

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 11, 2020

Build-A-Bear Workshop, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware ----- (State or Other Jurisdiction of Incorporation)	001-32320 ----- (Commission File Number)	43-1883836 ----- (IRS Employer Identification No.)
--	---	---

1954 Innerbelt Business Center Drive St. Louis, Missouri ----- (Address of Principal Executive Offices)	63114 ----- (Zip Code)
--	------------------------------

(314) 423-8000

(Registrant's Telephone Number, Including Area Code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	BBW	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

(e) On April 14, 2020, the Board of Directors (the “Board”) of Build-A-Bear Workshop, Inc. (the “Company”) adopted, subject to stockholder approval, the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan (the “2020 Incentive Plan”). On June 11, 2020, at the Company’s 2020 Annual Meeting of Stockholders (the “Annual Meeting”), the Company’s stockholders approved the 2020 Incentive Plan. The 2020 Incentive Plan, which is administered by the Compensation and Development Committee of the Board, permits the grant of stock options (including both incentive and non-qualified stock options), stock appreciation rights, other stock-based awards, including restricted stock and restricted stock units, cash-based awards, and performance awards pursuant to the terms of the 2020 Incentive Plan. The 2020 Incentive Plan will terminate on April 14, 2030, unless earlier terminated by the Board.

The number of shares of the Company’s common stock authorized for issuance under the 2020 Incentive Plan is 1,000,000, plus shares of stock that remained available for issuance under the Build-A-Bear Workshop, Inc. 2017 Omnibus Incentive Plan (the “2017 Incentive Plan”) at the time the 2020 Incentive Plan was approved by the Company’s stockholders, and shares that are subject to outstanding awards made under the 2017 Incentive Plan that on or after April 14, 2020 may be forfeited, expire or be settled for cash.

A description of the 2020 Incentive Plan was included in the Company’s definitive proxy statement on Schedule 14A for the Annual Meeting filed with the Securities and Exchange Commission (the “SEC”) on May 1, 2020 (the “2020 Proxy Statement”) under the caption “Proposal 4 – Approval of the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan,” which description is incorporated herein by reference. The description of the 2020 Incentive Plan contained in the 2020 Proxy Statement is qualified in its entirety by reference to the complete text of the 2020 Incentive Plan, which is included as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Company held its Annual Meeting on June 11, 2020. The following proposals were submitted by the Board to a vote of the Company’s stockholders, and the final results of the voting on each proposal are noted below.

Proposal 1. Election of Directors

The following three directors were nominated to serve for three-year terms expiring at the 2023 annual meeting of stockholders or until their successors are duly elected and qualified. The three directors, as indicated below, were elected as directors of the Company by the requisite affirmative vote of the majority of votes cast in person or by proxy.

Nominee	For	Against	Abstain	Broker Non-Votes
Maxine Clark	4,414,899	3,555,280	47,233	4,877,983
Sharon John	7,919,460	48,633	49,319	4,877,983
Sarah Personette	4,485,354	3,480,262	51,796	4,877,983

Proposal 2. Ratification of Appointment of Independent Accountants

The stockholders were asked to ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending January 30, 2021. The appointment was approved by the requisite affirmative vote of a majority of the shares represented in person or by proxy and entitled to vote, as indicated below.

For	Against	Abstain	Broker Non-Votes
12,090,549	759,490	45,356	—

Proposal 3. Advisory Vote Approving Executive Compensation

The stockholders were asked to approve the executive compensation as disclosed in the Proxy Statement for the Annual Meeting pursuant to the compensation disclosure rules of the SEC. The proposal was approved by the requisite affirmative vote of a majority of the shares represented in person or by proxy and entitled to vote, as indicated below.

For	Against	Abstain	Broker Non-Votes
6,476,788	797,179	743,445	4,877,983

Proposal 4. Approval of the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan

The stockholders were asked to approve the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan. The proposal was approved by the requisite affirmative vote of a majority of the shares represented in person or by proxy and entitled to vote, as indicated below.

For	Against	Abstain	Broker Non-Votes
7,096,722	857,843	62,847	4,877,983

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number Description of Exhibit

10.1 [Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan](#)

SIGNATURES

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

BUILD-A-BEAR WORKSHOP, INC.

Date: June 12, 2020

By: /s/ Eric Fencil
Name: Eric Fencil
Title: Chief Administrative Officer,
General Counsel and Secretary

BUILD-A-BEAR WORKSHOP, INC.
2020 OMNIBUS INCENTIVE PLAN
Effective April 14, 2020

BUILD-A-BEAR WORKSHOP, INC.
2020 OMNIBUS INCENTIVE PLAN

Table of Contents

	Page
1. Establishment, Purpose of the Plan and Effect on Prior Plan.	1
2. Definitions.	1
3. Stock Subject to the Plan and Annual Award Limits.	5
4. Administration.	7
5. Options.	9
6. Stock Appreciation Rights	11
7. Other Stock-Based Awards and Cash-Based Awards.	12
8. Performance Awards.	13
9. Recoupment of Award.	13
10. Nontransferability of Awards.	13
11. Tax Withholding.	13
12. Adjustments Upon Changes in Capitalization or Corporation Acquisitions.	14
13. Amendment and Termination.	16
14. Awards Previously Granted.	18
15. Dividends and Dividend Equivalents.	18
16. Effect of Termination of Service on Awards.	18
17. Term of Plan.	19
18. Severability.	19
19. Non-Waiver of Rights.	19
20. Assignment.	19
21. No Right To Continued Employment or Other Status.	19
22. Choice of Law.	19
23. Awards to Employees of Non-United States Subsidiaries.	20
24. Section 409A.	20

BUILD-A-BEAR WORKSHOP, INC.
2020 OMNIBUS INCENTIVE PLAN

1. Establishment, Purpose of the Plan and Effect on Prior Plan.

A. Establishment. Build-A-Bear Workshop, Inc., a Delaware corporation, establishes an incentive compensation plan to be known as the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan, as set forth in this document. The Plan permits the grant of various forms of equity and cash-based awards. The Plan shall become effective upon approval of the Plan by the Board (the “Effective Date”) and shall remain in effect as provided in Section 17. The Plan and each Award granted hereunder are conditioned on and shall be of no force or effect until the Plan is approved by the stockholders of the Company.

