange on which the Common Stock is traded for the 30-day period commencing on the Listing Date.

**“Free-Standing SAR”** shall mean an SAR which is not granted in tandem with, or by reference to, an option, which entitles the holder thereof to receive, upon exercise, shares of Common Stock (which may be Restricted Stock) with an aggregate value equal to the excess of the Fair Market Value of one share of Common Stock on the date of exercise over the base price of such SAR, multiplied by the number of such SARs which are exercised.

**“Incapacity”** shall have the meaning set forth in the Employment Agreement; provided that if a recipient of an award is not a party to an Employment Agreement that contains such definition, then “Incapacity” shall mean an individual’s long-term disability as defined under the long-term disability plan of the Company that covers that individual; or if the individual is not covered by such a long-term disability plan, an individual’s disability as defined for purposes of eligibility for a disability award under the Social Security Act.

**“Incentive Stock Option”** shall mean an option to purchase shares of Common Stock that meets the requirements of Section 422 of the Code, or any successor provision, which is intended by the Committee to constitute an Incentive Stock Option.

**“Listing Date”** shall mean the date on which the Common Stock first becomes listed on a national stock exchange after the Company’s emergence from bankruptcy following the confirmation of the Plan of Reorganization.

**“Non-Employee Director”** shall mean any director of the Company who is not an officer or employee of the Company or any Subsidiary.

**“Nonqualified Stock Option”** shall mean an option to purchase shares of Common Stock which is not an Incentive Stock Option.

**“Performance Measures”** shall mean the criteria and objectives, established by the Committee and set forth in the Agreement, which shall be satisfied or met (i) as a condition to

the grant or exercisability of all or a portion of an option or SAR or (ii) during the applicable Restriction Period or Performance Period as a condition to the vesting of the holder's interest, in the case of a Restricted Stock Award, of the shares of Common Stock subject to such award, or, in the case of a Restricted Stock Unit Award, to the holder's receipt of the shares of Common Stock subject to such award or of payment with respect to such award. To the extent necessary for an award to be qualified performance-based compensation under Section 162(m) of the Code and the regulations thereunder, such criteria and objectives shall include one or more of the following corporate-wide or subsidiary, division, operating unit or individual measures, stated in either absolute terms or relative terms, such as rates of growth or improvement: the attainment by a share of Common Stock of a specified Fair Market Value for a specified period of time, earnings per share, return to stockholders (including dividends), return on assets, return on equity, earnings of the Company before or after taxes and/or interest, revenues, market share, cash flow or cost reduction goals, interest expense after taxes, return on investment, return on investment capital, economic value created, operating margin, net income before or after taxes, pretax earnings before interest, depreciation and/or amortization, pretax operating earnings after interest expense and before incentives, and/or extraordinary or special items, operating earnings, net cash provided by operations, and strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion goals, cost targets, customer satisfaction, reductions in errors and omissions, reductions in lost business, management of employment practices and employee benefits, supervision of litigation and information technology, quality and quality audit scores, productivity, efficiency, and goals relating to acquisitions or divestitures, or any combination of the foregoing.

**“Performance Option”** shall mean an Incentive Stock Option or Nonqualified Stock Option, the grant of which or the exercisability of all or a portion of which is contingent upon the attainment of specified Performance Measures within a specified Performance Period.

**“Performance Period”** shall mean any period designated by the Committee and set forth in the Agreement during which (i) the Performance Measures applicable to an award shall be measured and (ii) the conditions to vesting applicable to an award shall remain in effect.

**“Performance Unit”** shall mean a right to receive, contingent upon the attainment of specified Performance Measures within a specified Performance Period, a specified cash amount or, in lieu thereof, shares of Common Stock having a Fair Market Value equal to such cash amount.

**“Performance Unit Award”** shall mean an award of Performance Units under this Plan.

**“Plan of Reorganization”** shall mean the Plan of Reorganization approved and confirmed pursuant to the Bankruptcy Proceedings.

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

**“Restricted Stock Award”** shall mean an award of Restricted Stock under this Plan.

**“Restricted Stock Unit”** shall mean a right to receive one share of Common Stock or, in lieu thereof, the Fair Market Value of such share of Common Stock in cash, which shall be contingent upon the expiration of a specified Restriction Period and which may, in addition thereto, be contingent upon the attainment of specified Performance Measures within a specified Performance Period.

**“Restricted Stock Unit Award”** shall mean an award of Restricted Stock Units under this Plan.

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

**“Retirement”** shall have the meaning set forth in the Employment Agreement; provided that if an Agreement does not specify such definition, then “Retirement” shall mean an employee’s retirement from the Company after the attainment of age 55 and the completion of at least five years of service with the Company.

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

**“Stock Award”** shall mean a Restricted Stock Award or a Restricted Stock Unit Award.

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

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

**“Tax Date”** shall have the meaning set forth in Section 5.5.

**“Ten Percent Holder”** shall have the meaning set forth in Section 2.1(a).

**1.3 Administration.** This Plan shall be administered by the Committee. Any one or a combination of the following awards may be made under this Plan to eligible persons: (i) options to purchase shares of Common Stock in the form of Incentive Stock Options or Nonqualified Stock Options (which may include Performance Options), (ii) SARs in the form of Tandem SARs or Free-Standing SARs, (iii) Stock Awards in the form of Restricted Stock or

Restricted Stock Units and (iv) Performance Units. The Committee shall, subject to the terms of this Plan, select eligible persons for participation in this Plan and determine the form, amount and timing of each award to such persons and, if applicable, the number of shares of Common Stock, the number of SARs, the number of Restricted Stock Units and the number of Performance Units subject to such an award, the exercise price or base price associated with the award, the time and conditions of exercise or settlement of the award and all other terms and conditions of the award, including, without limitation, the form of the Agreement evidencing the award. The Committee may, in its sole discretion and for any reason at any time, subject to the requirements of Section 162(m) of the Code and regulations thereunder in the case of an award intended to be qualified performance-based compensation, take action such that (i) any or all outstanding options and SARs shall become exercisable in part or in full, (ii) all or a portion of the Restriction Period applicable to any outstanding Restricted Stock or Restricted Stock Units shall lapse, (iii) all or a portion of the Performance Period applicable to any outstanding Restricted Stock, Restricted Stock Units or Performance Units shall lapse and (iv) the Performance Measures (if any) applicable to any outstanding award shall be deemed to be satisfied at the target or any other level. The Committee shall, subject to the terms of this Plan, interpret this Plan and the application thereof, establish rules and regulations it deems necessary or desirable for the administration of this Plan and may impose, incidental to the grant of an award, conditions with respect to the award, such as limiting competitive employment or other activities, which shall be set forth in the applicable Agreement. All such interpretations, rules, regulations and conditions shall be conclusive and binding on all parties.

The Committee may delegate some or all of its power and authority hereunder to the Board or, subject to applicable law, to the Chief Executive Officer or other executive officer of the Company as the Committee deems appropriate; provided, however, that (i) the Committee may not delegate its power and authority to the Board or the Chief Executive Officer or other executive officer of the Company with regard to the grant of an award to any person who is a “covered employee” within the meaning of Section 162(m) of the Code or who, in the Committee’s judgment, is likely to be a covered employee at any time during the period an award hereunder to such employee would be outstanding and (ii) the Committee may not delegate its power and authority to the Chief Executive Officer or other executive officer of the Company with regard to the selection for participation in this Plan of an officer, director or other person subject to Section 16 of the Exchange Act or decisions concerning the timing, pricing or amount of an award to such an officer, director or other person.

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

A majority of the Committee shall constitute a quorum. The acts of the Committee shall be either (i) acts of a majority of the members of the Committee present at any meeting at which

a quorum is present or (ii) acts approved in writing by all of the members of the Committee without a meeting.

**1.4 Eligibility.** Participants in this Plan shall consist of such officers, other employees, consultants and nonemployee directors, and persons expected to become officers, other employees, consultants and nonemployee directors, of the Company and its Subsidiaries as the Committee in its sole discretion may select from time to time or as specified in the Plan of Reorganization. The Committee's selection of a person to participate in this Plan at any time shall not require the Committee to select such person to participate in this Plan at any other time. For purposes of this Plan, references to employment by the Company shall also mean employment by a Subsidiary.

**1.5 Shares Available.** Subject to adjustment as provided in Section 5.7 and to all other limits set forth in this Section 1.5, 8,695,652 shares of Common Stock shall be available for all awards under this Plan, reduced by the sum of the aggregate number of shares of Common Stock which become subject to outstanding options, outstanding Free-Standing SARs and outstanding Stock Awards and delivered upon the settlement of Performance Units. To the extent that shares of Common Stock subject to an outstanding option, SAR or stock award granted under the Plan are not issued or delivered by reason of (i) the expiration, termination, cancellation or forfeiture of such award (excluding shares subject to an option cancelled upon settlement in shares of a related tandem SAR or shares subject to a tandem SAR cancelled upon exercise of a related option) or (ii) the settlement of such award in cash, then such shares of Common Stock shall again be available under this Plan.

Shares of Common Stock to be delivered under this Plan shall be made available from authorized and unissued shares of Common Stock, or authorized and issued shares of Common Stock reacquired and held as treasury shares or otherwise or a combination thereof.

To the extent necessary for an award to be qualified performance-based compensation under Section 162(m) of the Code and the regulations thereunder (i) the maximum number of shares of Common Stock with respect to which options or SARs or a combination thereof may be granted during any fiscal year of the Company to any person shall be 2% of the total outstanding shares of Common Stock determined as of the effective date of the Plan, subject to adjustment as provided in Section 5.7; (ii) the maximum number of shares of Common Stock with respect to which Stock Awards subject to Performance Measures may be granted during any fiscal year of the Company to any person shall be 2% of the total outstanding shares of Common Stock determined as of the effective date of the Plan, subject to adjustment as provided in Section 5.7, and (iii) the maximum amount that may be payable with respect to Performance Units granted during any fiscal year of the Company to any person shall be the cash equivalent of (x) 2% of the total outstanding shares of Common Stock determined as of the effective date of the Plan multiplied by (y) the Fair Market Value of a share of Common Stock determined as of the effective date of the Plan, subject to adjustment as provided in Section 5.7.



## II STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

**2.1 Stock Options.** The Committee may, in its discretion, or shall, pursuant to the Plan of Reorganization, grant options to purchase shares of Common Stock to such eligible persons as may be selected by the Committee or as specified in the Plan of Reorganization. Each option, or portion thereof, that is not an Incentive Stock Option, shall be a Nonqualified Stock Option. To the extent that the aggregate Fair Market Value (determined as of the date of grant) of shares of Common Stock with respect to which options designated as Incentive Stock Options are exercisable for the first time by a participant during any calendar year (under this Plan or any other plan of the Company, or any parent or Subsidiary) exceeds the amount (currently \$100,000) established by the Code, such options shall constitute Nonqualified Stock Options.

