
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 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): May 24, 2018

Potbelly Corporation
(Exact name of registrant as specified in its charter)

Commission File Number: 001-36104

Delaware
(State or other jurisdiction
of incorporation)

36-4466837
(IRS Employer
Identification No.)

**111 N. Canal Street, Suite 850
Chicago, Illinois 60606**
(Address of principal executive offices, including zip code)

(312) 951-0600
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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:

- 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))

Indicated 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) At the Potbelly Corporation (the “Company”) annual meeting of shareholders held on May 24, 2018, the Company’s shareholders approved the Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan (“LTIP”), to, among other things, increase the number of shares available for issuance under the LTIP to a total number of 3,500,000. Pursuant to the LTIP, the Company may grant awards to any officer, director, employee, consultant, independent contractor or agent of the Company and/or a related company, and persons who are expected to become an officer, director, employee, consultant, independent contractor or agent of the Company or a related company.

A more complete description of the LTIP is contained in the Company’s Proxy Statement, dated April 17, 2018 (the “Proxy Statement”), as filed with the Securities and Exchange Commission (the “Commission”), under the heading “PROPOSAL 3 APPROVAL OF AMENDED AND RESTATED POTBELLY CORPORATION 2013 LONG-TERM INCENTIVE PLAN,” which is incorporated by reference. The description of the LTIP set forth in the Proxy Statement is qualified in its entirety by reference to the complete text of the LTIP, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On May 24, 2018, the Board of Directors of the Company approved an amendment and restatement (the “Amendment”) to the Company’s bylaws (the “By-Laws”), effective as of the same date. The Amendment modified the provisions of Article IV, Section 5 of the By-Laws to provide that the Company’s directors may be removed without cause. The change followed the expiration of the classification of the Company’s Board of Directors effective as of the Company’s 2018 annual meeting of shareholders on May 24, 2018.

The foregoing description of the Amendment is qualified in its entirety by reference to the complete text of the Amendment, which is attached as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated By-Laws of Potbelly Corporation
10.1	Amended and Restated Potbelly Corporation 2013 Long-Term 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.

Date: June 12, 2018

Potbelly Corporation

By: /s/ Matthew Revord

Name: Matthew Revord

Title: Chief Legal Officer

**AMENDED AND RESTATED BY-LAWS
OF
POTBELLY CORPORATION
Effective as of May 24, 2018**

**ARTICLE I
OFFICES**

Section 1. Registered Office. Potbelly Corporation (the "Corporation") shall continuously maintain in the State of Delaware a registered office which may, but need not be, the same as its place of business, and a registered agent whose business office is identical with such registered office. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the board of directors of the Corporation (the "Board of Directors").

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II
STOCK**

Section 1. Form of Stock Certificates. The shares of stock in the Corporation shall be represented by uncertificated stock.

Section 2. Identification of Stockholders. The name and address of each stockholder, the number and class of stock held and the date on which the stock was issued shall be entered on the books of the Corporation. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 3. Transfers of Stock. Upon receipt of proper transfer instructions and proper evidence of compliance of other conditions to rightful transfer from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled and issuance of new equivalent uncertificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

Section 4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record

date, which shall not be more than 60 days nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE III MEETINGS OF STOCKHOLDERS

Section 1. Annual Meeting. Annual meetings of stockholders shall be held each year at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At each such annual meeting, the stockholders shall elect the directors and transact such other business as may properly be brought before the meeting.

Section 2. Advance Notice of Stockholder Business.

(a) To be properly brought before the annual meeting, business (other than the nomination of directors) must be:

(1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors;

(2) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or

(3) otherwise properly brought before the meeting by a stockholder of the Corporation who (A) is a stockholder of record at the time of giving of notice provided for in these by-laws (the "By-Laws"), on the record date for the meeting and at the time of the meeting, (B) is entitled to vote at the meeting and (C) complies with the notice procedures set forth in these By-Laws as to such business.

(b) For business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(3) of this Section 2, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business must constitute a proper matter for stockholder action. To be timely, the stockholder's notice must be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the Corporation addressed to the attention of the Secretary of the Corporation not earlier than the close of business on the 120th day nor later than the close of business on the 90th day prior to the anniversary of the date of the previous year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is more than 30 days before or after the anniversary date of the previous year's annual meeting, notice by the stockholder must be received by the Secretary of the Corporation not later than the close of business on the later of (x) the 90th day prior to such annual meeting and (y) the 10th day following the day on which public announcement of the date of such meeting is first made. For the purposes of these By-Laws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, PR Newswire, Associated Press, Business Wire or a

comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting:

(1) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), and the reasons for conducting such business at the annual meeting;

(2) the name and record address of the stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made;

(3) the class, series and number of shares of the Corporation that are owned beneficially and of record by the stockholder and such beneficial owner and a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or represented by proxy at the meeting;

(4) any material interest of the stockholder of record or beneficial owner in such business;

(5) any other information that is required to be provided by the stockholder pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act") in such stockholder's capacity as a proponent of a stockholder proposal; and

(6) a representation as to whether either such stockholder of record or beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to approve the proposal and/or otherwise to solicit proxies from stockholders in support of such proposal.