B. Plan Purpose. The purpose of the Plan is to provide the Company with a means to assist in recruiting, retaining and rewarding certain employees, Directors and consultants and to motivate such individuals to exert their best efforts on behalf of the Employer by providing incentives through the granting of Awards. By granting Awards to such individuals, the Company expects that the interests of the recipients will be better aligned with those of the Employer.

C. Prior Plan. As of the date the Plan is approved by the Company’s stockholders, the Build-A-Bear Workshop, Inc. 2017 Omnibus Incentive Plan, effective March 14, 2017 (the “Prior Plan”), will be frozen and no further awards will be issued thereunder. Awards issued pursuant to the Prior Plan that are outstanding as of the date of stockholder approval of the Plan shall remain outstanding and shall be administered in accordance with the terms of the Prior Plan and applicable award agreements thereunder.

2. Definitions.

Unless the context clearly indicates otherwise, the following capitalized terms shall have the meanings set forth below:

- A. “Act” means the Securities Exchange Act of 1934, as amended, or any successor thereto.
- B. “Award” means a grant under the Plan of an Option, Stock Appreciation Right, Cash-Based Award, Other Stock-Based Award or Performance Award.
- C. “Award Agreement” means a written or electronic agreement entered into by the Company and a Participant, or a written or electronic statement issued by the Company to a Participant, which in either case contains (either expressly or by reference to the Plan or any sub-plan created hereunder) the terms and provisions applicable to an Award granted under the Plan, including any amendment or modification thereof. The Committee may provide for the use of electronic, Internet or other non-paper Award Agreements, and the use of electronic, Internet or other non-paper means for the acceptance thereof and actions thereunder by a Participant.

- D. "Board" means the Board of Directors of the Company or any duly appointed Committee thereof.
- E. "Cash-Based Award" means an Award described in Section 7 as a Cash-Based Award.
- F. "Change in Control" means (i) the purchase or other acquisition (other than from the Company) by any person, entity or group of persons, within the meaning of Section 13(d) or 14(d) of the Act of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of 20% or more of either the then-outstanding shares of Stock of the Company or the combined voting power of the Company's then-outstanding voting securities entitled to vote generally in the election of Directors, excluding, however, the following: (a) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company or Subsidiary, (b) any acquisition by the Company or any Subsidiary, (c) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; (ii) individuals who, as of the date hereof, constitute the Board (and, as of the date hereof, the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any person who becomes a Director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the Directors then comprising the Incumbent Board shall be, for purposes of this Section, considered as though such person were a member of the Incumbent Board; (iii) the consummation of a Corporate Transaction; excluding, however, such a Corporate Transaction pursuant to which all or substantially all of the individuals and entities who are the beneficial owners, respectively, of the outstanding shares of common stock of the Company immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than fifty percent (50%) of, respectively, the outstanding shares of Stock, and the combined voting power of the then outstanding securities entitled to vote generally in the election of Directors of the surviving or acquiring entity resulting from such Corporate Transaction or a direct or indirect parent entity of the surviving or acquiring entity (including, without limitation, an entity which 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) in substantially the same proportions (as compared to each other) as their ownership, immediately prior to such Corporate Transaction, of the outstanding shares of Stock of the Company and outstanding voting securities entitled to vote generally in the election of Directors, as the case may be; or (iv) a liquidation or dissolution of the Company. Notwithstanding the foregoing, solely for purposes of an Award subject to Code Section 409A, if the Award provides for a change in the time or form of payment upon a Change in Control or provides for the payment of the Award upon a Change in Control, then no Change in Control shall be deemed to have occurred upon an event described in this paragraph F unless the event would also constitute a permissible payment event under Code Section 409A and Treasury Regulation Section 1.409A-3(i)(5).

- G. “Code” means the Internal Revenue Code of 1986, as amended, or any successor thereto.
- H. “Committee” means the Compensation and Development Committee of the Board, or any committee appointed by the Board in accordance with the Company’s amended and restated bylaws from among its members for the purpose of administering the Plan. Members of the Committee shall be “Non-Employee Directors” within the meaning of Rule 16b-3 under the Act.
- I. “Company” means Build-A-Bear Workshop, Inc., a Delaware corporation.
- J. “Corporate Transaction” means (i) a sale of all or substantially all of the assets of the Company; (ii) a merger or consolidation of the Company with or into any other corporation, regardless of whether the Company is the surviving corporation; or (iii) a statutory share exchange involving capital stock of the Company.
- K. “Director” means a member of the Board of Directors of the Company.
- L. “Dividend Equivalents” means a right, granted to a Participant under the Plan, to receive cash, shares, other Awards or other property equal in value to dividends paid with respect to shares of Stock.
- M. “Employer” means the Company and any other entity directly or indirectly controlling, controlled by, or under common control with, the Company or any other entity designated by the Board in which the Company has an interest.
- N. “Fair Market Value” means (i) if the Stock is listed on any established stock exchange, the closing sales price for such Stock on such exchange for the Trading Date applicable to the date of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable; or (ii) in the absence of an established market for the Stock, the value determined in good faith by the Board based on a reasonable valuation method that is consistent with the requirements of Code Section 409A and the Treasury Regulations thereunder.
- For purposes of determining the Fair Market Value with respect to an Award received by an employee in connection with an initial hire or a promotion within the Company, the date of determination shall mean the Trading Date which is such employee’s first date of hire or promotion. For all other Awards, the date of determination shall mean the Trading Date on which the Committee (or its delegate) approves the Award.
- O. “Incentive Stock Option” means a stock option which is an incentive stock option within the meaning of Code Section 422.
- P. “Non-qualified Stock Option” means a stock option which is not an Incentive Stock Option.
- Q. “Officer” means an officer of the Company as defined in Rule 16a-1(f) of the Act.