Options shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable or as approved in the Plan of Reorganization, and set forth in the applicable Agreement:

(a) Number of Shares and Purchase Price. The number of shares of Common Stock subject to an option and the purchase price per share of Common Stock purchasable upon exercise of the option shall be determined by the Committee and set forth in the Agreement; provided, however, that the purchase price per share of Common Stock purchasable upon exercise of a Nonqualified Stock Option or an Incentive Stock Option shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such option; provided further, that if an Incentive Stock Option shall be granted to any person who, at the time such option is granted, owns capital stock possessing more than 10 percent of the total combined voting power of all classes of capital stock of the Company (or of any parent or Subsidiary) (a “Ten Percent Holder”), the purchase price per share of Common Stock shall not be less than the price (currently 110% of Fair Market Value) required by the Code in order to constitute an Incentive Stock Option.

(b) Option Period and Exercisability. The period during which an option may be exercised shall be determined by the Committee and set forth in the Agreement; provided, however, that no Incentive Stock Option or Nonqualified Stock Option shall be exercised later than ten years after its date of grant; provided further, that if an Incentive Stock Option shall be granted to a Ten Percent Holder, such option shall not be exercised later than five years after its date of grant. The Committee may, in its discretion, determine that an option is to be granted as a Performance Option and may establish and include in the Agreement an applicable Performance Period and Performance Measures which shall be satisfied or met as a condition to the grant of such option or to the exercisability of all or a portion of such option. The Committee shall determine whether an option shall become exercisable in cumulative or non-cumulative installments and in part or in full at any time. An exercisable option, or portion thereof, may be exercised only with respect to whole shares of Common Stock.

(c) Method of Exercise. An option may be exercised (i) by giving written notice to the Company specifying the number of whole shares of Common Stock to be purchased and accompanying such notice with payment therefor in full (or arrangement made for such payment to the Company’s satisfaction) either (A) in cash, (B) by delivery (either actual delivery or by

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

**2.2 Stock Appreciation Rights.** The Committee may, in its discretion, or shall, pursuant to the Plan of Reorganization, grant SARs to such eligible persons as may be selected by the Committee or as specified in the Plan of Reorganization. The Agreement relating to an SAR shall specify whether the SAR is a Tandem SAR or a Free-Standing SAR.

SARs shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable or as approved in the Plan of Reorganization, and set forth in the applicable Agreement:

(a) **Number of SARs and Base Price.** The number of SARs subject to an award shall be determined by the Committee and set forth in the Agreement. Any Tandem SAR related to an Incentive Stock Option shall be granted at the same time that such Incentive Stock Option is granted. The base price of a Tandem SAR shall be the purchase price per share of Common Stock of the related option. The base price of a Free-Standing SAR shall be determined by the Committee and set forth in the Agreement; provided, however, that such base price shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such SAR.

(b) **Exercise Period and Exercisability.** The period for the exercise of an SAR shall be determined by the Committee and set forth in the Agreement; provided, however, that no Tandem SAR shall be exercised later than the expiration, cancellation, forfeiture or other termination of the related option and no Free-Standing SAR shall be exercised later than ten years after its date of grant. The Committee may, in its discretion, establish and include in the Agreement applicable Performance Measures which shall be satisfied or met as a condition to the grant of an SAR or to the exercisability of all or a portion of an SAR. The Committee shall determine whether an SAR may be exercised in cumulative or non-cumulative installments and in part or in full at any time. An exercisable SAR, or portion thereof, may be exercised, in the case of a Tandem SAR, only with respect to whole shares of Common Stock and, in the case of a Free-Standing SAR, only with respect to a whole number of SARs. If an SAR is exercised for shares of Restricted Stock, a certificate or certificates representing such Restricted Stock shall be

issued in accordance with Section 3.2(c), or such shares shall be transferred to the holder in book entry form with restrictions on the Shares duly noted, and the holder of such Restricted Stock shall have such rights of a stockholder of the Company as determined pursuant to Section 3.2(d). Prior to the exercise of an SAR, the holder of such SAR shall have no rights as a stockholder of the Company with respect to the shares of Common Stock subject to such SAR.

(c) **Method of Exercise.** A Tandem SAR may be exercised (i) by giving written notice to the Company specifying the number of whole SARs which are being exercised, (ii) by surrendering to the Company any options which are cancelled by reason of the exercise of the Tandem SAR and (iii) by executing such documents as the Company may reasonably request. A Free-Standing SAR may be exercised (A) by giving written notice to the Company specifying the whole number of SARs which are being exercised and (B) by executing such documents as the Company may reasonably request.

**2.3 Termination of Employment or Service.** All of the terms relating to the exercise, cancellation or other disposition of an option or SAR upon a termination of employment or service with the Company of the holder of such option or SAR, as the case may be, whether by reason of Incapacity, Retirement, death or any other reason, shall be determined by the Committee and set forth in the Agreement, Employment Agreement and/or any other agreement between the Company and the recipient of an award.

**2.4 No Repricing.** Notwithstanding anything in this Plan to the contrary and subject to Section 5.7, without the approval of the stockholders of the Company, the Committee will not amend or replace any previously granted option or SAR in a transaction that constitutes a “repricing,” as such term is used in the listing rules of the applicable stock exchange on which shares of Common Stock are listed.

### **III STOCK AWARDS**

**3.1 Stock Awards.** The Committee may, in its discretion, or shall, pursuant to the Plan of Reorganization, grant Stock Awards to such eligible persons as may be selected by the Committee or as specified in the Plan of Reorganization. The Agreement relating to a Stock Award shall specify whether the Stock Award is a Restricted Stock Award or a Restricted Stock Unit Award.

**3.2 Terms of Restricted Stock Awards.** Restricted Stock Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable or as approved in the Plan of Reorganization, and set forth in the applicable Agreement.

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

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

provisions of this Plan, for the vesting of the shares of Common Stock subject to such award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period and (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period. The Committee may, in its sole discretion, grant shares of Common Stock pursuant to the Plan that are not subject to any vesting or performance conditions.

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

(d) Rights with Respect to Restricted Stock Awards. Unless otherwise set forth in the Agreement relating to a Restricted Stock Award, and subject to the terms and conditions of a Restricted Stock Award, the holder of such award shall have all rights as a stockholder of the Company, including, but not limited to, voting rights, the right to receive dividends and the right to participate in any capital adjustment applicable to all holders of Common Stock; provided, however, that a distribution with respect to shares of Common Stock, other than a regular cash dividend, shall be deposited with the Company and shall be subject to the same restrictions as the shares of Common Stock with respect to which such distribution was made.

**3.3 Terms of Restricted Stock Unit Awards**. Restricted Stock Unit Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable or as approved in the Plan of Reorganization, and set forth in the applicable Agreement.

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

(b) Vesting and Forfeiture. The Agreement relating to a Restricted Stock Unit Award shall provide, in the manner determined by the Committee, in its discretion, and subject to the provisions of this Plan, for the vesting of such Restricted Stock Unit Award (i) if the holder of such award remains continuously in the employment of the Company during the specified Restriction Period and (ii) if specified Performance Measures (if any) are satisfied or met during a specified Performance Period, and for the forfeiture of the shares of Common Stock subject to such award (x) if the holder of such award does not remain continuously in the employment of the Company during the specified Restriction Period or (y) if specified Performance Measures (if any) are not satisfied or met during a specified Performance Period. The Committee may, in its sole discretion, grant units representing the right to receive shares of Common Stock that are not subject to any vesting or performance conditions.

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

**3.4 Termination of Employment or Service.** All of the terms relating to the satisfaction of Performance Measures and the termination of the Restriction Period or Performance Period relating to a Stock Award, or any forfeiture and cancellation of such award upon a termination of employment or service with the Company of the holder of such award, whether by reason of Incapacity, Retirement, death or any other reason, shall be determined by the Committee and set forth in the Agreement, Employment Agreement and/or any other agreement between the Company and the recipient of an award.

#### **IV PERFORMANCE UNIT AWARDS**

**4.1 Performance Unit Awards.** The Committee may, in its discretion, or shall, pursuant to the Plan of Reorganization, grant Performance Unit Awards to such eligible persons as may be selected by the Committee or as specified in the Plan of Reorganization.

**4.2 Terms of Performance Unit Awards.** Performance Unit Awards shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee shall deem advisable or as approved in the Plan of Reorganization and set forth in the applicable Agreement.

(a) Number of Performance Units and Performance Measures. The number of Performance Units subject to a Performance Unit Award and the Performance Measures and Performance Period applicable to a Performance Unit Award shall be determined by the Committee and set forth in the Agreement.

(b) Vesting and Forfeiture. The Agreement relating to a Performance Unit Award shall provide, in the manner determined by the Committee, in its discretion, and subject to the

provisions of this Plan, for the vesting of such Performance Unit Award if the specified Performance Measures are satisfied or met during the specified Performance Period and for the forfeiture of such award if the specified Performance Measures are not satisfied or met during the specified Performance Period.

(c) **Settlement of Vested Performance Unit Awards.** The Agreement relating to a Performance Unit Award shall specify whether such award may be settled in shares of Common Stock (including shares of Restricted Stock) or cash or a combination thereof. If a Performance Unit Award is settled in shares of Restricted Stock, such shares of Restricted Stock shall be issued to the holder in book entry form or a certificate or certificates representing such Restricted Stock shall be issued in accordance with Section 3.2(c) and the holder of such Restricted Stock shall have such rights as a stockholder of the Company as determined pursuant to Section 3.2(d). Prior to the settlement of a Performance Unit Award in shares of Common Stock, including Restricted Stock, the holder of such award shall have no rights as a stockholder of the Company.

**4.3 Termination of Employment or Service.** All of the terms relating to the satisfaction of Performance Measures and the termination of the Performance Period relating to a Performance Unit Award, or any forfeiture and cancellation of such award upon a termination of employment or service with the Company of the holder of such award, whether by reason of Incapacity, Retirement, death or any other reason, shall be determined by the Committee and set forth in the Agreement, Employment Agreement and/or any other agreement between the Company and the recipient of an award.

## V GENERAL

**5.1 Effective Date and Term of Plan.** This Plan shall be submitted to the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) for approval in connection with the Plan of Reorganization and, if approved, shall become effective as of the effective date of the Plan of Reorganization. This Plan shall terminate as of the first annual meeting of the Company’s stockholders to occur on or after the tenth anniversary of its effective date, unless terminated earlier by the Board. Termination of this Plan shall not affect the terms or conditions of any award granted prior to termination.

Awards hereunder may be made at any time prior to the termination of this Plan, provided that no award may be made later than ten years after the effective date of this Plan. In the event that this Plan is not approved by the Bankruptcy Court, this Plan and any awards hereunder shall be void and of no force or effect.

**5.2 Amendments.** The Board may amend this Plan as it shall deem advisable, subject to any requirement of stockholder approval required by applicable law, rule or regulation, including Section 162(m) of the Code and any rule of the principal national stock exchange on which the Common Stock is then traded; provided, however, that no amendment may impair the rights of a holder of an outstanding award without the consent of such holder.