(d) Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Section; *provided, however*, that nothing in this Section shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting. The Chairman of the Board (or such other person presiding at the meeting in accordance with these By-Laws) shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 3. Special Meetings. Special meetings of the stockholders may be called for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), by the Secretary only at the request of the Chairman of the Board of Directors, the Chief Executive Officer or by a resolution duly adopted by the affirmative vote of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 4. Place of Meeting. The Board of Directors may designate the place of meeting, either within or without of the State of Delaware, for any annual or special meeting of stockholders. In the absence of any such designation, the place of meeting shall be the principal place of business of the Corporation.

Section 5. Notice of Meetings. For all meetings of stockholders, a written or printed notice of the meeting shall be delivered personally, by mail or by electronic transmission (if receipt thereof has been consented to by the stockholder to whom the notice is given), to each stockholder of record entitled to vote at such meeting, which notice shall state the place, if any, date and time of the meeting and the means of remote communications, if any, for such meeting. For all special meetings and when and as otherwise required by law, the notice shall state the purpose or purposes of the meeting and the business to be transacted at such meeting. At any special meeting, the business to be transacted at such meeting shall be limited to the matters so stated in the notice of such special meeting and any matters reasonably related thereto. The notice of the meeting shall be given not less than 10 nor more than 60 days before the date of the meeting. If mailed, such notice shall be deemed to have been delivered when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears in the records of the Corporation. If given by facsimile transmission, such notice shall be deemed to have been delivered when directed to a number at which the stockholder has consented to receive notice by facsimile. If given by electronic transmission, such notice shall be deemed to have been delivered (a) by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (b) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (x) such posting and (y) the giving of such separate notice by United States mail or facsimile transmission; and (c) if by any other form of electronic transmission, when directed to the stockholder. When a meeting is adjourned to another place, date or time, notice need not be given of the adjourned meeting if the place, if any, date, time and means of remote communications, if any, thereof are announced at the meeting at which the adjournment is taken, unless otherwise required by law.

Section 6. Quorum of Stockholders. Except where otherwise provided by law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the voting power of the capital stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders.

Section 7. Adjournments. If a quorum is not present or represented at any meeting of stockholders, a majority of the stockholders present in person or represented by proxy at the meeting and entitled to vote, though less than a quorum, or by any officer entitled to preside at such meeting, shall be entitled to adjourn such meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. When a meeting is adjourned to another place, if any, date, time and means of remote communications, if any, notice need not be given of the adjourned meeting if the place, if any, date, time and means of

remote communications, if any, thereof are announced at the meeting at which the adjournment is taken, unless otherwise required by law; *provided, however*, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, if any, date, time and means of remote communications, if any, of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted that might have been transacted at the original meeting.

Section 8. Vote Required. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, (i) at all meetings of stockholders for the election of directors, a plurality of votes cast shall be sufficient to elect, and (ii) any other question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority in voting power of the stock represented and entitled to vote thereon. The Board of Directors, in its discretion, or any officer entitled to preside at a meeting of stockholders, in his or her discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 9. Organization and Conduct of Business. The Chairman of the Board or, in his or her absence, the Chief Executive Officer or President or, in their absence, such person as the Board of Directors may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or represented by proxy, shall call to order any meeting of stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

Section 10. Voting Lists. The officer or agent having charge of the transfer book for stock of the Corporation shall make, at least 10 days before such meeting, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares of stock held by each. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The original stock transfer books (or any duplicates thereof maintained by the Corporation) shall be the only evidence of the identity of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders.

Section 11. Proxies. A stockholder may appoint a proxy to vote or otherwise act for him or her by signing an appointment form and delivering it to the person so appointed. No proxy shall be valid after the expiration of three years from the date thereof unless otherwise provided in the proxy. An appointment of a proxy is revocable by the stockholder unless the appointment form states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power.

Section 12. Inspectors of Election. In advance of any meeting of stockholders, the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The inspectors shall have the duties prescribed by applicable law. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares of stock represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 13. Consent of Stockholders in Lieu of a Meeting. Stockholders may not act by written consent.

ARTICLE IV DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders. Directors need not be stockholders of the Corporation to be qualified for election or service as a director of the Corporation.

Section 2. Number, Election and Tenure. Subject to the rights of the holders of any series of Preferred Stock then outstanding, the exact number of directors shall be determined from time to time solely by resolution adopted by the Board of Directors. No decrease in the number of authorized directors shall have the effect of removing any director before that director's term of office expires. The directors shall be elected and shall hold office only in the manner provided in the Certificate of Incorporation.

Section 3. Advance Notice of Director Nominations.