- R. "Option" means both an Incentive Stock Option and a Non-qualified Stock Option.
- S. "Other Stock-Based Award" means an Award granted pursuant to Section 7 and described as an Other Stock-Based Award, including an Award of Restricted Stock or Restricted Stock Units.
- T. "Parent" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of the granting of the Option, each of the corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain, or such other meaning as may be hereafter ascribed to it in Code Section 424.
- U. "Participant" means an employee, Director or consultant of the Employer who is selected by the Committee to participate in the Plan and be eligible to receive an Award.
- V. "Performance Award" means a right to receive an Option, Stock Appreciation Right, Cash-Based Award or Other Stock-Based Award as determined by the Committee, subject to satisfying certain performance-based vesting conditions and other restrictions or limitations as may be set forth in the Plan and the applicable Award Agreement.
- W. "Plan" means the Build-A-Bear Workshop, Inc. 2020 Omnibus Incentive Plan.
- X. "Replacement Award" means an award granted to a Participant to replace the unvested portion of a then-outstanding Award upon a Change in Control that meets the requirements set forth in Section 12.B(3).
- Y. "Restricted Stock" means Stock granted to a Participant subject to a risk of forfeiture pursuant to Section 7.
- Z. "Restricted Stock Unit" means a right granted to a Participant that shall be evidenced by a bookkeeping entry representing the equivalent of one share of Stock pursuant to Section 7.
- AA. "Separation from Service" means a "separation from service" as such term is defined under Code Section 409A and the Treasury Regulations issued thereunder. Except as otherwise required to comply with Code Section 409A, a Participant shall be considered not to have had a Separation from Service where the level of bona fide services performed continues at a level that is more than twenty percent (20%) of the average level of service performed by the Participant during the immediately preceding thirty six (36) month period (or if providing services for less than thirty six (36) months, such lesser period) after taking into account any services that the Participant provided prior to such date or that the Company and the Employee reasonably anticipate the Participant may provide (whether as an Participant or independent contractor) after such date.

- BB. “Six Month Delay” means the required delay in payment to a Participant who is a “specified employee” of amounts subject to Section 409A that are paid upon Separation from Service, pursuant to Code Section 409A(a)(2)(B)(i). When a Six Month Delay is required, the payment date shall be not before the date which is six months after the date of Separation from Service or, if earlier, the date of the Participant’s death. The term specified employee shall have the meaning ascribed to this term under Code Section 409A.
- CC. “Statutory Option Stock” means any stock acquired through the exercise of an Incentive Stock Option.
- DD. “Stock” means the common stock, par value of \$0.01 per share, of the Company.
- EE. “Stock Appreciation Right” means a stock appreciation right described in Section 6.
- FF. “Subsidiary” means any corporation or other legal entity (other than the Company) in an unbroken chain of corporations or other legal entities beginning with the Company if, at the time of granting an Award, each of the corporations or other legal entities other than the last corporation or other legal entity in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock or other equity in one of the other corporations or other legal entities in such chain, or such other meaning as may be hereafter ascribed to it in Code Section 424.
- GG. “Substitute Award” means an Award granted upon the assumption of, or in substitution or exchange for, outstanding awards granted by a company or other entity acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines.
- HH. “Trading Date” means a day on which national stock exchanges are open for trading.

3. Stock Subject to the Plan and Annual Award Limits.

- A. Share Reserve. The number of shares of Stock allocated to the Plan and reserved to satisfy Awards under the Plan as of the Effective Date (the “Share Reserve”) shall be an aggregate of 1,000,000 shares of Stock (plus shares of Stock that had remained available under the Prior Plan). The maximum number of shares of Stock with respect to which Incentive Stock Options may be granted under the Plan shall be an aggregate of 1,000,000. Awards shall be counted against this limit as one (1) share of Stock for every one (1) share of Stock subject to the Awards. For Awards with a variable number of shares of Stock on the grant date, the number of shares of Stock to be counted against the Share Reserve prior to the settlement of the Award shall be the maximum number of shares of Stock that could be received under that particular Award. Notwithstanding the preceding, in no event shall the number of shares of Stock awarded to Participants under the Plan, when taken in combination with the number of outstanding shares of Stock previously issued by the Company, a Parent or Subsidiary, exceed the limit specified in the Company Certificate of Incorporation, as amended. The Company may, in its discretion, use shares held in the treasury or shares acquired on the public market, if applicable, in lieu of authorized but unissued shares.

B. Share Counting.

- (1) Shares of Stock subject to an Award granted under the Plan or an Award granted under the Prior Plan that on or after the Effective Date is forfeited, expires or is settled for cash (in whole or in part) shall, to the extent of such forfeiture, expiration or cash settlement, be added to the Share Reserve.
- (2) Shares subject to Substitute Awards shall not be counted against the Share Reserve specified in Section 3.A nor shall they reduce the shares of Stock authorized for grant to a Participant in any calendar year.
- (3) Notwithstanding anything to the contrary herein, the following shares of Stock shall not be added to the Share Reserve: (i) shares of Stock tendered by the Participant in payment of the purchase price of an Option; (ii) shares of Stock tendered by the Participant or withheld by the Company to satisfy any tax withholding obligation with respect to Options, Stock Appreciation Rights or Other Stock-Based Awards; (iii) shares of Stock subject to a Stock Appreciation Right or Other Stock-Based Awards that are not issued in connection with its share settlement on exercise or vesting thereof; and (iv) shares of Stock reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of Options.

C. Effect of Plans Operated by Acquired Companies. If a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of Stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Share Reserve. Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not eligible to participate in the Plan prior to such acquisition or combination.