**5.3 Agreement.** Each award under this Plan shall be evidenced by an Agreement setting forth the terms and conditions applicable to such award. No award shall be valid until approved by the Company or, with respect to the Emergence Equity Awards, the

Bankruptcy Court. Such award shall be effective as of the effective date set forth in the Agreement.

**5.4 Non-Transferability.** No award shall be transferable other than by will, the laws of descent and distribution or pursuant to beneficiary designation procedures approved by the Company or, to the extent expressly permitted in the Agreement relating to such award, to the holder's family members, a trust or entity established by the holder for estate planning purposes or a charitable organization designated by the holder. Except to the extent permitted by the foregoing sentence or the Agreement relating to an award, each award may be exercised or settled during the holder's lifetime only by the holder or the holder's legal representative or similar person. Except as permitted by the second preceding sentence, no award may be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of any award, such award and all rights thereunder shall immediately become null and void.

**5.5 Tax Withholding.** The Company shall have the right to require, prior to the issuance or delivery of any shares of Common Stock or the payment of any cash pursuant to an award made hereunder, payment by the holder of such award of any federal, state, local or other taxes which may be required to be withheld or paid in connection with such award. An Agreement may provide that (i) the Company shall withhold whole shares of Common Stock which would otherwise be delivered to a holder, having an aggregate Fair Market Value determined as of the date the obligation to withhold or pay taxes arises in connection with an award (the "Tax Date"), or withhold an amount of cash which would otherwise be payable to a holder, in the amount necessary to satisfy any such obligation or (ii) the holder may satisfy any such obligation by any of the following means: (A) a cash payment to the Company, (B) delivery (either actual delivery or by attestation procedures established by the Company) to the Company of previously owned whole shares of Common Stock having an aggregate Fair Market Value, determined as of the Tax Date, equal to the amount necessary to satisfy any such obligation, (C) authorizing the Company to withhold whole shares of Common Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the Tax Date, or withhold an amount of cash which would otherwise be payable to a holder, equal to the amount necessary to satisfy any such obligation, (D) in the case of the exercise of an option and except as may be prohibited by applicable law, a cash payment by a broker-dealer acceptable to the Company to whom the optionee has submitted an irrevocable notice of exercise or (E) any combination of (A), (B) and (C), in each case to the extent set forth in the Agreement relating to the award. Shares of Common Stock to be delivered or withheld may not have an aggregate Fair Market Value in excess of the amount determined by applying the minimum statutory withholding rate. Any fraction of a share of Common Stock which would be required to satisfy such an obligation shall be disregarded and the remaining amount due shall be paid in cash by the holder.

**5.6 Restrictions on Shares.** Each award made hereunder shall be subject to the requirement that if at any time the Company determines that the listing, registration or qualification of the shares of Common Stock subject to such award upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the delivery of shares thereunder, such shares shall not be delivered unless such listing, registration,

qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company may require that certificates evidencing shares of Common Stock delivered pursuant to any award made hereunder bear a legend indicating that the sale, transfer or other disposition thereof by the holder is prohibited except in compliance with the Securities Act of 1933, as amended, and the rules and regulations thereunder.

**5.7 Adjustment.** In the event of any stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of Common Stock other than a regular cash dividend, the number and class of securities available under this Plan, the number and class of securities subject to each outstanding option and the purchase price per security, the terms of each outstanding SAR, the terms of each outstanding Restricted Stock Award and Restricted Stock Unit Award, including the number and class of securities subject thereto, the terms of each outstanding Performance Unit, the maximum number of securities with respect to which options or SARs may be granted during any fiscal year of the Company to any one grantee and the maximum number of shares of Common Stock that may be awarded during any fiscal year of the Company to any one grantee pursuant to a Stock Award that is subject to Performance Measures shall be equitably adjusted by the Committee, such adjustments to be made in the case of outstanding options and SARs in accordance with Section 409A of the Code. The decision of the Committee regarding any such adjustment shall be final, binding and conclusive. If any such adjustment would result in a fractional security being (a) available under this Plan, such fractional security shall be disregarded, or (b) subject to an award under this Plan, the Company shall pay the holder of such award, in connection with the first vesting, exercise or settlement of such award, in whole or in part, occurring after such adjustment, an amount in cash determined by multiplying (i) the fraction of such security (rounded to the nearest hundredth) by (ii) the excess, if any, of (A) the Fair Market Value on the vesting, exercise or settlement date over (B) the exercise or base price, if any, of such award.

**5.8 Change in Control.**

(a) Notwithstanding any provision in this Plan or any Agreement, in the event of a Change in Control, (i) all outstanding options and SARs shall immediately become exercisable in full, (ii) the Restriction Period applicable to any outstanding Restricted Stock Award or Restricted Stock Unit Award shall lapse, (iii) the Performance Period applicable to any outstanding award shall lapse, (iv) the Performance Measures applicable to any outstanding award shall be deemed to be satisfied at the maximum level and (v) the Board (as constituted prior to such Change in Control) may, in its discretion:

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



(2) require outstanding awards, in whole or in part, to be surrendered to the Company by the holder, and to be immediately cancelled by the Company, and to provide for the holder to receive (A) a cash payment in an amount equal to (i) in the case of an option or an SAR, the number of shares of Common Stock then subject to the portion of such option or SAR surrendered multiplied by the excess, if any, of the Fair Market Value of a share of Common Stock as of the date of the Change in Control, over the purchase price or base price per share of Common Stock subject to such option or SAR, (ii) in the case of a Stock Award, the number of shares of Common Stock then subject to the portion of such award surrendered multiplied by the Fair Market Value of a share of Common Stock as of the date of the Change in Control, and (iii) in the case of a Performance Unit Award, the number of Performance Units then subject to the portion of such award surrendered; (B) shares of capital stock of the corporation resulting from such Change in Control, or a parent corporation thereof, having a fair market value not less than the amount determined under clause (A) above; or (C) a combination of the payment of cash pursuant to clause (A) above and the issuance of shares pursuant to clause (B) above.

(b) For purposes of this Plan, a “Change in Control” shall have the meaning set forth in the Employment Agreement; provided that if the holder of any award is not party to an Employment Agreement that contains such definition, then “Change in Control” shall mean the occurrence of any one or more of the following events following the effective date of the Plan of Reorganization:

(1) The “beneficial ownership” of securities representing more than ~~20~~40% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Company Voting Securities”) is accumulated, held or acquired by a Person (as defined in Section 3(a)(9) of the Exchange Act, as modified, and used in Sections 13(d) and 14(d) thereof) other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, any corporation owned, directly or indirectly, by the Company’s stockholders in substantially the same proportions as their ownership of stock of the Company; provided, however, that any acquisition from the Company or any acquisition pursuant to a transaction that complies with clauses (i), (ii) and (iii) of subparagraph (3) of this definition will not be a Change in Control under this subparagraph (1), and provided further that immediately prior to such accumulation, holding or acquisition, such person was not a direct or indirect beneficial owner of ~~20~~40% or more of the Company Voting Securities; or

(2) Individuals who, as of the day next following the effective date of the Plan of Reorganization, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that an individual becoming a director subsequent to that date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board will be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other

actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(3) Consummation by the Company of a reorganization, merger or consolidation, or sale or other disposition of all or substantially all of the assets of the Company or the acquisition of assets or stock of another entity (a “Business Combination”), in each case, unless immediately following such Business Combination: (i) more than 60% of the combined voting power of then outstanding voting securities entitled to vote generally in the election of directors of (A) the corporation resulting from such Business Combination (the “Surviving Corporation”), or (B) if applicable, a corporation that as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries (the “Parent Corporation”), is represented, directly or indirectly, by Company Voting Securities outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which such Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Company Voting Securities; (ii) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, ~~20~~40% or more of the combined voting power of the then outstanding voting securities eligible to elect directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) except to the extent that such ownership of the Company existed prior to the Business Combination; and (iii) at least a majority of the members of the board of directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination;

(4) Approval by the Company’s stockholders of a complete liquidation or dissolution of the Company;

(5) The consummation of a reorganization under the U.S. Bankruptcy Code;  
or

(6) The consummation of a complete liquidation or dissolution of the Company under the U.S. Bankruptcy Code.

However, in no event will a Change in Control be deemed to have occurred, with respect to a Participant’s award, if the Participant is part of a purchasing group that consummates the Change in Control transaction. A Participant will be deemed “part of a purchasing group” for purposes of the preceding sentence if the Participant is an equity participant in the purchasing company or group (except: (i) passive ownership of less than 2% of the stock of the purchasing company; or (ii) ownership of equity participation in the purchasing company or group that is otherwise not significant, as determined prior to the Change in Control by a majority of the non-employee continuing directors). For the avoidance of doubt, a Change in Control shall not include transactions pursuant to the Plan of Reorganization (as defined herein).

**5.9 Deferrals.** The Committee may determine that the delivery of shares of Common Stock or the payment of cash, or a combination thereof, upon the exercise or settlement of all or a portion of any award (other than awards of Incentive Stock Options, Nonqualified Stock Options and SARs) made hereunder shall be deferred, or the Committee may, in its sole discretion, approve deferral elections made by holders of awards. Deferrals shall be for such periods and upon such terms as the Committee may determine in its sole discretion and as set forth in the Agreement, subject to the requirements of Section 409A of the Code.

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

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

**5.12 Designation of Beneficiary.** A holder of an award may file with the Committee a written designation of one or more persons as such holder's beneficiary or beneficiaries (both primary and contingent) in the event of the holder's death or incapacity. To the extent an outstanding option or SAR granted hereunder is exercisable, such beneficiary or beneficiaries shall be entitled to exercise such option or SAR pursuant to procedures prescribed by the Committee.

Each beneficiary designation shall become effective only when filed in writing with the Committee during the holder's lifetime on a form prescribed by the Committee. The spouse of a married holder domiciled in a community property jurisdiction shall join in any designation of a beneficiary other than such spouse. The filing with the Committee of a new beneficiary designation shall cancel all previously filed beneficiary designations.

If a holder fails to designate a beneficiary, or if all designated beneficiaries of a holder predecease the holder, then each outstanding option and SAR hereunder held by such holder, to the extent exercisable, may be exercised by such holder's executor, administrator, legal representative or similar person.

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

**5.14 Foreign Employees.** Without amending this Plan, the Committee may grant awards to eligible persons who are foreign nationals on such terms and conditions different

from those specified in this Plan as may in the judgment of the Committee be necessary or desirable to foster and promote achievement of the purposes of this Plan and, in furtherance of such purposes the Committee may make such modifications, amendments, procedures, subplans and the like as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or its Subsidiaries operates or has employees.