(a) Subject to the rights of the holders of any series of Preferred Stock then outstanding, nominations of persons for election to the Board of Directors must be:

- (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors;
- (2) otherwise made by or at the direction of the Board of Directors; or

(3) otherwise properly made by a stockholder of the Corporation who (A) is a stockholder of record at the time of giving of notice provided for in these By-Laws, on the record date for the meeting and at the time of the meeting, (B) is entitled to vote at the meeting and (C) complies with the notice procedures set forth in these By-Laws as to such nomination.

(b) For nominations to be properly brought before a meeting by a stockholder pursuant to clause (C) of paragraph (a)(3) of this Section 3, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, the stockholder's notice must be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the Corporation addressed to the attention of the Secretary of the Corporation:

(1) in the case of an annual meeting of stockholders, not earlier than the close of business on the 120th day nor later than the close of business on the 90th day prior to the anniversary of the date of the previous year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is more than 30 days before or after the anniversary date of the previous year's annual meeting, notice by the stockholder must be received by the Secretary of the Corporation not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the 10th day following the day on which public announcement of the date of such meeting is first made, and

(2) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of (A) the 90th day prior to such special meeting and (B) the 10th day following the day on which notice of the date of the special meeting was delivered or public announcement of the date of the special meeting is first made.

In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary shall set forth:

(1) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class, series and number of shares of capital stock of the Corporation that are owned beneficially by the person, (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to the Exchange Act and (v) the nominee's written consent to serve, if elected, and

(2) as to the stockholder giving the notice, (i) a description of all arrangements or understandings between such stockholder and each person the stockholder proposes for election or re-election as a director pursuant to which such proposed nomination is being made and (ii) the information called for by Section 2(c)(2) through (6) of Article III.

(d) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein.

(e) In connection with any annual meeting of stockholders (or, if and as applicable, any special meeting of stockholders), the Chairman of the Board (or such other person presiding at such meeting in accordance with these By-Laws) shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the provisions of this Section, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

Section 4. Vacancies. Any newly created directorship resulting from an increase in the number of directors may be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy on the Board of Directors may be filled by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, may exercise the powers of the full board until the vacancy is filled. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and a director elected to fill a position resulting from any increase in the authorized number of directors shall hold office until the next election of the class for which such director shall have been chosen (or, if directors are not at that time divided into classes, until the next annual meeting of stockholders to be held in the first year following the year of his or her election), subject in each case to the election and qualification of his or her successor or his or her earlier death, resignation or removal. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 5. Resignation. Any director may resign at any time upon written notice to the Corporation at its principal place of business addressed to the attention of the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt of such notice unless the notice specifies such resignation to be effective at some other time or upon the happening of some other event. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 6. Quorum of Directors. A majority of the number of directors holding office on the date of any regular or special meeting shall constitute a quorum for the transaction of business at such meeting of the Board of Directors; *provided, however*, that if less than a majority of the number of directors holding office on the date of such meeting is present at that meeting, a majority of the directors present may adjourn the meeting at any time without further notice, unless otherwise required by law, until a quorum shall be present or represented.

Section 7. Organization and Manner of Acting. The Chairman of the Board shall preside over each meeting of the Board of Directors. If the Chairman of the Board is absent from a meeting of the Board of Directors, a chairman chosen at such meeting shall preside over such meeting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Certificate of Incorporation or these By-Laws.

Section 8. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law, immediately after, and, at the same place as, the annual meeting of stockholders. The Board of Directors may provide, by resolution, the place, either within or without of the State of Delaware, date and time for the holding of additional regular meetings of the Board of Directors, without other notice than such resolution.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place, either within or without of the State of Delaware, for holding any special meeting of the Board of Directors called by them.

Section 10. Notice. Notice of each special meeting of the Board of Directors shall be given, either personally or as hereinafter provided, to each director at least 24 hours before the meeting. Notice may be delivered personally or by means of e-mail, telephone, telegram, telex, facsimile transmission, recognized express delivery service and United States mail. Any and all business may be transacted at a special meeting which may be transacted as a regular meeting of the Board of Directors. Except as may be otherwise expressly provided by law, the Certificate of Incorporation or these By-Laws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 11. Chairman of the Board. The Board of Directors shall annually elect one of its members to be the chairman of the board and shall fill any vacancy in the position of Chairman of the Board at such time and in such manner as the Board of Directors shall determine. The Chairman of the Board shall preside at all meetings of the Board of Directors and of stockholders. The Chairman of the Board shall exercise such powers and perform such duties as shall be assigned to or required of him from time to time by the Board of Directors or these By-Laws.

Section 12. Lead Director. By resolution, the Board of Directors shall appoint the chairperson of the Nominating and Corporate Governance Committee of the Board of Directors, or such other independent director as the resolution may provide, as the lead independent director (the "Lead Director"). The Lead Director shall have the responsibilities set forth in the Corporate Governance Guidelines of the Corporation, as such guidelines may be revised from time to time, together with such other responsibilities as the Board of Directors may from time to time specify.

