

As filed with the Securities and Exchange Commission on June 22, 1999  
 Registration No. 333-\_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
 Washington, D.C.

Form S-8  
 Registration Statement under The Securities Act of 1933

WELLS REAL ESTATE INVESTMENT TRUST, INC.  
 (Exact name of Registrant as specified in its charter)

-----  
 Maryland 58-2328421  
 -----  
 (State or other jurisdiction (I.R.S. Employer Identification No.)  
 of incorporation or organization)

-----  
 3885 Holcomb Bridge Road 30092  
 Norcross, Georgia  
 -----  
 (Address of Principal Executive Offices) (Zip Code)

WELLS REAL ESTATE INVESTMENT TRUST, INC.  
 INDEPENDENT DIRECTOR STOCK OPTION PLAN  
 (Full Title of the Plan)

Leo F. Wells, III, President  
 Wells Real Estate Investment Trust, Inc.  
 3885 Holcomb Bridge Road, Norcross, Georgia 30092  
 (Name and Address of Agent For Service)

(770) 449-7800  
 (Telephone Number, Including Area Code, of Agent For Service)

COPY TO:  
 Donald Kennicott, Esq.  
 Michael K. Rafter, Esq.  
 Holland & Knight LLP  
 One Atlantic Center, Suite 2000  
 1201 West Peachtree Street, N.E.  
 Atlanta, Georgia 30309-3400

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$.01 par value	100,000	\$12.00	\$1,200,000	\$334 (2)

(1) This amount includes options to acquire 22,500 shares that have been issued (Initial Options) and options to acquire an additional 77,500 shares to be issued in the future (Subsequent Options). This Registration Statement also covers any additional shares that may hereafter become purchasable as a result of the adjustment provisions in the Plan.

- (2) Determined in accordance with Rule 457(h), the registration fee is based on the exercise price per share for shares presently subject to the Initial Options, and the minimum exercise price per share for the Subsequent Options.

## PART I

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

The documents containing the information specified in Part I of Form S-8 will be sent or given to plan participants as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the rules and regulations of the Securities and Exchange Commission ("SEC") and the instructions to Form S-8, Wells Real Estate Investment Trust, Inc. (the "Registrant") is not filing such documents with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents, which include the statement of availability required by Item 2 of Form S-8, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN REGISTRATION STATEMENT

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

The following documents previously filed by the Registrant with the SEC are incorporated by reference in this Registration Statement:

- (1) The Registrant's Annual Report on Form 10-K for the year ended December 31, 1998;
- (2) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1999;
- (3) The Registrant's Definitive Proxy Statement on Schedule 14A filed April 30, 1999;
- (4) The Registrant's Amendment to Current Report on Form 8-K/A filed on April 16, 1999;
- (5) The Registrant's Current Report on Form 8-K filed on February 17, 1999; and
- (6) The description of the Registrant's Common Stock, par value \$.01 per share, set forth under the caption "Description of Capital Stock" in the 424(b) Prospectus and incorporated by reference into the Registrant's Registration Statement on Form 8-A (No. 0-25739) filed with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") on April 8, 1999.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all shares of Common Stock being offered hereby have been sold or which deregisters all shares of Common Stock then remaining unsold, shall be deemed incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Any statement in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by

reference herein modifies or replaces such statement. Any statement so modified or

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superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 2-418 of the Maryland General Corporation Law ("MGCL") permits a corporation to indemnify its directors and officers and certain other parties against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty; (ii) the director or officer actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the director or officer in connection with the proceeding; provided, however, that if the proceeding is one by or in the right of the corporation, indemnification may not be made with respect to any proceeding in which the director or officer has been adjudged to be liable to the corporation. In addition, a director or officer may not be indemnified with respect to any proceeding charging improper personal benefit to the director or officer, whether or not involving action in the director's or officer's official capacity, in which the director or officer was adjudged to be liable on the basis that personal benefit was received. The termination of any proceeding by conviction, or upon a plea of nolo contendere or its equivalent, or an entry of any order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet the requisite standard of conduct required for indemnification to be permitted.