**Exhibit 3-C**

**Equity Incentive Plan – Option Award Notice and Stock Option Agreement**

**SMURFIT-STONE CONTAINER CORPORATION  
EQUITY INCENTIVE PLAN**

**OPTION AWARD NOTICE**

**[Name and Address of Optionee]**

\_\_\_\_\_  
\_\_\_\_\_

You have been awarded an option to purchase shares of Common Stock of Smurfit-Stone Container Corporation (the "Company"), pursuant to the terms and conditions of the Smurfit-Stone Container Corporation Equity Incentive Plan (the "Plan") and the Stock Option Agreement (together with this Award Notice, the "Agreement"). Copies of the Plan and the Stock Option Agreement are attached hereto. Capitalized terms not defined herein shall have the meanings specified in the Plan or the Agreement.

Option: You have been awarded a Nonqualified Stock Option to purchase from the Company [**insert number**] shares of its Common Stock, par value [**\$0.01**] per share, subject to adjustment as provided in Section 3.4 of the Agreement.

Option Date: \_\_\_\_\_, \_\_\_\_\_<sup>1</sup>

Exercise Price: \$\_\_\_\_\_ per share, subject to adjustment as provided in Section 3.4 of the Agreement. The Exercise Price shall equal the average of the closing transaction prices of a share of Common Stock as reported on the principal national stock exchange on which the Common Stock is traded for the 30-day period commencing on the date on which the Common Stock is first listed on such stock exchange after the Company's emergence from bankruptcy following the confirmation of the Plan of Reorganization.

Vesting Schedule: Except as otherwise provided in the Plan, Agreement or any other agreement between the Company and Optionee, the Option shall vest (i) on the first anniversary of the Option Date with respect to one-third of the number of shares subject thereto on the Option Date, (ii) on the second anniversary of the Option Date with respect to an additional one-third of the number of shares subject thereto on the Option Date and (iii) on the third anniversary of the Option Date with respect to the remaining one-third of the number of shares subject thereto on the Option Date, provided you remain continuously employed by the Company through such date.

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<sup>1</sup> [Note: Option Date shall be the date on which shares of Common Stock are first listed on a national stock exchange after the Company's emergence from bankruptcy following the confirmation of the Plan of Reorganization.]

Expiration Date: Except to the extent earlier terminated pursuant to Section 2.2 of the Agreement or earlier exercised pursuant to Section 2.3 of the Agreement, the Option shall terminate at 5:00 p.m., Central time, on the seventh anniversary of the Option Date.

Cash Payment: In the event that a bona fide offer to enter into a Transaction, as defined below, is announced after the Listing Date but before the end of the thirty (30) calendar day period following the Listing Date, and the Exercise Price exceeds the per share value of a share of Common Stock as of the effective date of the Plan of Reorganization, determined by using the Debtors' Average Bond Trading Price, as defined in the Plan of Reorganization (such per share value, the "Effective Date Value"), then, in addition to the Option grant, the Optionee shall receive a cash payment from the Company in an amount equal to the number of shares of Common Stock subject to the Option multiplied by the lesser of (i) the excess of the Exercise Price over the Effective Date Value or (ii) the excess of the per share consideration received by holders of Common Stock in such Transaction over the Effective Date Value, with such amount payable within thirty (30) calendar days after the consummation of such Transaction. For purposes of this paragraph, a "Transaction" shall have the same meaning as set forth in Exhibit 3 of the Plan of Reorganization.

SMURFIT-STONE CONTAINER  
CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

Acknowledgment, Acceptance and Agreement:

By signing below and returning this Award Notice to Smurfit-Stone Container Corporation at the address stated herein, I hereby acknowledge receipt of the Agreement and the Plan, accept the Option granted to me and agree to be bound by the terms and conditions of this Award Notice, the Agreement and the Plan.

\_\_\_\_\_  
Optionee

\_\_\_\_\_  
Date

**SMURFIT-STONE CONTAINER  
ATTENTION: [GENERAL COUNSEL]  
222 NORTH LASALLE STREET,  
CHICAGO, ILLINOIS 60601**



**SMURFIT-STONE CONTAINER CORPORATION  
EQUITY INCENTIVE PLAN**

**Stock Option Agreement**

Smurfit-Stone Container Corporation, a Delaware corporation (the “Company”), hereby grants to the individual (“Optionee”) named in the award notice attached hereto (the “Award Notice”) as of the date set forth in the Award Notice (the “Option Date”), pursuant to the provisions of the Smurfit-Stone Container Corporation Equity Incentive Plan (the “Plan”), an option to purchase from the Company the number and class of shares of stock set forth in the Award Notice at the price per share set forth in the Award Notice (the “Exercise Price”) (the “Option”), upon and subject to the terms and conditions set forth below, in the Award Notice and in the Plan. Capitalized terms not defined herein shall have the meanings specified in the Plan.

1. Option Subject to Acceptance of Agreement. The Option shall be null and void unless Optionee shall accept this Agreement by executing the Award Notice in the space provided therefor and returning an original execution copy of the Award Notice to the Company.

2. Time and Manner of Exercise of Option.

2.1. Maximum Term of Option. In no event may the Option be exercised, in whole or in part, after the expiration date set forth in the Award Notice (the “Expiration Date”).

2.2. Vesting and Exercise of Option. The Option shall become vested and exercisable in accordance with the vesting schedule set forth in the Award Notice (the “Vesting Schedule”). The Option shall be vested and exercisable following a termination of Optionee’s employment according to the following terms and conditions:

(a) Termination as a Result of Optionee’s Death or Incapacity. If Optionee’s employment with the Company terminates by reason of Optionee’s Incapacity or death, then the Option shall be 100% vested upon the effective date of such termination of employment and the Option may thereafter be exercised by Optionee or Optionee’s executor, administrator, legal representative, guardian or similar person until and including the earlier to occur of (i) the date which is five years after the date of death and (ii) the Expiration Date.

(b) Termination by the Company Other than for Cause, Death or Incapacity or by Optionee for Good Reason or Retirement On or Prior to One Year Anniversary of Bankruptcy Emergence. If Optionee’s employment with the Company terminates on or prior to the first anniversary of the effective date of the Plan of Reorganization by reason of (i) the Company’s termination of Optionee’s employment other than for Cause, death or Incapacity, or (ii) Optionee’s resignation from employment for Good Reason or Retirement, then in any such case, one-third of all shares of Stock subject to the Option that were not vested immediately prior to such termination of employment shall vest upon such termination of employment and the Option may thereafter be exercised by Optionee until and including the Expiration Date.

(c) Termination by the Company Other than for Cause, Death or Incapacity or by Optionee for Good Reason or Retirement After One Year Anniversary of Bankruptcy

Emergence. If Optionee's employment with the Company terminates after the first anniversary of the effective date of the Plan of Reorganization by reason of (i) the Company's termination of Optionee's employment other than for Cause, death or Incapacity, or (ii) Optionee's resignation from employment for Good Reason or Retirement, then in any such case, all shares of Stock subject to the Option that were not vested immediately prior to such termination of employment shall be 100% vested upon such termination of employment and the Option may thereafter be exercised by Optionee until and including the Expiration Date.

(d) Termination Prior to a Change in Control. In the event of the termination of Optionee's employment prior to a Change in Control for any reason other than for Cause, the Option with respect to the shares of Stock that were not vested immediately prior to such termination of employment and which did not vest in connection with such termination of employment pursuant to Section 2.2(a), Section 2.2(b) or Section 2.2(c), shall remain outstanding until the expiration of the six-month anniversary of such termination of employment; provided, however, that such Option shall not be exercisable during such six-month period except as provided for in this Section 2.2(d). If a Change in Control occurs within the six months following the termination of Optionee's employment for any reason other than for Cause, then all shares of Stock subject to the Option that were not vested immediately prior to the termination of Optionee's employment and which did not vest in connection with such termination of employment shall be 100% vested upon such Change in Control and the Option may thereafter be exercised by Optionee with respect to such Shares until and including the Expiration Date.

(e) Termination for Cause or by Optionee Other than for Good Reason or Retirement. If Optionee's employment with the Company terminates by reason of (i) the Company's termination of Optionee's employment for Cause, or (ii) Optionee's resignation from employment other than for Good Reason or Retirement, then except as provided in Section 2.2(d), the Option, whether or not vested, shall terminate immediately upon such termination of employment.

(f) Good Reason. For purposes of this Option, "Good Reason" shall have the meaning set forth in the Employment Agreement; provided that if Optionee is not a party to an Employment Agreement that contains such definition, then "Good Reason" shall mean the occurrence of any of the following without Optionee's express written consent: (i) failure of the Company to continue in effect any broad-based bonus or incentive plan, welfare benefit, pension, retirement benefit or other benefit plan in which Optionee participates or becomes eligible to participate unless such discontinuance applies on a consistent basis to other employees at a similar level to Optionee within the Company, or a reduction by the Company of Optionee's target level participation (as a percentage of Optionee's base salary and on an annualized basis) in its annual incentive bonus plan from the lower of such target levels of Optionee's participation in the Company's 2010 Management Incentive Plan as approved by the Board (or if applicable, the Company's Chief Executive Officer or President) prior to the effective date of the Company's Plan of Reorganization (unless such reduction is made on a consistent basis for other employees at a similar level to Optionee within the Company); or (ii) assigning Optionee duties that are materially inconsistent with the position(s) then held by Optionee for similar companies in similar industries; provided, however, that an occurrence which otherwise may constitute Good Reason hereunder shall not constitute Good Reason unless Optionee provides to the

Company, at least thirty (30) calendar days prior to Optionee's contemplated resignation for Good Reason, a written notice containing reasonable detail setting forth the basis for Optionee's claim that an occurrence constitutes Good Reason and the Company fails to cure or otherwise remedy such occurrence within thirty (30) calendar days after receiving such notice from Optionee; and further provided that in order for a resignation to constitute a resignation for "Good Reason" for purposes of this Agreement, Optionee must resign within 90 calendar days after the initial existence of the circumstances or events constituting "Good Reason".

(g) Cause. For purposes of this Option, "Cause" shall have the meaning set forth in the Employment Agreement; provided that if Optionee is not a party to an Employment Agreement that contains such definition, then "Cause" shall mean the occurrence of any of the following: (i) the refusal or continued failure by Optionee to perform substantially all his or her duties with the Company (other than any failure resulting from incapacity due to physical or mental illness) after the Company provides Optionee a demand for substantial performance identifying in reasonable detail the manner in which Optionee has not substantially performed his or her duties; (ii) a plea of guilty or nolo contendere by Optionee, or conviction of Optionee, for a felony; or (iii) the determination by the Board in its sole discretion that Optionee has engaged in: (A) illegal conduct or gross misconduct in connection with Optionee's job duties or the business of the Company; (B) a material breach of any written policy of the Company; (C) fraud or material dishonesty in connection with the business of the Company; or (D) any violation of a statutory or common law duty of loyalty to the Company; provided that the Company has given Optionee at least fifteen (15) days to cure such alleged conduct that otherwise would constitute Cause to the extent that such conduct is reasonably capable of cure by Optionee.