Section 13. Committees. The Board of Directors may, by written resolution, create one or more committees of the Board of Directors and may appoint one or more directors to serve on any such committee or committees. Each committee shall have one or more members, who serve at the pleasure of the Board of Directors. Each committee may appoint a chairperson of such committee and, if so appointed, each committee shall appoint a new chairperson at least once every three years. A majority of any committee shall constitute a quorum and a majority of a quorum is necessary for committee action. A committee may act by unanimous consent in writing without a meeting and, subject to the provisions of these By-Laws or any action by the Board of Directors,

the committee by majority vote of its numbers shall fix the time and place of meetings and the notice required therefor and may fix its own rules of procedure. Any committee established pursuant to this Section shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, but only to the extent provided in the resolution of the Board of Directors establishing such committee or otherwise delegating specific power and authority to such committee and except as limited by law, the Certificate of Incorporation or these By-Laws. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 14. Action by Written Consent. Any action required by the General Corporation Law of the State of Delaware to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors or a committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent in writing or by electronic transmission, provided that any such electronic transmission complies with Section 141 of the General Corporation Law of the State of Delaware. All approvals evidencing any such consent shall be delivered to the Secretary of the Corporation to be filed in the corporate records. Any action taken by such consent shall be effective as of the date on which the Corporation receives approvals evidencing that all of the directors have approved the consent, unless the consent specifies a different effective date.

Section 15. Meeting by Communications Equipment. Members of the Board of Directors or of any committee of the Board of Directors may participate in and act at any meeting of the board or committee by means of conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute attendance and presence in person at such meeting.

Section 16. Compensation. The Board of Directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for services to the Corporation as directors, officers or otherwise. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors. The directors may also be entitled to participate in any benefit plan as they determine. No such payment previously mentioned in this Section will preclude any director from serving the Corporation in any other capacity and receiving compensation for that service.

ARTICLE V

OFFICERS

Section 1. Number. The officers of the Corporation shall be a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary. The Board of Directors, in its sole discretion, may also choose one or more vice presidents, a treasurer, one or more assistant treasurers, one or more assistant secretaries and such other officers as it shall deem necessary. Any two or more offices may be held by the same person, except for the offices of President and Secretary. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the offices of President and Secretary shall be filled as expeditiously as possible.

Section 2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as reasonably practicable. Each officer shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation or removal. Election of an officer shall not of itself create contract rights.

Section 3. Resignation. Any officer may resign at any time upon written notice to the Corporation directed to the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein and no acceptance of such resignation shall be necessary to make it effective.

Section 4. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5. Vacancies; New Offices. A vacancy occurring in any office may be filled and new offices may be created and filled, at any time, by the Board of Directors.

Section 6. Chief Executive Officer. The Chief Executive Officer of the Corporation shall be in charge of the management of the day-to-day business and affairs of the Corporation subject to the policies and directions of the Board of Directors. He or she may sign deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except where required or permitted by law to be otherwise signed and except where the signing thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. He or she shall have the power to appoint such agents and employees as in his or her judgment may be necessary or proper for the transaction of the business of the Corporation and in general shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section 7. President. The President may be the chief operating officer who shall be in charge of the day-to-day operations and affairs of the Corporation subject to the policies and the directions of the Board of Directors and of the Chief Executive Officer. In the absence of the Chief Executive Officer, the President shall discharge the functions of the Chief Executive Officer. The President may sign deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except where required or permitted by law to be otherwise signed and except where the signing thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall also have the power to appoint such agents and employees as in his or her judgment may be necessary or proper for the transaction of the business of the Corporation and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer or these By-Laws.

Section 8. Chief Financial Officer. The Chief Financial Officer shall have general charge and supervision of the financial affairs of the Corporation, subject to the direction and control of the Board of Directors and the Chief Executive Officer, including budgetary, accounting

and statistical methods and approve payment, or designate others serving under him to approve for payment, of all vouchers and warrants for disbursements of funds. The Chief Financial Officer may sign deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized to be executed, except where required or permitted by law to be otherwise signed and except where the signing thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The Chief Financial Officer in general shall perform all duties incident to the office of Chief Financial Officer and such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer, the President or these By-Laws.

Section 9. Secretary. The secretary shall (a) keep the minutes of the stockholders' and the Board of Directors' meetings; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) have general charge of the corporate records and for the seal of the Corporation; (d) have general charge of the stock transfer books of the Corporation; (e) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (f) sign with the President, or any other officer duly authorized by the Board of Directors, any deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, according to the requirements of the form of the instrument; and (g) in general perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer, the President or these By-Laws.

Section 10. Vice President(s). The vice president (or in the event more than one vice president is elected, each of the vice presidents) shall assist the President in the discharge of his or her duties as the President may direct, and shall perform such other duties as from time to time may be assigned to him or her (them) by the Chief Executive Officer, the President or the Board of Directors. In the absence of the President, the vice president, if one is elected (or vice presidents, in the order designated by the Board, or in the absence of any designation, then in the order of their election), shall perform the duties and exercise the authority of the President.