D. Annual Award Limits. Subject to adjustment as set forth in Section 12, the following limits (each an “Annual Award Limit” and, collectively, “Annual Award Limits”) shall apply to grants of Awards:

- (1) The maximum aggregate number of shares of Stock for which Options or Stock Appreciation Rights may be granted to any Participant in any calendar year shall be 200,000 shares (for avoidance of the doubt, this limit applies, in the aggregate, to all Awards subject to this paragraph (1)).

- (2) The maximum aggregate number of shares of Stock that may be subject to Other Stock-Based Awards granted to any one Participant in any calendar year shall be 200,000 shares (for avoidance of doubt, this limit applies, in the aggregate, to all forms of Awards subject to this paragraph (2)).
- (3) The maximum aggregate amount that may be paid to any Participant in any calendar year under a Cash-Based Awards or any other Award that is payable or denominated in cash shall be \$5,000,000 determined as of the date of payout (for avoidance of doubt, this limit applies in the aggregate, to all forms of Awards subject to this paragraph (3)). To the extent that any form of Award subject to this paragraph (3) is to be settled in shares of Stock, either pursuant to the discretion of the Committee or an election by the applicable Participant, compliance with the limit established by this paragraph (3) shall be determined by calculating the dollar value of the shares to be issued in settlement based on the Fair Market Value of such shares as of the applicable settlement date.
- (4) Notwithstanding any provision in the Plan to the contrary, the maximum number of shares of Stock subject to Awards granted during any calendar year to a non-employee Director, taken together with any cash fees paid during the calendar year to the non-employee Director in respect of such Director's service as a member of the Board during such year (including service as a member or chair of any committees of the Board), shall not have an aggregate Fair Market Value determined on the grant date of the applicable Award in excess of \$1,000,000.

E. Minimum Vesting Standards. Any Award granted under the Plan shall be subject to a minimum vesting or exercise period of at least one (1) year. Notwithstanding the immediately preceding sentence, the Committee may grant Awards covering up to five percent (5%) of the Share Reserve without respect to the minimum vesting standards set forth in this Section 3.E.

4. Administration.

A. Committee Power and Authority. Subject to any express limitations set forth in the Plan, the Committee shall have full and exclusive discretionary power and authority to take such actions as it deems necessary and advisable with respect to the administration of the Plan including, but not limited to, the following:

- (1) To determine from time to time which of the persons eligible under the Plan shall be granted Awards, when and how each Award shall be granted, what type or combination of types of Awards shall be granted, the provisions of each Award granted (which need not be identical), including the time or times when a person shall be permitted to receive shares pursuant to an Award and the number of shares subject to an Award or the value of an Award;

- (2) To construe and interpret the Plan and Awards granted under it, and to establish, amend, and revoke rules and regulations for its administration;
- (3) To correct any defect, omission or inconsistency in the Plan or in an Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective;
- (4) To approve forms of Award Agreements for use under the Plan;
- (5) To determine Fair Market Value of a share of Stock;
- (6) To amend any Award Agreement as permitted under the Plan;
- (7) To adopt sub-plans and/or special provisions applicable to stock awards regulated by the laws of a jurisdiction other than and outside of the United States. Such sub-plans and/or special provisions shall be subject to and consistent with the terms of the Plan, except to the extent the Committee determines that different terms and conditions are necessary or desirable to comply with the laws of a jurisdiction other than and outside of the United States;
- (8) To authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award;
- (9) To determine whether Awards will be settled in shares of Stock, cash or in any combination thereof;
- (10) To determine whether Awards will provide for Dividend Equivalents;
- (11) To establish a program whereby Participants designated by the Committee may reduce compensation otherwise payable in cash in exchange for Awards under the Plan;
- (12) To authorize a program permitting eligible Participants to surrender outstanding Awards in exchange for newly granted Awards subject to any applicable stockholder approval requirements;
- (13) To impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by a Participant or other subsequent transfers by a Participant of any shares of Stock subject to an Award, including, without limitation, restrictions under an insider trading policy and restrictions as to the use of a specified brokerage firm for such resales or other transfers;

- (14) To waive any restrictions, conditions or limitations imposed on an Award at the time the Award is granted or at any time thereto including but not limited to forfeiture, vesting and treatment of Awards upon a termination of employment, subject to the minimum vesting standards set forth in Section 3.E of the Plan;
- (15) To permit Participants to elect to defer payments of Awards; provided that any such deferrals shall comply with applicable requirements of the Code, including Code Section 409A; and
- (16) To extend the timing of the settlement or payment of an Award to the extent permitted under Code Section 409A and other applicable law and rules of the exchange that is the primary trading market of the Stock.

B. Delegation of Authority. The Committee may, to the extent permitted by law, delegate its responsibilities and authority hereunder to an executive officer of the Company. Notwithstanding anything herein to the contrary, the Chief Executive Officer and the Chief Financial Officer are specifically designated under the Plan to have plenary authority, in their discretion, as applicable, to also determine individuals, other than themselves or other Officers, to whom, and the time or times at which, Awards shall be granted and the number of shares, if applicable, subject to such Award.

C. Award Date. An Award granted under the Plan shall be deemed to be made on the date on which the Committee, by formal action of its members duly recorded in the records thereof, makes an Award to a Participant (but in no event prior to the Effective Date); provided that, such Award is evidenced by a written Award Agreement duly executed on behalf of the Company and on behalf of the Participant, if applicable, within a reasonable time after the date of the Committee action. Notwithstanding the foregoing, for an Award granted under the Plan by Chief Executive Officer or Chief Financial Officer, the date on which such officer takes action to make an Award to a Participant shall be deemed to be the determination date.