2.3. Method of Exercise. Subject to the limitations set forth in this Agreement, the Option may be exercised by Optionee (a) by delivering to the Company an exercise notice in the form prescribed by the Company specifying the number of whole shares of Stock to be purchased and by accompanying such notice with payment therefor in full (or by arranging for such payment to the Company's satisfaction) either (i) in cash, (ii) by delivery to the Company (either actual delivery or by attestation procedures established by the Company) of shares of Stock having an aggregate Fair Market Value, determined as of the date of exercise, equal to the aggregate purchase price payable pursuant to the Option by reason of such exercise, (iii) authorizing the Company to withhold whole shares of Stock which would otherwise be delivered having an aggregate Fair Market Value, determined as of the date of exercise, equal to the amount necessary to satisfy such obligation, (iv) if the Stock is then publicly traded, in cash by a broker-dealer acceptable to the Company to whom Optionee has submitted an irrevocable notice of exercise or (v) by a combination of (i), (ii) and (iii), and (b) by executing such documents as the Company may reasonably request. Any fraction of a share of Stock which would be required to pay such purchase price shall be disregarded and the remaining amount due shall be paid in cash by Optionee. No certificate representing a share of Stock shall be issued or delivered until the full purchase price therefor and any withholding taxes thereon, as described in Section 3.3, have been paid.

2.4. Termination of Option. In no event may the Option be exercised after it terminates as set forth in this Section 2.4. The Option shall terminate, to the extent not earlier terminated pursuant to Section 2.2 or exercised pursuant to Section 2.3, on the Expiration Date.

Upon the termination of the Option, the Option and all rights hereunder shall immediately become null and void.

3. Additional Terms and Conditions of Option.

3.1. Nontransferability of Option. The Option may not be transferred by Optionee other than by will or the laws of descent and distribution or pursuant to the designation of one or more beneficiaries on the form prescribed by the Company. Except to the extent permitted by the foregoing sentence, (i) during Optionee's lifetime the Option is exercisable only by Optionee or Optionee's legal representative, guardian or similar person and (ii) the Option may not be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of the Option, the Option and all rights hereunder shall immediately become null and void.

3.2. Investment Representation. Optionee hereby represents and covenants that (a) any shares of Stock purchased upon exercise of the Option will be purchased for investment and not with a view to the distribution thereof within the meaning of the Securities Act unless such purchase has been registered under the Securities Act and any applicable state securities laws; (b) any subsequent sale of any such shares shall be made either pursuant to an effective registration statement under the Securities Act and any applicable state securities laws, or pursuant to an exemption from registration under the Securities Act and such state securities laws; and (c) if requested by the Company, Optionee shall submit a written statement, in a form satisfactory to the Company, to the effect that such representation (x) is true and correct as of the date of any purchase of any shares hereunder or (y) is true and correct as of the date of any sale of any such shares, as applicable. As a further condition precedent to any exercise of the Option, Optionee shall comply with all regulations and requirements of any regulatory authority having control of or supervision over the issuance or delivery of the shares and, in connection therewith, shall execute any documents which the Board or the Committee shall in its sole discretion deem necessary or advisable.

3.3. Withholding Taxes. (a) As a condition precedent to the issuance of Stock upon exercise of the Option, Optionee shall, upon request by the Company, pay to the Company in addition to the purchase price of the shares, such amount as the Company may be required, under all applicable federal, state, local or other laws or regulations, to withhold and pay over as income or other withholding taxes (the "Required Tax Payments") with respect to such exercise of the Option. If Optionee shall fail to advance the Required Tax Payments after request by the Company, the Company may, in its discretion, deduct any Required Tax Payments from any amount then or thereafter payable by the Company to Optionee.

(b) Optionee may elect to satisfy his or her obligation to advance the Required Tax Payments by any of the following means: (1) a cash payment to the Company, (2) delivery to the Company (either actual delivery or by attestation procedures established by the Company) of previously owned whole shares of Stock having an aggregate Fair Market Value, determined as of the Tax Date, equal to the Required Tax Payments, (3) authorizing the Company to withhold whole shares of Stock which would otherwise be delivered to Optionee upon exercise

of the Option having an aggregate Fair Market Value, determined as of the Tax Date, equal to the Required Tax Payments, (4) if the Stock is then publicly traded, a cash payment by a broker-dealer acceptable to the Company to whom Optionee has submitted an irrevocable notice of exercise or (5) any combination of (1), (2), (3) and (4). Shares of Stock to be delivered or withheld may not have a Fair Market Value in excess of the minimum amount of the Required Tax Payments. Any fraction of a share of Stock which would be required to satisfy any such obligation shall be disregarded and the remaining amount due shall be paid in cash by Optionee. No certificate representing a share of Stock shall be issued or delivered until the Required Tax Payments have been satisfied in full.

3.4. Adjustment. In the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of Stock other than a regular cash dividend, the number and class of securities subject to the Option and the Exercise Price shall be equitably adjusted by the Committee, such adjustment to be made in accordance with Section 409A of the Code. The decision of the Committee regarding any such adjustment shall be final, binding and conclusive. If any such adjustment would result in a fractional security being subject to the Option, the Company shall pay Optionee, in connection with the first exercise occurring after such adjustment, an amount in cash determined by multiplying (i) the fraction of such security (rounded to the nearest hundredth) by (ii) the excess, if any, of (A) the Fair Market Value on such date over (B) the Exercise Price of the Option.

3.5. Change in Control. In the event of a Change in Control, the Option, to the extent it is then outstanding, shall become fully vested and be subject to Section 5.8 of the Plan and may thereafter be exercised by Optionee until and including the Expiration Date.

3.6. Compliance with Applicable Law. The Option is subject to the condition that if the listing, registration or qualification of the shares subject to the Option upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the purchase or issuance of shares hereunder, the Option may not be exercised, in whole or in part, and such shares may not be issued, unless such listing, registration, qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company agrees to use reasonable efforts to effect or obtain any such listing, registration, qualification, consent, approval or other action.

3.7. Issuance or Delivery of Shares. Upon the exercise of the Option, in whole or in part, the Company shall issue or deliver, subject to the conditions of this Article 3, the number of shares of Stock purchased against full payment therefor. Such issuance shall be evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company. The Company shall pay all original issue or transfer taxes and all fees and expenses incident to such issuance, except as otherwise provided in Section 3.3.

3.8. Option Confers No Rights as Shareholder. Optionee shall not be entitled to any privileges of ownership with respect to shares of Stock subject to the Option unless and until such shares are purchased and issued upon the exercise of the Option, in whole or in part,

and Optionee becomes a shareholder of record with respect to such issued shares. Optionee shall not be considered a shareholder of the Company with respect to any such shares not so purchased and issued.

3.9. Option Confers No Rights to Continued Employment. In no event shall the granting of the Option or its acceptance by Optionee, or any provision of this Agreement or the Plan, give or be deemed to give Optionee any right to continued employment by the Company or any affiliate of the Company.

4. Miscellaneous Provisions.

4.1. Decisions of Board or Committee. The Board or the Committee shall have the right to resolve all questions which may arise in connection with the Option or its exercise. Any interpretation, determination or other action made or taken by the Board or the Committee regarding the Plan or this Agreement shall be final, binding and conclusive.

4.2. Successors. This Agreement shall be binding upon and inure to the benefit of any successor or successors of the Company and any person or persons who shall, upon the death of Optionee, acquire any rights hereunder in accordance with this Agreement or the Plan.

4.3. Notices. All notices, requests or other communications provided for in this Agreement shall be made, if to the Company, to Smurfit-Stone Container Corporation, Attn. General Counsel, 222 North LaSalle Street, Chicago, Illinois 60601, and if to Optionee, to the last known mailing address of Optionee contained in the records of the Company. All notices, requests or other communications provided for in this Agreement shall be made in writing either (a) by personal delivery, (b) by facsimile or electronic mail with confirmation of receipt, (c) by mailing in the United States mails or (d) by express courier service. The notice, request or other communication shall be deemed to be received upon personal delivery, upon confirmation of receipt of facsimile or electronic mail transmission or upon receipt by the party entitled thereto if by United States mail or express courier service; provided, however, that if a notice, request or other communication sent to the Company is not received during regular business hours, it shall be deemed to be received on the next succeeding business day of the Company.

4.4. Partial Invalidity. The invalidity or unenforceability of any particular provision of this Agreement shall not effect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

4.5. Governing Law. This Agreement, the Option and all determinations made and actions taken pursuant hereto and thereto, to the extent not governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware and construed in accordance therewith without giving effect to principles of conflicts of laws.

4.6. Counterparts. The Award Notice may be executed in two counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

4.7. Agreement Subject to the Plan. This Agreement is subject to the provisions of the Plan, and shall be interpreted in accordance therewith. Optionee hereby acknowledges receipt of a copy of the Plan, and by signing and returning the Award Notice to the Company, at the address stated herein, he or she agrees to be bound by the terms and conditions of this Agreement, the Award Notice and the Plan.

**Exhibit 3-D**

**Equity Incentive Plan – Restricted Stock Unit Award Agreement**



**SMURFIT-STONE CONTAINER CORPORATION  
EQUITY INCENTIVE PLAN**

**RESTRICTED STOCK UNIT AWARD AGREEMENT**

Smurfit-Stone Container Corporation, a Delaware corporation (the “Company”), hereby grants to [\_\_\_\_\_] (the “Holder”) as of [\_\_\_\_\_] (the “Grant Date”)<sup>1</sup>, pursuant to the terms and conditions of the Smurfit-Stone Container Corporation Equity Incentive Plan (the “Plan”), a restricted stock unit award (the “Award”) with respect to [\_\_\_\_\_] shares of the Company’s Common Stock, par value [\$0.01] per share (“Stock”), upon and subject to the restrictions, terms and conditions set forth in the Plan and this agreement (the “Agreement”).

1. Award Subject to Acceptance of Agreement. The Award shall be null and void unless the Holder accepts this Agreement by executing it in the space provided below and returning such original execution copy to the Company.

2. Rights as a Stockholder.

2.1. The Holder shall not be entitled to any privileges of ownership with respect to the shares of Stock subject to the Award unless and until, and only to the extent, such shares become vested pursuant to Section 3 hereof and the Holder becomes a stockholder of record with respect to such shares.

2.2. As of each date on which the Company pays a cash dividend to record owners of shares of Stock (a “Dividend Date”), then the number of shares subject to the Award shall increase by (i) the product of the total number of shares subject to the Award immediately prior to such Dividend Date multiplied by the dollar amount of the cash dividend paid per share of Stock by the Company on such Dividend Date, divided by (ii) the Fair Market Value of a share of Stock on such Dividend Date. Any such additional shares shall be subject to the same vesting conditions and payment terms set forth herein as the shares to which they relate.