Section 11. Treasurer. The treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation; (c) have charge of and be responsible for the maintenance of adequate books of account for the Corporation; and (d) in general perform all duties incident to the office of treasurer and such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer, the President or these By-Laws.

Section 12. Assistant Treasurers and Assistant Secretaries; Other Officers. The Board of Directors may elect one or more assistant treasurers and assistant secretaries. In the absence of the Treasurer, or in the event of his or her inability or refusal to act, the assistant treasurer(s), in the order of their election, shall perform the duties and exercise the authority of the treasurer. In the absence of the Secretary, or in the event of his or her inability or refusal to act, the assistant secretary(ies), in the order of their election, shall perform the duties and exercise the authority of the secretary. The assistant treasurer(s) and assistant secretary(ies), in general, shall perform such other duties as may be prescribed by the Treasurer or the Secretary, respectively, or by the Board of Directors, the Chief Executive Officer, the President or these By-Laws. Such other officers or assistant officers as the Board of Directors may choose shall perform such duties and have such powers as may be prescribed by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Section 13. Compensation. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board of Directors.

ARTICLE VI INDEMNIFICATION

Section 1. General. The Corporation shall, to the fullest extent permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, have reasonable cause to believe that the person's conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation. The Corporation shall, to the fullest extent permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State Delaware or such other court shall deem proper.

Section 3. Indemnification Against Expenses. To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 hereof, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 4. Board Determinations. Any indemnification under Sections 1 and 2 hereof (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Sections 1 and 2 hereof. Such determination shall be made with respect to a person who is a director or officer at the time of such determination: (a) by a majority vote of the directors who were not parties to such action, suit or proceeding, even though less than a quorum; (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; or (c) if there are no such disinterested directors, by the stockholders.

Section 5. Advancement of Expenses. Expenses (including attorneys' fees) incurred by an officer or director of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized by law or in this Section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the Corporation or persons serving at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, limited liability company, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 6. Nonexclusive. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office, and shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or this Article VI.

Section 8. Other Indemnification. The Corporation may, by action of the Board of Directors, provide indemnification to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification of directors and officers.

Section 9. Certain Definitions. For purposes of this Article VI, (a) references to “the Corporation” shall include, in addition to the Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation.”

Section 10. Change in Governing Law. In the event of any amendment or addition to Section 145 of the General Corporation Law of the State of Delaware or the addition of any other section to such law which shall limit indemnification rights thereunder, the Corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware, indemnify to the fullest extent authorized or permitted hereunder, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

Section 11. Repeal or Modification of Indemnification. Any repeal or modification of this Article VI by the stockholders of the Corporation shall not conflict with or adversely affect any right or protection of a director, officer, employee or agent of the Corporation existing at the time of such repeal or modification.

ARTICLE VII

GENERAL

Section 1. Amendment of By-Laws. These By-Laws may be altered, amended or repealed, and new By-Laws may be adopted, by the Board of Directors or by the affirmative vote of the holders at least sixty-six and two-thirds percent (66-2/3%) of the stock then outstanding and entitled to vote.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 3. Dividends and Distributions. The Board of Directors may from time to time declare or otherwise authorize, and the Corporation may pay, dividends or other distributions on its outstanding stock in the manner and upon the terms, conditions and limitations provided by law or the Certificate of Incorporation.

Section 4. Corporate Seal. The Corporation may, at the option of the Board of Directors, provide a corporate seal which shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Section 5. Waiver of Notice. Whenever any notice is required to be given by law, the Certificate of Incorporation or under the provisions of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver thereof by electronic transmission by such person or persons, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Any person so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 6. Headings. Section or paragraph headings are inserted herein only for convenience of reference and shall not be considered in the construction of any provision hereof.

**AMENDED AND RESTATED POTBELLY CORPORATION 2013 LONG-TERM INCENTIVE PLAN
(As Amended and Restated Effective May 24, 2018)**

1. GENERAL

1.1 Purposes. Potbelly Corporation (the “Company”) has established the Potbelly Corporation 2013 Long-Term Incentive Plan (the “Plan”) to: (a) align the interests of the Company’s stockholders and the recipients of Awards under this Plan by increasing the proprietary interest of such recipients in the Company’s growth and success, (b) advance the interests of the Company by attracting and retaining qualified employees, Outside Directors and other persons providing services to the Company and/or to its Related Companies, and (c) motivate Participants to act in the long-term best interests of the Company’s stockholders. The following provisions constitute an amendment and restatement of the Plan, effective May 24, 2018).