5. Options.

The Committee, in its discretion, may grant Options which are Incentive Stock Options or Non-qualified Stock Options, as evidenced by the Award Agreement, and shall be subject to the foregoing and the following terms and conditions and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine:

A. Type of Option. Incentive Stock Options may be granted to any Participant classified by the Committee as an employee of the Company, a Parent or a Subsidiary. A Non-qualified Stock Option may be granted to any individual Participant selected by the Committee.

B. Option Prices. The purchase price of the Stock under each Option shall not be less than one hundred percent (100%) of the Fair Market Value of the Stock at the time of the granting of the Option; provided that, in the case of a Participant who owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, a Parent or a Subsidiary, the purchase price of the Stock under each Incentive Stock Option shall not be less than one hundred ten percent (110%) of the Fair Market Value of the Stock on the date such Option is granted.

- C. Exercise - Elections and Restrictions. Options may be exercised by delivery to the Company of a written notice of exercise signed by the proper persons or by any other form of notice (including electronic notice) approved by the Committee together with payment in full as described in this Section 5.C.

The purchase price for an Option is to be paid in full upon the exercise of the Option, either (i) in cash; (ii) in the discretion of the Committee, by the tender to the Company (either actual or by attestation) of shares of Stock already owned by the Participant having a Fair Market Value equal to the cash exercise price of the Option being exercised; (iii) in the discretion of the Committee, by withholding shares of Stock otherwise issuable pursuant to the Option having a Fair Market Value equal to the cash exercise price of the Option being exercised; (iv) in the discretion of the Committee, by any other means allowable pursuant to applicable law; or (v) in the discretion of the Committee, by any combination of the payment methods specified in clauses (i), (ii), (iii) and (iv) hereof; provided that, no shares of Statutory Option Stock may be tendered in exercise of an Incentive Stock Option unless (a) such shares have been held by the Participant for at least one (1) year and (b) at least two (2) years have elapsed since such Incentive Stock Option was granted. The proceeds of sale of Stock subject to the Option are to be added to the general funds of the Company or to the shares of the Stock held in its treasury, and used for its corporate purposes as the Board shall determine, subject to the provisions of the Plan.

- D. Option Terms. The term of each Option shall not be more than ten (10) years from the date of granting thereof or such shorter period as is prescribed in the Award Agreement; provided that, in the case of a Participant who owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, a Parent or a Subsidiary, the term of any Incentive Stock Option shall not be more than five (5) years from the date of granting thereof or such shorter period as prescribed in the Award Agreement. Within such limit, Options will be exercisable at such time or times, and subject to such terms, restrictions and conditions, as the Committee shall, in each instance, approve, which need not be uniform for all Participants.
- E. Fractional Shares. To the extent Options are subject to restrictions, Options shall vest in whole shares only, and the holder of an Option shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement.

F. Stockholder Rights. The holder of an Option shall have none of the rights of a stockholder with respect to the shares subject to Option until such shares shall be issued to him or her upon the exercise of his or her Option.

G. Additional Incentive Stock Option Requirements.

(1) Grant Limits. The maximum aggregate Fair Market Value (determined at the time an Option is granted) of the Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company, a Parent and a Subsidiary) shall not exceed \$100,000.

(2) Notice of Disposal. A Participant who disposes of Stock acquired upon the exercise of an Incentive Stock Option either (i) within two (2) years after the date of grant of such Incentive Stock Option or (ii) within one (1) year after the transfer of such shares to the Participant upon exercise, shall notify the Company of such disposition and of the amount realized upon such disposition.

6. Stock Appreciation Rights

The Committee, in its discretion, may grant a Stock Appreciation Right evidenced by an Award Agreement and shall be subject to the following terms and conditions and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine:

A. Strike Price. The strike price per share of Stock underlying a Stock Appreciation Right shall not be less than one hundred percent (100%) of the Fair Market Value of the Stock on the grant date of the Stock Appreciation Right.

B. Settlement of Stock Appreciation Rights. A Stock Appreciation Right shall entitle the Participant upon settlement to a payment from the Company in an amount equal to the excess of: (i) the Fair Market Value on the settlement date of a share of Stock, over (ii) the strike price (i.e., the Fair Market Value of a share of Stock on the grant date), multiplied by the number of Stock Appreciation Rights settled. Payment may be made, in the discretion of the Committee and as provided in the Award Agreement, in (i) Stock; (ii) cash; or (iii) any combination of Stock and cash. Cash shall be paid for fractional shares of Stock upon the exercise of a Stock Appreciation Right.

C. Term of Stock Appreciation Rights. The term of each Stock Appreciation Right shall not be more than ten (10) years from the date of granting thereof or such shorter period as is prescribed in the Award Agreement.

D. Stockholder Rights. The holder of a Stock Appreciation Right shall have none of the rights of a stockholder with respect to the shares subject to the Stock Appreciation Right until such shares shall be issued to him or her upon the exercise of his or her Stock Appreciation Right.

- E. Limitations. The Committee may impose such conditions upon the Stock Appreciation Rights as it determines in its sole discretion. To the extent Stock Appreciation Rights are subject to restrictions, Stock Appreciation Rights shall vest in whole shares only, and the holder of a Stock Appreciation Right shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement.

7. Other Stock-Based Awards and Cash-Based Awards.

The Committee may, in its sole discretion, grant Awards of Stock, Restricted Stock, Restricted Stock Units and other Awards that are valued in whole or in part by reference to the Fair Market Value of Stock. These Awards shall collectively be referred to herein as Other Stock-Based Awards. The Committee may also, in its sole discretion, grant Cash-Based Awards, which shall have a value as may be determined by the Committee.