3. Restriction Period and Vesting.

3.1. Service-Based Vesting Condition. Except as otherwise provided in this Section 3, the Award shall vest (i) on the first anniversary of the Grant Date with respect to one-third of the number of shares subject thereto on the Grant Date, (ii) on the second anniversary of the Grant Date with respect to an additional one-third of the number of shares subject thereto on the Grant Date and (iii) on the third anniversary of the Grant Date with respect to the remaining one-third of the number of shares subject thereto on the Grant Date, provided the Holder remains continuously employed by the Company or one of its Affiliates through such date. The period of time prior to the vesting shall be referred to herein as the “Restriction Period.”

3.2. Change in Control. Upon a Change in Control, the Restriction Period shall lapse, the Award shall become fully vested and shall be subject to Section 5.8 of the Plan; provided, however, that if such Change in Control is not a “change in control event,” within the

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<sup>1</sup> [Note: Grant Date shall be the date on which the Company emerges from bankruptcy.]

meaning of regulations promulgated under Section 409A of the Code, then the Award shall be fully vested upon such Change in Control, but the shares of Stock subject to the Award shall be transferred to the Holder on the earlier to occur of (i) the date or dates on which the Award was scheduled to have become vested pursuant to Section 3.1 and (ii) the date on which the Holder's employment terminates for any reason.

### 3.3. Termination of Employment.

3.3.1. Termination as a Result of Holder's Death or Incapacity. If the Holder's employment with the Company terminates prior to the end of the Restriction Period by reason of the Holder's Incapacity or death, then the portion of the Award that was not vested immediately prior to such termination of employment shall be 100% vested upon such termination of employment.

3.3.2. Termination by the Company Other than for Cause, Death or Incapacity or by the Holder for Good Reason or Retirement On or Prior to One Year Anniversary of Bankruptcy Emergence. If the Holder's employment with the Company terminates prior to the end of the Restriction Period and on or prior to the first anniversary of the effective date of the Plan of Reorganization by reason of (i) the Company's termination of the Holder's employment other than for Cause, death or Incapacity, or (ii) the Holder's resignation from employment for Good Reason or Retirement, then in any such case, one-third of all shares of Stock subject to the Award that were not vested immediately prior to such termination of employment shall vest upon such termination of employment.

3.3.3. Termination by the Company Other than for Cause, Death or Incapacity or by the Holder for Good Reason or Retirement After One Year Anniversary of Bankruptcy Emergence. If the Holder's employment with the Company terminates prior to the end of the Restriction Period and after the first anniversary of the effective date of the Plan of Reorganization by reason of (i) the Company's termination of the Holder's employment other than for Cause, death or Incapacity, or (ii) the Holder's resignation from employment for Good Reason or Retirement, then in any such case, the portion of the Award that was not vested immediately prior to such termination of employment shall be 100% vested upon such termination of employment.

3.3.4. Termination Prior to a Change in Control. In the event of the termination of the Holder's employment prior to a Change in Control for any reason other than for Cause, the portion of the Award that was not vested immediately prior to such termination of employment and which did not vest in connection with such termination of employment pursuant to Section 3.3.1, Section 3.3.2 or Section 3.3.3, shall remain outstanding until the expiration of the six-month anniversary of such termination of employment; provided, however, that such Award shall not be settled during such six-month period except as provided for in this Section 3.3.4. If a Change in Control occurs within the six months following the termination of the Holder's employment for any reason other than for Cause, then the portion of the Award that was not vested immediately prior to the termination of the Holder's employment and which did not vest in connection with such termination of employment shall be 100% vested upon such Change in Control; provided, however, that if such Change in Control is not a "change in control event," within the meaning of regulations promulgated under Section 409A of the

Code, then the Award shall be fully vested upon such Change in Control, but the shares of Stock subject to the Award shall be transferred to the Holder on the date or dates on which the Award was scheduled to have become vested pursuant to Section 3.1.

3.3.5. Termination by the Company for Cause or by the Holder Other than for Good Reason or Retirement. If the Holder's employment with the Company terminates prior to the end of the Restriction Period by reason of (i) the Company's termination of the Holder's employment for Cause, or (ii) the Holder's resignation from employment other than for Good Reason or Retirement, then, except as provided for in Section 3.3.4, the portion of the Award that was not vested immediately prior to such termination of employment shall be immediately forfeited by the Holder and cancelled by the Company.

3.3.6. Good Reason. For purposes of this Award, "Good Reason" shall have the meaning set forth in the Holder's Employment Agreement; provided that if the Holder is not a party to an Employment Agreement that contains such definition, then "Good Reason" shall mean the occurrence of any of the following without the Holder's express written consent: (i) failure of the Company to continue in effect any broad-based bonus or incentive plan, welfare benefit, pension, retirement benefit or other benefit plan in which Holder participates or becomes eligible to participate unless such discontinuance applies on a consistent basis to other employees at a similar level to Holder within the Company, or a reduction by the Company of Holder's target level participation (as a percentage of Holder's base salary and on an annualized basis) in its annual incentive bonus plan from the lower of such target levels of Holder's participation in the Company's 2010 Management Incentive Plan as approved by the Board (or if applicable, the Company's Chief Executive Officer or President) prior to the effective date of the Company's Plan of Reorganization (unless such reduction is made on a consistent basis for other employees at a similar level to Holder within the Company); or (ii) assigning Holder duties that are materially inconsistent with the position(s) then held by Holder for similar companies in similar industries; provided, however, that an occurrence which otherwise may constitute Good Reason hereunder shall not constitute Good Reason unless Holder provides to the Company, at least thirty (30) calendar days prior to Holder's contemplated resignation for Good Reason, a written notice containing reasonable detail setting forth the basis for Holder's claim that an occurrence constitutes Good Reason and the Company fails to cure or otherwise remedy such occurrence within thirty (30) calendar days after receiving such notice from Holder; and further provided that in order for a resignation to constitute a resignation for "Good Reason" for purposes of this Agreement, Holder must resign within 90 calendar days after the initial existence of the circumstances or events constituting "Good Reason".

3.3.7. Cause. For purposes of this Award, "Cause" shall have the meaning set forth in the Holder's Employment Agreement; provided that if the Holder is not a party to an Employment Agreement that contains such definition, then "Cause" shall mean the occurrence of any of the following: (i) the refusal or continued failure by the Holder to perform substantially all his or her duties with the Company (other than any failure resulting from incapacity due to physical or mental illness) after the Company provides the Holder a demand for substantial performance identifying in reasonable detail the manner in which the Holder has not substantially performed his or her duties; (ii) a plea of guilty or nolo contendere by the Holder, or conviction of the Holder, for a felony; or (iii) the determination by the Board in its sole discretion that the Holder has engaged in:

(A) illegal conduct or gross misconduct in connection with the Holder's job duties or the business of the Company; (B) a material breach of any written policy of the Company; (C) fraud or material dishonesty in connection with the business of the Company; or (D) any violation of a statutory or common law duty of loyalty to the Company; provided that the Company has given Holder at least fifteen (15) days to cure such alleged conduct that otherwise would constitute Cause to the extent that such conduct is reasonably capable of cure by Holder.

4. Delivery of Certificates. Subject to Section 6, as soon as practicable (but not later than 90 days) after the vesting of the Award, in whole or in part, the Company shall deliver or cause to be delivered one or more certificates issued in the Holder's name (or such other name as is acceptable to the Company and designated in writing by the Holder) representing the number of vested shares. The Company shall pay all original issue or transfer taxes and all fees and expenses incident to such delivery, except as otherwise provided in Section 6. Prior to the issuance to the Holder of the shares of Stock subject to the Award, the Holder shall have no direct or secured claim in any specific assets of the Company or in such shares of Stock, and will have the status of a general unsecured creditor of the Company.

5. Transfer Restrictions and Investment Representation.

5.1. Nontransferability of Award. The Award may not be transferred by the Holder other than by will or the laws of descent and distribution or pursuant to the designation of one or more beneficiaries on the form prescribed by the Company. Except to the extent permitted by the foregoing sentence, the Award may not be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of the Award, the Award and all rights hereunder shall immediately become null and void.

5.2. Investment Representation. The Holder hereby represents and covenants that (a) any share of Stock acquired upon the vesting of the Award will be acquired for investment and not with a view to the distribution thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), unless such acquisition has been registered under the Securities Act and any applicable state securities laws; (b) any subsequent sale of any such shares shall be made either pursuant to an effective registration statement under the Securities Act and any applicable state securities laws, or pursuant to an exemption from registration under the Securities Act and such state securities laws; and (c) if requested by the Company, the Holder shall submit a written statement, in form satisfactory to the Company, to the effect that such representation (x) is true and correct as of the date of vesting of any shares of Stock hereunder or (y) is true and correct as of the date of any sale of any such share, as applicable. As a further condition precedent to the delivery to the Holder of any shares of Stock subject to the Award, the Holder shall comply with all regulations and requirements of any regulatory authority having control of or supervision over the issuance or delivery of the shares and, in connection therewith, shall execute any documents which the Board shall in its sole discretion deem necessary or advisable.

6. Additional Terms and Conditions of Award.

6.1. Withholding Taxes. (a) As a condition precedent to the delivery of the Shares upon the vesting of the Award, the Holder shall, upon request by the Company, pay to the Company such amount as the Company may be required, under all applicable federal, state, local or other laws or regulations, to withhold and pay over as income or other withholding taxes (the “Required Tax Payments”) with respect to the Award. If the Holder shall fail to advance the Required Tax Payments after request by the Company, the Company may, in its discretion, deduct any Required Tax Payments from any amount then or thereafter payable by the Company to the Holder.

(b) The Holder may elect to satisfy his or her obligation to advance the Required Tax Payments by any of the following means: (1) a cash payment to the Company, (2) delivery to the Company (either actual delivery or by attestation procedures established by the Company) of previously owned whole shares of Stock having an aggregate Fair Market Value, determined as of the date on which such withholding obligation arises (the “Tax Date”), equal to the Required Tax Payments, (3) authorizing the Company to withhold whole shares of Stock which would otherwise be delivered to the Holder having an aggregate Fair Market Value, determined as of the Tax Date, equal to the Required Tax Payments or (4) any combination of (1), (2) and (3). Shares of Stock to be delivered or withheld may not have a Fair Market Value in excess of the minimum amount of the Required Tax Payments. Any fraction of a share of Stock which would be required to satisfy any such obligation shall be disregarded and the remaining amount due shall be paid in cash by the Holder. No certificate representing a share of Stock shall be delivered until the Required Tax Payments have been satisfied in full.

6.2. Adjustment. In the event of any stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of Stock other than a regular cash dividend, the number and class of securities subject to the Award shall be equitably adjusted by the Board. If any adjustment would result in a fractional security being subject to the Award, the Company shall pay the Holder in connection with the first settlement, in whole or part, occurring after such adjustment, an amount in cash determined by multiplying (i) such fraction (rounded to the nearest hundredth) by (ii) the Fair Market Value of such security on the settlement date as determined by the Board. The decision of the Board regarding any such adjustment and the Fair Market Value of any fractional security shall be final, binding and conclusive.