In addition, Section 2-418 of the MGCL requires that, unless prohibited by its charter, a corporation may indemnify any director or officer who is made a party to any proceeding by reason of service in that capacity against reasonable expenses incurred by the director or officer in connection with the proceeding, in the event that the director or officer is successful, on the merits or otherwise, in the defense of the proceeding.

The Registrant's Articles of Incorporation and Bylaws provide in effect for the indemnification by the Registrant of the directors and officers of the Registrant to the fullest extent permitted by applicable law. The Registrant has purchased directors' and officers' liability insurance for the benefit of its directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.

Exhibit

Number	Description
3.1*	Form of Amended and Restated Articles of Incorporation of the Registrant
3.2*	Bylaws of the Registrant
3.2(a)*	Amendment No. 1 to Bylaws of the Registrant
5	Opinion of Holland & Knight LLP
23.1	Consent of Holland & Knight LLP (contained in Exhibit 5)
23.2	Consent of Arthur Andersen LLP
24	Power of Attorney (contained on the signature page hereto)
99	Wells Real Estate Investment Trust, Inc. Independent Director Stock Option Plan

\* Incorporated by reference to the Registrant's Registration Statement on Form S-11 (Commission No. 333-32099), as amended to date.

Item 9. Undertakings.

The undersigned hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by the foregoing paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

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(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities

Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Norcross, and the State of Georgia on this 16th day of June, 1999.

WELLS REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ Leo F. Wells, III

-----  
Leo F. Wells, III  
President

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated. Each person whose signature appears below constitutes and appoints Leo F. Wells, III and Brian M. Conlon, and each of them individually, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and any and all Registration Statements filed pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, may lawfully do or cause to be done by virtue hereof.

Signature -----	Title -----	Date -----
/s/ Leo F. Wells, III ----- Leo F. Wells, III	President (Principal Executive Officer) and Director	June 16, 1999
/s/ Brian M. Conlon ----- Brian M. Conlon	Executive Vice President (Principal Financial and Accounting Officer) and Director	June 16, 1999
/s/ John L. Bell -----	Director	June 16, 1999

John L. Bell		
/s/ Richard W. Carpenter	Director	June 16, 1999
----- Richard W. Carpenter		
/s/ Bud Carter	Director	June 16, 1999
----- Bud Carter		
/s/ William H. Keogler, Jr.	Director	June 16, 1999
----- William H. Keogler, Jr.		
/s/ Donald S. Moss	Director	June 16, 1999
----- Donald S. Moss		
/s/ Walter W. Sessoms	Director	June 16, 1999
----- Walter W. Sessoms		
/s/ Neil H. Strickland	Director	June 16, 1999
----- Neil H. Strickland		

EXHIBIT INDEX

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5	Opinion of Holland & Knight LLP
23.1	Consent of Holland & Knight LLP (contained in Exhibit 5)
23.2	Consent of Arthur Andersen LLP
24	Power of Attorney (contained on the signature page hereto)
99	Wells Real Estate Investment Trust, Inc. Independent Director Stock Option Plan

\* -----  
Incorporated by reference to the Registrant's Registration Statement on Form S-11 (Commission No. 333-32099), as amended to date.

EXHIBIT 5

June 21, 1999

Wells Real Estate Investment Trust, Inc.  
3885 Holcomb Bridge Road  
Norcross, Georgia 30092

Re: Registration Statement on Form S-8 Relating to Shares of Common Stock  
Issuable Pursuant to the Wells Real Estate Investment Trust, Inc.  
Independent Director Stock Option Plan

Ladies and Gentlemen:

This opinion is being furnished in connection with the Registration Statement on Form S-8 (the "Registration Statement") of Wells Real Estate Investment Trust, Inc. (the "Company"), under the Securities Act of 1933, as amended, for the registration of 100,000 shares of common stock, par value \$.01 per share, issuable pursuant to the Wells Real Estate Investment Trust, Inc. Independent Director Stock Option Plan (the "Plan"). The common stock issuable pursuant to the Plan is referred to herein as the "Shares."