1.2 Definitions. For purposes of the Plan, the following definitions shall apply:

- (a) “Agreement” shall have the meaning set forth in subsection 6.8 of the Plan.
- (b) “Approval Date” means the date on which this amended and restated plan is approved by the Company’s stockholders.
- (c) “Award” shall mean an award under Section 3 or 4 of the Plan.
- (d) “Board” shall mean the Board of Directors of the Company.
- (e) “Cause” shall have the meaning set forth in an employment agreement between the Company or a Related Company and the Participant or, if no such agreement exists, “Cause” shall mean (i) the willful failure to substantially perform the duties assigned by the Company or a Related Company (other than a failure resulting from the Participant’s Disability), (ii) the willful engaging in conduct which is injurious to the Company or any of its Related Companies or the Company’s stockholders, monetarily or otherwise, including conduct that, in the reasonable judgment of the Board, no longer conforms to the standard of the Company’s executives or employees, (iii) any act of dishonesty, commission of a felony, or a violation of any statutory or common law duty of loyalty to the Company or any of its Related Companies.
- (f) “Change in Control” means the first to occur of any of the following:
 - (i) the consummation of a transaction, approved by the stockholders of the Company, to merge the Company with or into or consolidate the Company with another entity or sell or otherwise dispose of all or substantially all of its assets, or the stockholders of the Company adopt a plan of liquidation, provided, however, that a Change in Control shall not be deemed to have occurred by reason of a transaction, or a substantially concurrent or otherwise related series of transactions, upon the completion of which 50% or more of the beneficial ownership of the voting power of the Company, the surviving corporation or corporation directly or indirectly controlling the Company or the surviving corporation, as the case may be, is held by the same persons (although not necessarily in the same proportion) as held the beneficial ownership of the voting power of the Company immediately prior to the transaction or the substantially concurrent or otherwise related series of transactions, except that upon the completion thereof, employees or employee benefit plans of the Company may be a new holder of such beneficial ownership; or

- (ii) (ii) the “beneficial ownership” (as defined in Rule 13d-3 under the Exchange Act) of securities representing 50% or more of the combined voting power of the Company is acquired, other than from the Company, by any “person” as defined in Sections 13(d) and 14(d) of the Exchange Act (other than any trustee or other fiduciary holding securities under an employee benefit or other similar equity plan of the Company); or
- (iii) (iii) at any time during any period of two consecutive years, individuals who at the beginning of such period were members of the Board cease for any reason to constitute at least a majority thereof (unless the election, or the nomination for election by the Company’s stockholders, of each new director was approved by a vote of at least two-thirds of the directors still in office at the time of such election or nomination who were directors at the beginning of such period).
- (g) “Code” shall mean the Internal Revenue Code of 1986, as amended.
- (h) “Committee” shall have the meaning set forth in subsection 5.1 of the Plan.
- (i) “Common Stock” shall mean a share of common stock, \$.01 par value, of the Company.
- (j) “Company” shall have the meaning set forth in subsection 1.1 of the Plan.
- (k) “Disability” shall mean that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. Whether an individual has a “Disability” shall be determined in a manner that is consistent with section 22(e)(3) of the Code.
- (l) “Effective Date” shall have the meaning set forth in subsection 6.1 of the Plan.
- (m) “Eligible Persons” shall mean any officer, director, employee, consultant, independent contractor or agent of the Company or any Related Company and persons who are expected to become an officer, director, employee, consultant, independent contractor or officer of the Company or any Related Company (but effective no earlier than the date on which such person begins to provide services to the Company or any Related Company), including, in each case, directors who are not employees of the Company or a Related Company.
- (n) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- (o) “Exercise Price” shall have the meaning set forth in subsection 3.2 of the Plan.
- (p) “Expiration Date” shall have the meaning set forth in subsection 3.9 of the Plan.
- (q) “Fair Market Value” of a share of Common Stock shall mean, as of any date, the value determined in accordance with the following rules:
 - (i) If the Common Stock is at the time listed or admitted to trading on any stock exchange, then the Fair Market Value shall be the closing price per share of Common Stock on the principal exchange on which the Common Stock is then listed or admitted to trading on the last trading day preceding the date on which Fair Market Value is to be determined or, if no such sale is reported on that date, on the last preceding date on which a sale was so reported.

- (ii) If the Common Stock is not at the time listed or admitted to trading on a stock exchange, the Fair Market Value shall be the closing average of the closing bid and asked price of a share of Common Stock on the date in question in the over-the-counter market, as such price is reported in a publication of general circulation selected by the Committee and regularly reporting the market price of Common Stock in such market.
- (iii) If the Common Stock is not listed or admitted to trading on any stock exchange or traded in the over-the-counter market, the Fair Market Value shall be as determined by the Committee in good faith.

For purposes of determining the Fair Market Value of Common Stock that is sold pursuant to a cashless exercise program, Fair Market Value shall be the price at which such Common Stock is sold.