- A. General. Other Stock-Based Awards and Cash-Based Awards shall be in such form, and dependent on such conditions, as the Committee shall determine, including, but not limited to, the completion of a specified period of service, the occurrence of an event, or the attainment of performance objectives. Other Stock-Based Awards and Cash-Based Awards may be granted with or in addition to other Awards. Subject to the other terms of the Plan, Other Stock-Based Awards and Cash-Based Awards may be granted to such Participants in such amounts and upon such terms, restrictions and conditions, and at any time and from time to time, as shall be determined by the Committee and set forth in an Award Agreement. If an Other Stock-Based Award or Cash-Based Award is not by its terms exempt from the requirements of Code Section 409A, then the applicable Award Agreement shall contain terms and conditions necessary to avoid adverse tax consequences specified in Code Section 409A.
- B. Fractional Shares. To the extent Other Stock-Based Awards are subject to restrictions, Other Stock-Based Awards shall vest in whole shares only, and the holder of an Other Stock-Based Award shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement.
- C. Stockholder Rights. The holder of Other Stock-Based Awards, except for an Other Stock-Based Award that is in the form of Restricted Stock, shall have none of the rights of a stockholder with respect to the Stock subject to such Other Stock-Based Award until such Stock shall be issued to the holder upon the settlement of the Other Stock-Based Award. Except as otherwise provided by the Committee, the holder of Other Stock-Based Awards that is in the form of a Restricted Stock shall have same rights of a stockholder with respect to the Stock subject to such Restricted Stock Award, including voting rights and dividend rights, provided that such dividend rights shall be subject to the requirements of Section 15.A.

8. Performance Awards.

- A. General. A Performance Award shall be subject to performance-based vesting conditions and other restrictions, based on such factors and occurring over such period of time as the Committee may determine in its discretion. The Committee shall determine, in its sole discretion and as provided in the Award Agreement, the type of underlying Award or Awards subject to the Performance Award, including an Option, Stock Appreciation Right, Cash-Based Award, or Other Stock-Based Award. The Committee may provide whether any consideration other than Services must be received by the Company or any Subsidiary as a condition precedent to the settlement of a Performance Award.
- B. Settlement of Performance Award. Following the vesting of a Performance Award, settlement of the Award and payment to the Participant shall be made in accordance with the terms of the type of underlying Award subject to the Performance Award, and may include issuance of Restricted Stock or Restricted Stock Units under the Plan. If the Performance Award is not by its terms exempt from the requirements of Code Section 409A, then the applicable Award Agreement shall contain terms and conditions necessary to avoid adverse tax consequences specified in Code Section 409A.

9. Recoupment of Award.

Any Award granted under the Plan shall be subject to any provisions of: (A) applicable laws providing for the recoupment or clawback of incentive compensation; (B) the terms of any Company recoupment, clawback or similar policy in effect at the time of grant of the Award; and (C) any recoupment, clawback or similar provisions that may be included in the applicable Award Agreement.

10. Nontransferability of Awards.

Unless otherwise determined by the Committee and expressly set forth in an Award Agreement, an Award granted under the Plan and all rights thereunder shall, by its terms, be non-transferable, nonassignable and not subject to encumbrance in any manner otherwise than by will or the laws of descent and distribution and an Award may be exercised, if applicable, during the lifetime of the Participant thereof, only by the Participant or his or her guardian or legal representative. Notwithstanding the above, the Committee may not provide in an Award Agreement that an Incentive Stock Option is transferable. Any attempted assignment, transfer, mortgage, pledge or encumbrance except as herein authorized, shall be void and of no effect.

11. Tax Withholding.

The Committee shall have the right to condition the delivery, vesting and retention of Stock, cash or other property under an Award upon full satisfaction by the Participant of all tax withholding requirements with respect to the Award. The Committee will prescribe such rules for the withholding of federal, state and local taxes, including social security and Medicare withholding tax, as it deems necessary. In satisfaction of tax withholding requirements, the Committee may, but need not, hold back shares of Stock from an Award or permit a Participant to tender previously owned shares of Stock (but not in excess of the maximum withholding required by law) or sell any shares of Stock contingently issued or credited by the Company for the purpose of paying such Award or any other Award under the Plan to raise the amount necessary to satisfy applicable withholding requirements.

12. Adjustments Upon Changes in Capitalization or Corporation Acquisitions.

- A. Adjustment Upon Changes in Capitalization. Notwithstanding any other provisions of the Plan, unless otherwise provided in the Award Agreement, the number and class of shares subject to each outstanding Award and the exercise prices, if applicable, shall be adjusted, to the same pro rata number of shares and price as in the original Award Agreement, in the event of changes in the outstanding Stock by reason of stock dividends, stock splits, reverse stock splits, recapitalization, mergers, consolidations, statutory share exchange, sale of all or substantially all assets, split-ups, combinations or exchanges of shares and the like, and, in the event of any such change in the outstanding Stock, the aggregate number and class of shares available under the Plan and the maximum number of shares as to which Awards may be granted to an individual shall be appropriately adjusted by the Committee, whose determination shall be conclusive. In the event the Company, a Parent or a Subsidiary enters into a transaction described in Code Section 424(a) with any other corporation, the Committee shall, unless otherwise provided in the Award Agreement, grant options to employees or former employees of such corporation in substitution of options previously granted to them upon such terms and conditions as shall be necessary to qualify such grant as a substitution described in Code Section 424(a).
- B. Effect of a Change in Control. Upon a Change in Control, all then-outstanding Awards shall be immediately vested and payable in accordance with paragraphs (1) and (2) below, except as may otherwise be provided in a then-effective written agreement (including an Award Agreement) between a Participant and the Company. The immediately preceding sentence shall not apply the extent that a Replacement Award meeting the requirements of paragraph (3) below is provided to the Participant to replace an Award subject to Section 12.B(3).
- (1) Upon a Change in Control, a Participant's then-outstanding Awards, other than Options and Stock Appreciation Rights, that are not vested shall become fully vested and any applicable performance conditions shall be deemed satisfied as if target performance was achieved, and shall be settled in cash, Stock or a combination thereof, as determined by the Committee, within thirty (30) days following such Change in Control (except to the extent that settlement of the Award must be made pursuant to its original schedule in order to comply with Code Section 409A).
- (2) Upon a Change in Control, a Participant's then-outstanding Options and Stock Appreciation Rights that are not vested shall immediately become fully vested and any applicable performance conditions shall be deemed satisfied as if target performance was achieved, and otherwise treated in accordance with the applicable Award Agreement. Notwithstanding the immediately preceding sentence, the Committee may elect to cancel such outstanding Options or Stock Appreciation Rights and pay the Participant an amount of cash (less normal withholding taxes) equal to the excess of (i) the value, as determined by the Committee, of the consideration (including cash) received by the holders of Stock for a share of Stock as a result of the Change in Control (or, if the Company or Stockholders do not receive any consideration as a result of the Change in Control, the Fair Market Value of the Stock on the day immediately prior to the Change in Control) over (ii) the exercise price of such Options or the strike price of such Stock Appreciation Rights, multiplied by the number of shares of Stock subject to each such Award, in accordance with Code Section 409A to the extent applicable. No payment shall be made to a Participant for any Option or Stock Appreciation Right if the exercise price or strike price for such Option or Stock Appreciation Right, respectively, exceeds the value, as determined by the Committee, of the consideration (including cash) received by a holder of a share of Stock upon the Change in Control.