6.3. Compliance with Applicable Law. The Award is subject to the condition that if the listing, registration or qualification of the shares of Stock subject to the Award upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the delivery of shares hereunder, the shares of Stock subject to the Award shall not be delivered, in whole or in part, unless such listing, registration, qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company agrees to use reasonable efforts to effect or obtain any such listing, registration, qualification, consent, approval or other action.

6.4. Award Confers No Rights to Continued Employment. In no event shall the granting of the Award or its acceptance by the Holder, or any provision of the Agreement, give or be deemed to give the Holder any right to continued employment by the Company or

prevent or be deemed to prevent the Company from terminating the Holder's employment at any time, with or without Cause.

6.5. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by the Holder or by the Company forthwith to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on all parties.

6.6. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon the Holder and his or her heirs, executors, administrators, successors and assigns.

6.7. Notices. All notices, requests or other communications provided for in this Agreement shall be made, if to the Company, to Smurfit-Stone Container Corporation, Attn. General Counsel, 222 North LaSalle Street, Chicago, Illinois 60601, and if to the Holder, to the last known mailing address of the Holder contained in the records of the Company. All notices, requests or other communications provided for in this Agreement shall be made in writing either (a) by personal delivery, (b) by facsimile or electronic mail with confirmation of receipt, (c) by mailing in the United States mails or (d) by express courier service. The notice, request or other communication shall be deemed to be received upon personal delivery, upon confirmation of receipt of facsimile or electronic mail transmission or upon receipt by the party entitled thereto if by United States mail or express courier service; provided, however, that if a notice, request or other communication sent to the Company is not received during regular business hours, it shall be deemed to be received on the next succeeding business day of the Company.

6.8. Governing Law. This Agreement, the Award and all determinations made and actions taken pursuant hereto and thereto, to the extent not governed by the laws of the United States, shall be governed by the laws of the State of Delaware and construed in accordance therewith without giving effect to principles of conflicts of laws.

6.9. Entire Agreement. The Plan is incorporated herein by reference. Capitalized terms not defined herein shall have the meanings specified in the Plan. This Agreement and the Plan constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Holder with respect to the subject matter hereof, and may not be modified adversely to the Holder's interest except by means of a writing signed by the Company and the Holder.

6.10. Partial Invalidity. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

6.11. Amendment and Waiver. The provisions of this Agreement may be amended or waived only by the written agreement of the Company and the Holder, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

6.12. Counterparts. This Agreement may be executed in two counterparts each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

6.13. Compliance With Section 409A of the Code. This Award is intended to comply with Section 409A of the Code, and shall be interpreted and construed accordingly. To the extent this Agreement provides for the Award to become vested and be settled upon the Holder's termination of employment, the applicable shares of Stock shall be transferred to the Holder or his or her beneficiary upon the Holder's "separation from service," within the meaning of Section 409A of the Code; provided that if the Holder is a "specified employee," within the meaning of Section 409A of the Code, then such shares of Stock shall be transferred to the Holder or his or her beneficiary upon the earlier to occur of (i) the six-month anniversary of such separation from service or (ii) the date of the Holder's death.

SMURFIT-STONE CONTAINER  
CORPORATION

By: \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

**Exhibit 3-E**

**Smurfit-Stone Container Corporation 2009 Long-Term Incentive Plan**



**SMURFIT-STONE CONTAINER CORPORATION**  
**2009 LONG-TERM INCENTIVE PLAN**

**ARTICLE I**  
**PURPOSE OF THE PLAN**

The Smurfit-Stone Container Corporation 2009 Long-Term Incentive Plan (the “Plan”) is hereby established by the Compensation Committee of Smurfit-Stone Container Corporation (the “Company”), effective as of the confirmation date of a plan of reorganization in the Bankruptcy Proceedings or such earlier date as established by the Committee. The Plan is designed to align the interests of the recipients of awards under this Plan with the interests of the key economic stakeholders in the Company by providing to such recipients incentive compensation based on the Company’s achievement of its 2009-2010 financial performance and restructuring goal. Payments under the Plan are intended to be exempt from section 409A of the Internal Revenue Code of 1986, as amended, as “short-term deferrals” within the meaning of Treasury Regulation section 1.409A-1(b)(4). The Plan shall not create any contractual right of any individual to any amount prior to the payment of such amount.

**ARTICLE II**  
**DEFINITIONS**

For purposes of this Plan, the following terms, when capitalized, shall have the meanings set forth below:

**Section 2.1.** “Award Statement” means a letter or other writing (including in electronic format) provided by the Company to a Participant that sets forth, among other things, the LTIP Incentive Bonus that the Participant is eligible to earn under the Plan, the Financial Performance Goal and the Restructuring Goal.

**Section 2.2.** “Bankruptcy Proceedings” shall mean the bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware with respect to In re: Smurfit-Stone Container Corporation, et al., Case No. 09-10235 (BLS).

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

**Section 2.4.** “Cause” shall mean: (a) the refusal or continued failure by the Participant to perform substantially all his or her duties with the Company (other than any failure resulting from incapacity due to physical or mental illness) after the Company provides the Participant a demand for substantial performance identifying in reasonable detail the manner in which the Participant has not substantially performed his or her duties; (b) a plea of guilty or nolo contendere by the Participant, or conviction of the Participant, for a felony; or (c) the determination by the Committee in its sole discretion that the Participant has engaged in: (1) illegal conduct or gross misconduct in connection with the Participant’s job duties or the business of the Company; (2) a material breach of any written policy of the Company; (3) fraud or material dishonesty in connection with the business of the Company; or (4) any violation of a statutory or common law duty of loyalty to the Company.

**Section 2.5.** “Change in Control” means the occurrence of any one or more of the following:

(a) The “beneficial ownership” of securities representing more than 20% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Company Voting Securities”) is accumulated, held or acquired by a Person (as defined in Section 3(a)(9) of the Exchange Act, as modified, and used in Sections 13(d) and 14(d) thereof) other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, any corporation owned, directly or indirectly, by the Company’s stockholders in substantially the same proportions as their ownership of stock of the Company; provided, however, that any acquisition from the Company or any acquisition pursuant to a transaction that complies with clauses (i), (ii) and (iii) of subparagraph (c) of this definition will not be a Change in Control under this subparagraph (a), and provided further that immediately prior to such accumulation, holding or acquisition, such person was not a direct or indirect beneficial owner of 20% or more of the Company Voting Securities; or

(b) Individuals who, as of January 1, 2009, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that an individual becoming a director subsequent to that date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board will be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation by the Company of a reorganization, merger or consolidation, or sale or other disposition of all or substantially of all the assets of the Company or the acquisition of assets or stock of another entity (a “Business Combination”), in each case, unless immediately following such Business Combination: (i) more than 60% of the combined voting power of then outstanding voting securities entitled to vote generally in the election of directors of (A) the corporation resulting from such Business Combination (the “Surviving Corporation”), or (B) if applicable, a corporation that as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries (the “Parent Corporation”), is represented, directly or indirectly, by Company Voting Securities outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which such Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Company Voting Securities; (ii) no person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of the combined voting power of the then outstanding voting securities eligible to elect directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) except to the extent that such ownership of the Company existed prior to the Business Combination; and (iii) at least a majority of the

members of the board of directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) were members of the incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination;

- (d) The consummation of a complete liquidation or dissolution of the Company approved by the Company's stockholders;
- (e) The consummation of a reorganization under the U.S. Bankruptcy Code; or
- (f) The consummation of a complete liquidation or dissolution of the Company under the U.S. Bankruptcy Code.

However, in no event will a Change in Control be deemed to have occurred, with respect to a Participant's Award, if the Participant is part of a purchasing group that consummates the Change in Control transaction. A Participant will be deemed "part of a purchasing group" for purposes of the preceding sentence if the Participant is an equity participant in the purchasing company or group (except: (i) passive ownership of less than 2% of the stock of the purchasing company; or (ii) ownership of equity participation in the purchasing company or group that is otherwise not significant, as determined prior to the Change in Control by a majority of the non-employee continuing directors).

**Section 2.6.** "Committee" means the Compensation Committee of the Company, or any successor thereto or delegate thereof with the authority to act on behalf of the Committee with respect to this Plan.

**Section 2.7.** "Company" means the Smurfit-Stone Container Corporation and includes any successor thereto, including pursuant to a plan of reorganization under the U.S. Bankruptcy Code.

**Section 2.8.** "Disability" means an individual's long-term disability as defined under the long-term disability plan of the Company that covers that individual; or if the individual is not covered by such a long-term disability plan, an individual's disability as defined for purposes of eligibility for a disability award under the Social Security Act.

**Section 2.9.** "Effective Date" shall mean the confirmation date of a plan of reorganization in the Bankruptcy Proceedings [or such earlier date as established by the Committee.](#)

**Section 2.10.** "Financial Performance Goal" means financial performance goals established by the Committee based on achievement of (a) the Company's 2009 DCA Adjusted EBITDAR and (b) the Company's budgeted EBITDAR for calendar year 2010 (pro-rated as appropriate for any partial 2010 calendar year).

**Section 2.11.** "LTIP Incentive Bonus Award" means the cash incentive bonus awarded to a Participant under the Plan, which bonus is subject to the Company's achievement of the Financial Performance Goal and the Restructuring Goal, with the total amount of such bonus, as determined by the Committee, to be payable with respect to (a) the achievement of the Financial Performance Goal, based upon 50% of the Participant's LTIP Incentive Bonus Target and (b) the

achievement of the Restructuring Goal, based upon the remaining 50% of the Participant's LTIP Incentive Bonus Target, in each case as described in Article IV of this Plan.

**Section 2.12.** "LTIP Incentive Bonus Target" means the amount, as determined by the Committee, that a Participant will receive if the Company achieves the Financial Performance Goal at 100% of target, multiplied by two.

**Section 2.13.** "Participant" means an employee of the Company who satisfies the requirements of Section 3.1 for eligibility to participate in the Plan.

**Section 2.14.** "Payment Date" means the date on which all or a portion of the LTIP Incentive Bonus Award is paid to a Participant.

**Section 2.15.** "Plan" means this Smurfit-Stone Container Corporation 2009 Long-Term Incentive Plan, as amended from time to time.

**Section 2.16.** "Restructuring Goal" shall mean that the weighted average of the closing trading prices of the Debtors' series of five publicly traded bonds over the 30-calendar-day period preceding the Effective Date is not less than fifty cents (\$0.50).

**Section 2.17.** "Retirement" shall mean (i) in the case of a Participant with an employment agreement or comparable agreement with the Company, the Participant's "retirement" as defined in such agreement, and (ii) in the case of a Participant with no employment agreement or comparable agreement with the Company, the termination of the Participant's employment with the Company at or after the attainment of age 55 and completion of at least 5 years of service with the Company.