- (r) "Full Value Award" shall have the meaning set forth in Section 4 of the Plan.
- (s) "Incentive Stock Option" means an Option that is intended to satisfy the requirements applicable to an "incentive stock option" described in section 422 of the Code.
- (t) "Non-Qualified Stock Option" means an Option that is not intended to be an Incentive Stock Option.
- (u) "Option" means an Award under the Plan that entitles the Participant to purchase shares of Common Stock at an Exercise Price established by the Committee at the time the Option is granted.
- (v) "Outside Director" means a director of the Company who is not an officer or employee of the Company or any Related Company.
- (w) "Participant" shall have the meaning set forth in subsection 1.3 of the Plan.
- (x) "Plan" shall have the meaning set forth in subsection 1.1 of the Plan.
- (y) "Recycled Shares" shall have the meaning set forth in subsection 2.1(b) of the Plan.
- (z) "Related Company" shall mean any corporation, partnership, joint venture or other entity during any period in which (i) the Company, directly or indirectly, owns at least 50% of the combined voting power of all classes of stock of such entity or at least 50% of the ownership interests in such entity or (ii) such entity, directly or indirectly, owns at least 50% of the combined voting power of all classes of stock of the Company.
- (aa) "SAR" means the grant of an Award under the Plan that entitles the Participant to receive, in cash or shares of Common Stock (as determined in accordance with the terms of the Plan) value equal to the excess of: (i) the Fair Market Value of a specified number of shares of Common Stock at the time of exercise; over (ii) an Exercise Price established by the Committee at the time of grant.
- (bb) "Subsidiary" shall mean a corporation that is a subsidiary of the Company within the meaning of section 424(f) of the Code.

- (cc) “Substitute Award” means an Award granted or shares of Stock issued by the Company in assumption of, or in substitution or exchange for, an award previously granted, or the right or obligation to make a future award, in all cases by a company acquired by the Company or any Related Company or with which the Company or any Related Company combines. In no event shall the issuance of Substitute Awards change the terms of such previously granted awards such that the change, if applied to a current Award, would be prohibited under subsection 3.7.
- (dd) “Termination Date” means the date on which a Participant both ceases to be an employee of the Company and the Related Companies and ceases to perform material services for the Company and the Related Companies (whether as a director or otherwise), regardless of the reason for the cessation; provided that a “Termination Date” shall not be considered to have occurred during the period in which the reason for the cessation of services is a leave of absence approved by the Company or the Related Company which was the recipient of the Participant’s services; and provided, further that, with respect to an Outside Director, “Termination Date” means date on which the Outside Director’s service as an Outside Director terminates for any reason.

1.3 Participation. For purposes of the Plan, a “Participant” is any person to whom an Award is granted under the Plan. Subject to the terms and conditions of the Plan, the Committee shall determine and designate, from time to time, from among the Eligible Persons those persons who will be granted one or more Awards under the Plan and, subject to the terms and conditions of the Plan, a Participant may be granted any Award permitted under the provisions of the Plan and more than one Award may be granted to a Participant. Except as otherwise agreed by the Company and the Participant, or except as otherwise provided in the Plan, an Award under the Plan shall not affect any previous Award under the Plan or an award under any other plan maintained by the Company or any of the Related Companies. No Eligible Person or other person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Eligible Persons, or holders or beneficiaries of Awards, or of multiple Awards granted to an Eligible Person. The terms and conditions of Awards and the Committee’s determinations and interpretations with respect thereto need not be the same with respect to each Eligible Person (whether or not such Eligible Persons are similarly situated).

2. SHARES RESERVED AND LIMITATIONS

2.1 Shares Available and Other Amounts Subject to the Plan. The shares of Common Stock for which Awards may be granted under the Plan shall be subject to the following:

- (a) Shares of Common Stock with respect to which Awards may be made under the Plan shall be currently authorized but unissued shares of Common Stock or currently held or subsequently acquired by the Company as treasury shares (or a combination thereof), including shares purchased in the open market or in private transactions.
- (b) Subject to the provisions of subsection 2.2, the number of shares of Common Stock which may be issued with respect to Awards under the Plan shall be equal to 3,500,000. Except as otherwise provided herein, any shares of Common Stock subject to an outstanding Award under the Plan which, for any reason is forfeited, expires or is terminated without issuance of shares of Common Stock (including Awards that are settled in cash, collectively, “Recycled Shares”), shall thereafter again be available for issuance under the Plan. Recycled Shares shall be added back to the number of shares of Common Stock reserved for issuance under the Plan on a one for one basis; provided, however, that Recycled Shares attributable to any Full Value Award granted under the Plan on or after the Approval Date shall be added back on a two for one basis.