- (3) Upon a Change in Control, a Replacement Award granted to replace the unvested portion of a then-outstanding Award (the “Replaced Award”) shall meet the conditions of this Section 12.B(3) if:
- (A) it is of the same type as the Replaced Award (or, if it is of a different type as the Replaced Award (such as a deferred cash equivalent award), the Committee, as constituted immediately prior to the Change in Control, finds such type acceptable);
 - (B) it has a value at least equal to the Fair Market Value of the Replaced Award;
 - (C) it relates to publicly traded equity securities listed on a U.S. national securities exchange of the Company or its successor in the Change in Control or another entity that is affiliated with the Company or its successor following the Change in Control, except in the case of a Replacement Award granted in the form of a deferred cash equivalent award;
 - (D) its other terms and conditions are not less favorable to the recipient of the Replacement Award than the terms and conditions of the Replaced Award (including the provisions that would apply in the event of a subsequent Change in Control); and
 - (E) if a Participant incurs an involuntary termination of employment at any time following the Change in Control, it shall become fully vested and, in the case of Replacement Awards in the form of (i) an Option or Stock Appreciation Right, shall be fully exercisable, (ii) a Performance Award, shall be deemed to be satisfied at target performance and payable upon or within 60 days of such termination of employment, or (iii) any other Award, shall be payable upon or within 60 days of such termination of employment. Notwithstanding the foregoing, with respect to any Replacement Award that is considered nonqualified deferred compensation subject to Code Section 409A, settlement of such Replacement Award shall be made pursuant to its original schedule if necessary to comply with Code Section 409A.

The determination of whether the conditions of Section 12.B(3) are satisfied shall be made by the Committee, as constituted immediately before the Change in Control, in its sole discretion.

13. Amendment and Termination.

- A. Amendment and Termination of the Plan and Awards. Subject to this Section 13 and Section 14 of the Plan, the Board may at any time amend, suspend or terminate the Plan, and the Board or Committee may at any time amend, suspend or terminate any outstanding Award Agreement. Notwithstanding the foregoing, no amendment of the Plan shall be made without stockholder approval if stockholder approval is required pursuant to rules promulgated by any stock exchange or quotation system on which the Stock is listed or quoted or by applicable U.S. state corporate laws or regulations, or applicable U.S. federal laws or regulations.
- B. No Repricing of Options and Stock Appreciation Rights. Without the prior approval of the Company's stockholders and except as provided for in Section 12, no Option or Stock Appreciation Right may be (i) amended to reduce the exercise price; (ii) cancelled in exchange for the grant of any new Option or Stock Appreciation Right with a lower exercise price; or (iii) cancelled in exchange for cash, other property or the grant of any new Award at a time when the exercise price of the Option or Stock Appreciation Right is greater than the current Fair Market Value of a share of Stock.
- C. Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events.
- (1) The Committee may make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in Section 12) affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent unintended dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

- (2) The Committee or its authorized delegate shall retain the discretion to decrease the amount payable pursuant to a Cash-Based Award below the amount that would otherwise be payable upon attainment of the applicable performance goal(s) over a performance period that does not exceed a term of one (1) year, either on a formula or discretionary basis or any combination, as the Committee or its authorized delegate determines is appropriate.
- (3) Any sub-plan may provide that the Committee or its authorized delegate shall retain the discretion to decrease the amount payable pursuant to a Cash-Based Award granted under such sub-plan below the amount that would otherwise be payable upon attainment of the applicable performance goal(s) over a performance period that does not exceed a term of one (1) year, either on a formula or discretionary basis or any combination, as the Committee or its authorized delegate determines is appropriate.
- (4) The determination of the Committee (or its authorized delegate, if applicable) as to any adjustments made pursuant to subparagraphs (1), (2) and (3) above shall be conclusive and binding on Participants under the Plan. By accepting an Award under the Plan, a Participant agrees to any adjustment to the Award made pursuant to this Section 13 without further consideration or action.

D. Amendment to Conform to Law. Notwithstanding any other provision of the Plan to the contrary, the Board may amend the Plan and the Board or the Committee may amend an Award Agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan or an Award Agreement to (i) any law relating to plans of this or similar nature, and to the administrative regulations and rulings promulgated thereunder; (ii) any applicable exchange requirements; and (iii) any compensation recoupment policy adopted by the Company. By accepting an Award under the Plan, a Participant agrees to any amendment made pursuant to this Section 13.D to the Plan and any Award without further consideration or action.