We have examined and are familiar with the following: (a) Articles of Incorporation of the Company, as amended, as filed in the Office of the Secretary of State of the State of Maryland; (b) Bylaws of the Company; (c) proceedings of the Board of Directors and shareholders of the Company in connection with the adoption of the Plan; and (d) such other documents, Company records and matters of law as we have deemed to be pertinent.

Based on the foregoing, it is our opinion that:

1. The Company has been duly incorporated and is validly existing and in good standing under the laws of the State of Maryland.
2. The Shares have been duly authorized and, when paid for and issued in accordance with the terms of the Plan, will be duly and validly issued, fully paid and nonassessable.

We hereby consent to the inclusion of this opinion as Exhibit 5 in the Registration Statement. In giving this consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Securities and Exchange Commission promulgated thereunder.

HOLLAND & KNIGHT LLP

/s/ Holland & Knight LLP

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference in this registration statement of our report dated January 27, 1999 included in Wells Real Estate Investment Trust, Inc.'s Form 10-K for the year ended December 31, 1998 and to all references to our Firm included in this registration statement.

ARTHUR ANDERSEN LLP

/s/ Arthur Andersen LLP

Atlanta, Georgia  
June 17, 1999

WELLS REAL ESTATE INVESTMENT TRUST, INC.  
INDEPENDENT DIRECTOR STOCK OPTION PLAN

## ARTICLE I.

## GENERAL

## 1.1. PURPOSE:

Wells Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), hereby adopts this Independent Director Stock Option Plan (the "Plan"). The purpose of the Plan is to foster and promote the long-term financial success of the Company by attracting and retaining outstanding non-employee directors by enabling them to participate in the Company's growth through the granting of Options (as defined in Article II) which entitle them to purchase shares of the Company's common stock, par value \$.01 per share ("Shares").

## 1.2. PARTICIPATION:

Only directors of the Company who at the time an Option is granted are "Non-Employee Directors" as such term is defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 16b-3"), or any similar rule which may subsequently be in effect (the "Independent Directors") shall receive an Option under the Plan.

## 1.3. SHARES SUBJECT TO THE PLAN:

Shares to be issued upon exercise of Options granted under the Plan may be in whole or in part from authorized but unissued Shares or treasury Shares of the Company. A maximum of 100,000 Shares (the "Plan Maximum") may be issued for all purposes under the Plan (subject to adjustment pursuant to Section 3.2), and the Company shall reserve 100,000 authorized but unissued Shares as of the date this Plan is established for issuance upon exercise of Options granted under the Plan. Any Shares reserved for issuance under Options which for any reason are canceled or terminated without having been exercised shall not be counted in determining whether the Plan Maximum has been reached. Options for fractional shares shall not be granted.

## 1.4. GENDER AND NUMBER:

Except when otherwise indicated by the context, words in the masculine gender when used in the Plan shall include the feminine gender, the singular shall include the plural, and the plural shall include the singular.