### **ARTICLE III ELIGIBILITY**

#### **Section 3.1. Eligibility Requirements.**

(a) Subject to Section 3.2, an individual shall be entitled to participate in the Plan only if he or she:

- (1) was employed on or before April 28, 2009, or such later date as determined by the Committee on a case by case basis;
- (2) is designated by the Committee as an eligible Participant; and
- (3) is an employee of the Company or one of its subsidiaries or affiliates on the Payment Date with respect to all or a portion of the LTIP Incentive Bonus Award,

in all cases as determined by the Committee.

(b) In the event a Participant transfers into or otherwise assumes another position that participates in the Plan (or does not participate in the Plan, as the case may be), the Committee retains the sole discretion to determine what adjustments, if any, will be made to the Participant's LTIP Incentive Bonus Target and/or LTIP Incentive Bonus Award.

#### **Section 3.2. Effect of Termination of Employment.**

(a) Notwithstanding anything herein to the contrary, a Participant shall not be entitled to receive the Financial Performance Goal or Restructuring Goal portion of the LTIP Incentive Bonus Award if, prior to the Payment Date for such portion, he or she resigns from his or her employment or is terminated by the Company for Cause, in each case as determined by the Committee.

(b) If a Participant's employment is terminated by the Company without Cause, ~~on or after January 1, 2010,~~ any portion of the LTIP Incentive Bonus Award earned by such Participant ~~as if he or she had remained employed through the Effective Date or, if applicable, December 31, 2010, and~~ shall be prorated on the basis of the number of calendar days during which such Participant has been employed by the Company between January 1, 2009 and the Payment Date for such portion of the LTIP Incentive Bonus Award.

(c) Unless determined otherwise by the Committee and set forth in the Participant's Award Statement or a written agreement between the Participant and the Company, if a Participant's employment is terminated prior to the Payment Date for either the Financial Performance Goal or Restructuring Goal portion of the LTIP Incentive Bonus Award by reason of death, Disability, or Retirement, ~~on or after January 1, 2010,~~ the Participant will receive a prorated payout (to be prorated on the basis of the number of calendar days during which such Participant has been employed by the Company between January 1, 2009 and the Payment Date for such portion of the LTIP Incentive Bonus Award) of such portion of the LTIP Incentive Bonus Award earned by such Participant, ~~as if he or she had remained employed through the Effective Date or, if applicable, December 31, 2010.~~ Payment of an earned portion of the LTIP Incentive Bonus Award shall be made as provided in Section 5.1.

#### **ARTICLE IV CALCULATION OF AWARD**

**Section 4.1. Plan Components.** The Plan will contain two components -- the Financial Performance Goal component and the Restructuring Goal component. Each of the Financial Performance Goal and Restructuring Goal components of a Participant's LTIP Incentive Bonus Award will be determined based upon 50% of the Participant's LTIP Incentive Bonus Target, in each case as determined by the Committee.

**Section 4.2. Financial Performance Goal Component.** The Committee shall establish the Financial Performance Goal, and the Company's EBITDAR for calendar years 2009 and 2010 shall be measured against a scale that includes a threshold level of performance below which no payment shall be made with respect to the Financial Performance Goal portion of the LTIP Incentive Bonus Target, levels of performance at which specified percentages of the Financial Performance Goal portion of the LTIP Incentive Bonus Target shall be paid, and a maximum level of performance above which no additional Financial Performance Goal portion of the LTIP Incentive Bonus Target shall be paid. The Financial Performance Goal may be changed by the Committee in the event of changed or unanticipated circumstances, as determined by the Committee in its discretion.

**Section 4.3. Restructuring Goal Component.** If the Restructuring Goal is achieved,

each Participant shall be paid 175% of 50% of his or her total LTIP Incentive Bonus Target as the Restructuring Goal portion of his or her LTIP Incentive Bonus Award. If the Restructuring Goal is not achieved, no Participant shall be paid any amounts with respect to the Restructuring Goal.

**Section 4.4.** Award Statements. The Company shall provide an Award Statement to each Participant as soon as practicable after the Effective Date. Each Award Statement shall be subject to the terms of the Plan and shall specify: (i) the LTIP Incentive Bonus Target that such Participant is eligible to receive; (ii) the Financial Performance Goal; (iii) the Restructuring Goal; (iv) the impact of the attainment of various levels of the Financial Performance Goal on the amounts to be paid to the Participant with respect to such Financial Performance Goal; and (v) the impact of the attainment of the Restructuring Goal on the amounts to be paid to the Participant with respect to such Restructuring Goal, as determined by the Committee and to the extent not inconsistent with the Company's plan of reorganization confirmed by the United States Bankruptcy Court for the District of Delaware presiding over the Bankruptcy Proceeding (the "Court") or the Court's confirmation order with respect thereto (the "Confirmation Order").

**Section 4.5.** Emergence from Bankruptcy / Liquidation. In the event that the Court confirms a plan of reorganization for the Company prior to December 31, 2010, then each Participant shall, on or within 60 days after the Effective Date, receive (a) a pro-rata amount (based on the ratio of the number of calendar days that occurred during the period beginning January 1, 2009 and ending on the Effective Date) of the Financial Performance Goal portion of the LTIP Incentive Bonus Award, based on the Company's actual achievement of the Financial Performance Goal (pro-rated as appropriate for any partial 2010 calendar year) and (b) if the Restructuring Goal has been achieved, the full amount of the Restructuring Goal portion of the LTIP Incentive Bonus Award (without any pro-ration) as set forth in Section 4.3 above.

## **ARTICLE V PAYMENT OF AWARDS**

**Section 5.1.** Time of Payment. Payment of the Financial Performance Goal portion of the LTIP Incentive Bonus Award shall, unless paid earlier pursuant to Section 4.5, be made on or within the 30-day period following December 31, 2010. Payment of the Restructuring Goal portion of the LTIP Incentive Bonus Award shall be made within the 60-day period following the Effective Date, if the Restructuring Goal has been achieved.

**Section 5.2.** Form of Payment. The Financial Performance Goal portion and the Restructuring Goal portion of the LTIP Incentive Bonus Award shall each be paid in the form of a lump sum cash payment.

## **ARTICLE VI ADMINISTRATION**

**Section 6.1.** The Plan shall be administered by the Committee, which shall have full power and authority to interpret, construe and administer the Plan in accordance with the provisions set forth herein and to the extent not inconsistent with the Company's plan of

reorganization confirmed by the Court or the Confirmation Order, including without limitation the authority to: (i) select the Participants who are eligible to participate in the Plan; (ii) determine, consistent with the terms of the Plan, (A) the terms and conditions of each Award Statement, (B) the LTIP Incentive Bonus Target that each Participant is eligible to receive, (C) the Financial Performance Goal, (D) the level at which the Financial Performance Goal is attained, (E) whether the Restructuring Goal has been achieved, and (F) the impact of the attainment of various levels of the Financial Performance Goal on the amounts to be paid to Participants with respect to the Financial Performance Goal portion of the LTIP Incentive Bonus Award; and (iii) make any other determination and take any other action that the Committee deems necessary or desirable for administration of the Plan. The Committee may also delegate to any corporation, committee or individual, regardless of whether the individual is an employee of the Company, the duty to act for the Committee hereunder.

**Section 6.2.** Decisions of the Committee shall be final, conclusive and binding on all persons or entities, including the Company and any Participant. A majority of the members of the Committee may determine its actions.

**Section 6.3.** No officer or employee of the Company shall be liable to any person for any action taken or omitted in connection with the interpretation and administration of the Plan unless attributable to his or her own willful misconduct or lack of good faith.

**Section 6.4.** The expenses of administering the Plan shall be paid by the Company and shall not be charged against the Plan.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.1.** Successors. All obligations of the Company under the Plan will be binding on any successor to the Company, whether the existence of the successor results from a Change in Control or otherwise.

**Section 7.2.** Nontransferability. Unless the Committee provides for the transferability of a particular LTIP Incentive Bonus and such transferability is specified in the Award Statement or in a document prepared by the Committee and relating to the LTIP Incentive Bonus Target or LTIP Incentive Bonus Award, no LTIP Incentive Bonus Award or any rights thereto shall be transferable other than by will or the laws of descent and distribution or pursuant to any beneficiary designation procedures as may be approved by the Committee for such purpose. Except to the extent permitted by the foregoing sentence, no LTIP Incentive Bonus Award payable hereunder may be assigned, alienated, sold, transferred, anticipated, pledged, encumbered, or subjected to any charge or legal process, and if any such attempt is made, or a person eligible for any LTIP Incentive Bonus Award hereunder becomes bankrupt, the amount under the Plan which would otherwise be payable with respect to such person may be eliminated by the Committee which, in its sole discretion, may cause the same to be held or applied for the benefit of one or more of the dependents of such person or make any other disposition of such amount that it deems appropriate.

**Section 7.3.** Beneficiary Designation. Each Participant may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any amount payable under the Plan is to be paid in case the Participant should die before receiving

such amount. Each beneficiary designation will revoke all prior designations by the same Participant with respect to this Plan, must be in a form prescribed by the Committee, and must be made during the Participant's lifetime. If the Participant's designated beneficiary predeceases the Participant or no beneficiary has been designated, any amount remaining unpaid at the Participant's death may, in the sole discretion of the Committee, (i) be paid to the Participant's estate or to one or more of the dependents of the Participant or (ii) be disposed of in any other manner that the Committee deems appropriate.

**Section 7.4.** Claim to LTIP Incentive Bonus Award and Employment Rights. Nothing in this Plan shall require the Company to segregate or set aside any funds or other property for purposes of paying all or any portion of a LTIP Incentive Bonus Award hereunder. Neither the adoption of the Plan nor the continued operation thereof shall confer upon any Participant any right to continue in the employ of the Company or shall in any way affect the right and power of the Company to dismiss or otherwise terminate the employment of any Participant at any time for any reason, with or without cause.

**Section 7.5.** Income Tax Withholding/Rights of Offset. The Company shall have the right to deduct and withhold from any amounts paid pursuant to the Plan all federal, state, local and other taxes as may be required by law. In addition to the foregoing, the Company shall have the right to set off against any amount which would otherwise be payable hereunder, the amount of any debt, judgment, claim, expense or other obligation owed at such time by the Participant to the Company, to the extent permitted by law.

**Section 7.6.** Effective Date of Plan. The Plan shall take effect on the Effective Date.

**Section 7.7.** Rights as a Creditor. No Participant shall have any interest in any particular assets of the Company by reason of the right to receive a benefit under the Plan and any such Participant shall have only the rights of a general unsecured creditor of the Company with respect to any rights under the Plan

**Section 7.8.** Severability. If any provision of the Plan is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan, and the Plan will be construed and enforced as if the illegal or invalid provision had not been included.

**Section 7.9.** Governing Law. All questions pertaining to the construction, validity and effect of the Plan, and all questions pertaining to any amount payable hereunder, shall be determined in accordance with the laws of the State of Delaware.