E. Amendment to Avoid Imposition of Tax under Code Section 409A. Without limiting the generality of the foregoing, to the extent applicable, notwithstanding anything herein to the contrary, the Plan and Awards issued hereunder shall be interpreted in accordance with Code Section 409A and Department of Treasury Regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date of the Plan. Notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any amounts payable hereunder will be taxable to a Participant under Code Section 409A and related Department of Treasury guidance, prior to payment to such Participant of such amount, the Company may (i) adopt such amendments to the Plan and Awards and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Committee determines necessary or appropriate to preserve the intended tax treatment of the benefits provided by the Plan and Awards hereunder and/or (ii) take such other actions as the Committee determines necessary or appropriate to avoid the imposition of and additional tax under Code Section 409A. By accepting an Award under the Plan, a Participant agrees to any amendment made pursuant to this Section 13.E to the Plan and any Award without further consideration or action.

14. Awards Previously Granted.

Notwithstanding any other provision of the Plan to the contrary, other than Sections 12 and 13, no termination or amendment of the Plan or an Award Agreement shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Participant holding such Award.

15. Dividends and Dividend Equivalents.

- A. Payment of Dividends on Restricted Stock. With respect to an Award of Restricted Stock, the Committee may grant or limit the right of a Participant to receive dividends declared on shares of Stock that are subject to such Award to the extent the Award is not yet vested. If the Committee grants the right of a Participant to receive dividends declared on shares subject to an unvested Award of Restricted Stock, then such dividends shall be subject to the same performance conditions and service conditions, as applicable, as the underlying Award. Dividends shall be paid in cash or reinvested in additional shares or Awards by such formula and at such time and subject to such limitations as may be determined by the Committee.
- B. Payment of Dividend Equivalents on Awards Other than Options, Stock Appreciation Rights and Restricted Stock. Except for Options, Stock Appreciation Rights and Restricted Stock, the Committee may grant Dividend Equivalents on Restricted Stock Units or other share equivalents subject to an Award based on the dividends actually declared and paid on outstanding shares of Stock. The terms of any Dividend Equivalents will be as set forth in a separate Award Agreement, including the time and form of payment and whether such Dividend Equivalents will be credited with interest or deemed to be reinvested in additional Restricted Stock Units or share equivalents. If the Committee grants the right of a Participant to receive Dividend Equivalents declared on shares subject to an unvested Award subject to this Section 15.B, then such Dividend Equivalents shall be subject to the same performance conditions and service conditions, as applicable, as the underlying Award.

16. Effect of Termination of Service on Awards.

The Committee shall provide in any Award Agreement, or may determine in any individual case, the circumstances pursuant to which Awards shall be exercised, vested, paid or forfeited in the event a Participant ceases to provide service to the Company or any Subsidiary prior to the end of a performance period or exercise or settlement of such Award. Such provisions shall be determined in the sole discretion of the Committee, need not be uniform among all Awards, and may reflect distinctions based on the reasons for termination.

17. Term of Plan.

This amendment and restatement of the Plan shall terminate ten (10) years after the Effective Date and no Award shall be granted hereunder after the expiration of such ten-year period. Awards outstanding at the termination of the Plan shall continue in accordance with their terms and shall not be affected by such termination.

18. Severability.

Any word, phrase, clause, sentence or other provision herein which violates or is prohibited by any applicable law, court decree or public policy shall be modified as necessary to avoid the violation or prohibition and so as to make the Plan and any Award Agreement enforceable as fully as possible under applicable law, and if such cannot be so modified, the same shall be ineffective to the extent of such violation or prohibition without invalidating or affecting the remaining provisions herein.

19. Non-Waiver of Rights.

The Company's failure to enforce at any time any of the provisions of the Plan or any Award Agreement or to require at any time performance by the Participant of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of the Plan, any Award Agreement, or any part hereof, or the right of the Company thereafter to enforce each and every provision in accordance with the terms of the Plan and any Award Agreement.

20. Assignment.

Any Award Agreement shall be freely assignable by the Company and shall inure to the benefit of, and be binding upon, the Company, its successors and assigns and/or any other entity which shall succeed to the business presently being conducted by the Company.

21. No Right To Continued Employment or Other Status.

Nothing in the Plan or in any Award granted pursuant to the Plan shall be considered or construed as creating a contract of employment or any other relationship for any specified period of time or shall confer on any individual any right to continue in the employ of the Employer or continue any other relationship with the Company. The Employer and the Company expressly reserve the right at any time to dismiss or otherwise terminate its relationship, whether employment or otherwise, with any Participant free from any liability or claim under the Plan, except as expressly provided in the applicable Award Agreement.

22. Choice of Law.

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law.

23. Awards to Employees of Non-United States Subsidiaries.

The terms of an Award granted to an employee of a non-United States Subsidiary of the Company shall be governed by the otherwise applicable provisions of the Plan, unless such provisions are modified by sub-plans or special rules adopted by the Committee to modify the terms of the Plan as applied to employees of such non-United States Subsidiary who are residents outside the United States. Such sub-plans or special rules shall be designed to achieve desired tax or other objectives in particular jurisdictions outside the United States or achieve other business objectives in the determination of the Committee. The Committee may, in its sole discretion, amend the terms of the Plan or Awards with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for a Participant, the Company or a Subsidiary.

24. Section 409A.

Notwithstanding other provisions of the Plan or any Award Agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under the Plan in a manner that would result in the imposition of an additional tax under Code Section 409A. In the event that it is reasonably determined by the Committee that, as a result of Code Section 409A, payments in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award Agreement, as the case may be, without causing the Participant holding such Award to be subject to taxation under Code Section 409A, the Company will make such payment on the first day that would not result in the Participant incurring any tax liability under Code Section 409A; which, if the Participant is a "specified employee" within the meaning of the Code Section 409A, shall be the first day following the Six Month Delay beginning on the date of Participant's termination of employment. The Company shall use commercially reasonable efforts to implement the provisions of this Section 24 in good faith; provided that neither the Company, the Committee nor any of the Company's employees, Directors or representatives shall have any liability to any Participant with respect to this Section 24.