## ARTICLE II.

## STOCK OPTION AWARDS

## 2.1. AWARD OF STOCK OPTIONS:

(a) Effective on the later of (i) the date on which an Independent Director becomes a member of the Board of Directors of the Company or (ii) the date this Plan is adopted by the stockholders of the Company, each Independent Director who satisfies the conditions set forth in Section 1.2 will automatically be awarded a stock option (an "Initial Option") under the Plan to purchase 2,500 Shares (subject to adjustment pursuant to Section 3.2). Effective on the date of each Annual Meeting of Stockholders of the Company (an "Annual Meeting"), commencing with the Company's Annual Meeting in 2000, each Independent Director then in office who satisfies the conditions set forth in Section 1.2 will automatically be awarded a stock option (a "Subsequent Option"

or the "Subsequent Options," collectively with the "Initial Options" referred to herein as an "Option" or "Options") to purchase 1,000 Shares (subject to adjustment pursuant to Section 3.2). The Options are not intended to qualify as "incentive stock options" as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) Notwithstanding any other provision of this Plan, no Options shall be issued pursuant to Section 2.1(a) to the extent that the issuance of such Options would (i) enable the Independent Directors as a group to hold more than 10% of the outstanding Shares if such Options were exercised; (ii) result in the Company being "closely-held" within the meaning of Code Section 856(h); (iii) cause the Company to own, directly or constructively, 10% or more of the ownership interests in a tenant of the property of the Company (or of the property of one or more partnerships in which the Company is a partner), within the meaning of Code Section 856(d)(2)(B); or (iv) cause, in the opinion of counsel to the Company, the Company to fail to qualify (or create, in the opinion of counsel to the Company, a material risk that the Company would no longer qualify) as a real estate investment trust within the meaning of Code Section 856. To the extent that the issuance of Options pursuant to Section 2.1(a) would violate any of these limitations, the number of Shares that may be purchased under the Options to be issued to each of the Independent Directors shall be reduced pro rata. To the extent that the number of Shares which may be purchased under Options issued to an Independent Director is reduced in any year as a result of the application of these limitations, Options to purchase such Shares shall be issued to the Independent Director in any subsequent year in which issuance of such Options, after taking into account the Options to be issued to the Independent Directors in such subsequent year under Section 2.1(a), would not violate the limitations imposed by this Section 2.1(b). To the extent that the issuance of an Option is delayed until a subsequent year under this Section 2.1, the Option shall be treated for all purposes under this Plan as having been issued in such subsequent year.

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## 2.2. STOCK OPTION CERTIFICATES:

The award of an Option shall be evidenced by a certificate executed by an officer of the Company.

## 2.3. OPTION PRICE:

The purchase price of a Share (the "Option Price") under each Initial Option granted shall be \$12.00 per Share, and the Option Price under each Subsequent Option granted shall be the greater of (i) \$12.00 per Share, or (ii) the Fair Market Value (as defined in Section 3.5) of a Share on the last business day preceding the date of any Annual Meeting.

## 2.4. EXERCISE AND TERM OF OPTIONS:

(a) Options may be exercised by the delivery of written notice of exercise and payment of the aggregate Option Price for the Shares to be purchased to the Secretary of the Company. The Option Price may be paid in cash (including check, bank draft or money order) or, unless in the opinion of counsel to the Company doing so may result in a possible violation of law, by delivery of Shares already owned by the Independent Director, valued at Fair Market Value on the date of the exercise. As soon as practicable after receipt of each notice and full payment, the Company shall deliver to the Independent Director a certificate or certificates representing the purchased Shares. An Independent Director shall have none of the rights of a shareholder until a certificate or certificates for Shares underlying the Option(s) exercised are issued and no adjustment will be made for dividends or other rights for which the record date is prior to the date such certificate or certificates are issued.

(b) Each certificate for Shares issued upon exercise of an Option, unless at the time of exercise such Shares are registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act"), shall bear the following legend:

"NO SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION OF THESE SHARES SHALL BE MADE EXCEPT PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR PURSUANT TO AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT REGISTRATION IS NOT REQUIRED."

Any certificate issued at any time in exchange or substitution for any certificate bearing such legend (except a new certificate issued upon completion of a public distribution pursuant to a registration statement under the Act of the securities represented thereby) shall also bear the above legend unless, in the opinion of such counsel as shall be reasonably approved by the Company, the securities represented thereby no longer need be subject to such restrictions.

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Each certificate for Shares issued upon exercise of an Option shall also bear any legends required by the Company's Articles of Incorporation and the transferability of the certificate and the Shares represented thereby shall be subject to the restrictions contained in the Company's Articles of Incorporation.

(c) Options granted hereunder shall lapse on the first to occur of (i) the tenth (10th) anniversary of the date of grant, (ii) the removal for cause of the Independent Director as a Director of the Company, or (iii) three (3) months following the date the Independent Director ceases to be a Director of the Company for any reason, except death or disability, as provided below. In the event such Option or Options have not lapsed prior thereto due to occurrence of one of the foregoing events, an Independent Director's Initial Option shall (subject to Section 3.1) become exercisable as follows: (i) 20% of the shares on the date of grant, (ii) an additional 20% of the shares on each anniversary following the date of grant for a period of four (4) years until 100% of the shares become exercisable. In the event such Options have not lapsed prior thereto, an Independent Director's Subsequent Options shall (subject to Section 3.1) become fully exercisable on the second (2nd) anniversary of the date on which each such Subsequent Option was granted. Options shall continue to be exercisable until the first to occur of (i) the tenth (10th) anniversary of the date of grant, (ii) the removal for cause of the Independent Director as a Director of the Company, or (iii) three (3) months following the date the Independent Director ceases to be a Director of the Company for any reason, except death or disability. Notwithstanding the foregoing, Options granted under this Plan shall continue to be exercisable in the case of death or disability for a period of one (1) year after death or the disabling event, provided that the death or disabling event occurs while the person is an Independent Director and prior to his or her removal for cause, resignation or ceasing to be a Director of the Company for any other reason and the Option is otherwise exercisable on the date of the death or disabling event; PROVIDED, HOWEVER, if the Option is exercised within the first six (6) months after it becomes exercisable, any Shares issued pursuant to such exercise may not be sold until the six (6) month anniversary of the date of the grant of the Option. An Independent Director is removed "for cause" for gross negligence or willful misconduct in the execution of his duties; or for conviction of, or entry of a plea of guilty or nolo contendere to, any felony or any act of fraud, embezzlement, misappropriation, or a crime involving moral turpitude.

(d) Notwithstanding any other terms or provisions herein to the contrary, no Option may be exercised if, in the opinion of the Company's counsel, such exercise would jeopardize the Company's status as a real estate investment trust under the Code.

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#### ARTICLE III.

##### 3.1. NONTRANSFERABILITY; BENEFICIARIES:

No Option awarded under the Plan shall be transferable by the Independent

Director otherwise than by will or, if the Independent Director dies intestate, by the laws of descent and distribution. All Options exercised during the Independent Director's lifetime shall be exercised only by the Independent Director or his legal representative. Any transfer contrary to this Section 3.1 will nullify the Option. Notwithstanding any other provisions of this Plan, Options granted under this Plan shall continue to be exercisable in the case of death or disability for a period of one (1) year after death or the disabling event, provided that the death or disabling event occurs while the person is an Independent Director and prior to his or her removal for cause, resignation or ceasing to be an Independent Director for any other reason and the Option is exercisable on the date of the Independent Director's death or disabling event; PROVIDED, HOWEVER, if the Option is exercised within the first six (6) months after it becomes exercisable, any Shares issued on such exercise may not be sold until the six (6) month anniversary of the date of the grant of the Option. Each Independent Director may name, from time to time, any beneficiary or beneficiaries (who may be named contingently or successively) who may exercise such Options. Each designation will revoke all prior designations by such Independent Director, must be in writing and will be effective only when filed with the Executive Vice President of the Company during his lifetime.

### 3.2. ADJUSTMENT UPON CERTAIN CHANGES:

(a) If the outstanding Shares are (i) increased, decreased, or (ii) changed into, or exchanged for, a different number or kind of shares or securities of the Company, through a reorganization or merger in which the Company is the surviving entity, or through a combination, recapitalization, reclassification, stock split, stock dividend, stock consolidation or otherwise, an appropriate adjustment shall be made in the number and kind of Shares that may be issued pursuant to an Option and in the minimum number of Shares that must be issued and outstanding prior to the issuance of the Initial Options pursuant to Section 2.1(a)(iii). A corresponding adjustment to the consideration payable with respect to all Options granted prior to any such change shall also be made. Any such adjustment, however, shall be made without change in the total payment, if any, applicable to the portion of the Option not exercised but with a corresponding adjustment in the Option Price for each Share.

(b) Upon the dissolution or liquidation of the Company, or upon a reorganization, merger or consolidation of the Company with one or more corporations as a result of which the Company is not the surviving corporation, or upon sale of all or substantially all of the Company's property, the Plan shall terminate, and any outstanding Options shall terminate and be forfeited. However, holders of Options may exercise any Options that are otherwise exercisable immediately prior to the dissolution, liquidation, consolidation or merger.

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Notwithstanding the foregoing, the Board of Directors may provide in writing in connection with, or in contemplation of, any such transaction for any or all of the following alternatives (separately or in combinations): (i) for the assumption by the successor corporation of the Options theretofore granted or the substitution by such corporation for such Options of awards covering the stock of the successor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices; (ii) for the continuance of the Plan by such successor corporation in which event the Plan and the Options shall continue in the manner and under the terms so provided; or (iii) for the payment in cash or Shares in lieu of and in complete satisfaction of such Options.

### 3.3. AMENDMENT, SUSPENSION AND TERMINATION OF PLAN:

The Board of Directors may suspend or terminate the Plan or any portion thereof at any time and may amend it from time to time in such respects as the Board of Directors may deem advisable in order that any Options thereunder shall conform to or otherwise reflect any change in applicable laws or regulations, or to permit the Company or the Independent Directors to enjoy the benefits of any

change in applicable laws or regulations, or in any other respect the Board of Directors may deem to be in the best interests of the Company; provided, however, that no such amendment shall without stockholder approval to the extent required by law, or any agreement or the rules of any stock exchange upon which the Shares may be listed or of any national market system on which Shares may be traded: (a) except as provided in Section 3.2, materially increase the number of Shares which may be issued under the Plan; (b) materially modify the requirements as to eligibility for participation in the Plan; (c) materially increase the benefits accruing to Independent Directors under the Plan; or (d) extend the termination date of the Plan. No such amendment, suspension or termination shall: (x) impair the rights of Independent Directors affected thereby; or (y) make any change that would disqualify the Plan, or any other plan of the Company intended to be so qualified, from the exemption provided by Rule 16b-3.

#### 3.4. TAX WITHHOLDING:

(a) The Company shall have the power to withhold, or require an Independent Director to remit to the Company, an amount sufficient to satisfy any withholding or other tax due from the Company with respect to any amount payable and/or Shares issuable under the Plan, and the Company may defer such payment or issuance unless indemnified to its satisfaction.

(b) Subject to the consent of the Board of Directors of the Company, due to the exercise of an Option, an Independent Director may make an irrevocable election (an "Election") to: (a) have Shares otherwise issuable hereunder withheld; or (b) tender back to the Company Shares received; or (c) deliver back to the Company previously acquired Shares of the Company having a Fair Market Value sufficient to satisfy all or part of the Independent Director's

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estimated tax obligations associated with the transaction. Such Election must be made by an Independent Director prior to the date on which the relevant tax obligation arises. The Board of Directors of the Company may disapprove of any Election, may suspend or terminate the right to make Elections, or may provide with respect to any Option under this Plan that the right to make Elections shall not apply to such Option.

#### 3.5. DEFINITION OF FAIR MARKET VALUE:

"Fair Market Value" on any date shall mean the average of the Closing Price (as defined below) per Share for the five (5) consecutive Trading Days (as defined below) ending on such date. The "Closing Price" on any date shall mean the last sale price, regular way (as defined below), or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal national securities exchange on which the Shares are listed or admitted to trading or, if the Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by The NASDAQ Stock Market, Inc. ("NASDAQ") or, if NASDAQ is no longer in use, the principal automated quotation system that may then be in use or, if the Shares are not quoted by any such organization, the average of the closing bid and asked prices as selected by the Board or, if there is no professional market maker making a market in the Shares, the average of the last ten (10) sales pursuant to the IPO if the IPO has not concluded, or, if the IPO has concluded, the average of the last ten (10) purchases by the Company pursuant to its Share Repurchase Program ("SRP"), then the average of such lesser number of purchases, or, if the SRP is not then in existence, the price at which the Company is then offering Shares to the public if the Company is then engaged in a public offering of Shares, or if the Company is not then offering Shares to the public, the price per share at which a Stockholder may purchase Shares pursuant to the Company's Distribution Reinvestment Program (the "DRP") if such DRP is then in existence, or if the DRP is not then in existence, the fair market value of a Share as determined by the Company, in its sole

discretion. "Trading Day" shall mean a day on which the principal national securities exchange or national automated quotation system on which the Shares are listed or admitted to trading is open for the transaction of business or, if the Shares are not listed or admitted to trading on any national securities exchange or national automated quotation system, shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of Georgia are authorized or obligated by law or executive order to close.

The term "regular way" means a trade that is effected in a recognized securities market for clearance and settlement pursuant to the rules and procedures of the National Securities Clearing Corporation, as opposed to a trade effect "ex-clearing" for same day or next day settlement.

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3.6. PLAN NOT EXCLUSIVE:

The adoption of the Plan shall not preclude the adoption by appropriate means of any other stock option or other incentive plan for Independent Directors or other Directors of the Company.

3.7. LISTING, REGISTRATION AND LEGAL COMPLIANCE:

Each Option shall be subject to the requirement that if at any time counsel to the Company shall determine that the listing, registration or qualification thereof or of any Shares or other property subject thereto upon any securities exchange or under any foreign, federal or state securities or other law or regulation, or the consent or approval of any governmental body or the taking of any other action to comply with or otherwise, with respect to any such law or regulation, is necessary or desirable as a condition to or in connection with the aware of such Option or the issue, delivery or purchase of Shares or other property thereunder, no such Option may be exercised or paid in Shares or other property 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, and the holder of the award will supply the Company with such certificates, representations and information as the Company shall request and shall otherwise cooperate with the Company in effecting or obtaining such listing, registration, qualification, consent, approval or other action. The Company may at any time impose any limitations upon the exercise, delivery or payment of any Option which, in the opinion of the Board of Directors of the Company, are necessary or desirable in order to cause the Plan or any other plan of the Company to comply with Rule 16b-3. If the Company, as part of an offering of securities or otherwise, finds it desirable because of foreign, federal or state legal or regulatory requirements to reduce the period during which Options may be exercised, the Board of Directors of the Company may, without the holders' consent, so reduce such period on not less than 15 days written notice to the holders thereof.

3.8. RIGHTS OF INDEPENDENT DIRECTORS:

Nothing in the Plan shall confer upon any Independent Director any right to serve as an Independent Director for any period of time or to continue serving at his present or any other rate of compensation.

3.9. NO OBLIGATION TO EXERCISE OPTION:

The granting of an Option shall impose no obligation upon the Independent Director to exercise such Option.

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3.10. REQUIREMENTS OF LAW; GOVERNING LAW:

The granting of Options under this Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required. The Plan, and all

agreements hereunder, shall be construed in accordance with and governed by the laws of the State of Georgia. The provisions of this Plan shall be interpreted so as to comply with the conditions or requirements of Rule 16b-3, unless a contrary interpretation of any such provision is otherwise required by applicable law.