- (c) Shares of Common Stock covered by an Award shall only be counted as used to the extent that they are actually used. A share of Common Stock issued in connection with any Award under the Plan shall reduce the total number of shares of Common Stock available for issuance under the Plan by one; provided, however, that shares issued in connection with Full Value Awards granted under the Plan on and after the Approval Date shall reduce the total number of shares of Common Stock available for issuance under the Plan by a ratio of 2:1.
- (d) Notwithstanding any other provision of the Plan, following shares of Common Stock may not again be made available for issuance under the Plan pursuant to this subsection 2.1: (i) shares of Common Stock not issued or delivered as a result of the net settlement of an outstanding Award; (ii) shares delivered to or withheld by the Company to pay the Exercise Price of an Option or SAR or to pay the withholding taxes with respect to an Award; or (iii) shares of Common Stock repurchased on the open market with the proceeds of the Exercise Price of an Option.
- (e) Except as expressly provided by the terms of this Plan, the issue by the Company of stock of any class, or securities convertible into shares of stock of any class, for cash or property or for labor or services, either upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of stock or obligations of the Company convertible into such stock or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, Awards then outstanding hereunder.
- (f) To the extent provided by the Committee, any Award may be settled in cash rather than in Common Stock.
- (g) Substitute Awards shall not reduce the number of shares of Common Stock that may be issued under the Plan or that may be covered by Awards granted to any one Participant during any period pursuant to subsections 2.1(i) and 2.1(j).
- (h) Subject to the terms and conditions of the Plan, the maximum number of shares of Common Stock that may be delivered to or on behalf of Participants under the Plan with respect to Incentive Stock Options shall be 2,500,000; provided, however, that to the extent that shares not delivered must be counted against this limit as a condition of satisfying the rules applicable to Incentive Stock Options, such rules shall apply to the limit on Incentive Stock Options granted under the Plan.
- (i) The maximum number of shares of Common Stock that may be covered by Awards granted to any one Participant during any one calendar-year period pursuant to Section 3 (relating to Options and SARs) shall be 400,000 shares. For purposes of this subsection 2.1(i), if an Option is in tandem with an SAR, such that the exercise of the Option or SAR with respect to a share of Common Stock cancels the tandem SAR or Option right, respectively, with respect to such share, the tandem Option and SAR rights with respect to each share of Common Stock shall be counted as covering only one share of Common Stock for purposes of applying the limitations of this subsection 2.1(i).
- (j) For Full Value Awards that are intended to be performance-based compensation (within the meaning of section 162(m) of the Code), no more than 400,000 shares of Common Stock may be delivered pursuant to such Awards granted to any one Participant during any one calendar-year period (regardless of whether settlement of the Award is to occur prior to, at the time of, or after the time of vesting); provided that Awards described in this 2.1(j) shall be subject to the following:
 - (i) If the Awards are denominated in Common Stock but an equivalent amount of cash is delivered in lieu of delivery of shares of Common Stock, the foregoing limit shall be applied based on the methodology used by the Committee to convert the number of shares of Common Stock into cash.

- (ii) If delivery of Common Stock or cash is deferred until after the Common Stock has been earned, any adjustment in the amount delivered to reflect actual or deemed investment experience after the date the Common Stock is earned shall be disregarded.

2.2 Adjustments to Shares of Common Stock. In the event of a stock dividend, stock split, reverse stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, exchange of shares, sale of assets or subsidiaries, combination, or other corporate transaction that affects the Common Stock such that the Committee determines, in its sole discretion, that an adjustment is warranted in order to preserve the benefits or prevent the enlargement of benefits of Awards under the Plan, the Committee shall, in the manner it determines equitable in its sole discretion, (a) adjust the number and kind of shares which may be delivered under the Plan (including adjustments to the number and kind of shares that may be granted to an individual during any specified time as described in subsection 2.1); (b) adjust the number and kind of shares subject to outstanding Awards; (c) adjust the Exercise Price of outstanding Options and SARs; and (d) make any other adjustments that the Committee determines to be equitable (which may include, without limitation, (i) replacement of Awards with other awards which the Committee determines have comparable value and which are based on stock of a company resulting from the transaction, and (ii) cancellation of the Award in return for cash payment of the current value of the Award, determined as though the Award is fully vested at the time of payment, provided that in the case of an Option or SAR, the amount of such payment may be the excess of value of the shares of Common Stock subject to the Option or SAR at the time of the transaction over the exercise price).

2.3 Change in Control. In the event that (a) a Participant is employed or otherwise in service on the date of a Change in Control and the Participant's employment or service, as applicable, is terminated by the Company or the successor to the Company (or a Related Company which is his or her employer) for reasons other than Cause within 24 months following the Change in Control, or (b) the Plan is terminated by the Company or its successor following a Change in Control without provision for the assumption, continuation or substitution of outstanding Awards hereunder, all Options, SARs and related Awards which have not otherwise expired shall become immediately exercisable and all other Awards shall become fully vested; provided, however, that all Awards with conditions and restrictions relating to the attainment of performance goals shall become vested assuming the higher of (A) achievement of all relevant performance goals at the target level of performance (pro rated based upon the length of time within the performance period that has elapsed prior to the Change in Control) or (B) actual achievement of the performance goals as of the date of the Change in Control. For purposes of this subsection 2.3, a Participant's employment or service shall be deemed to be terminated by the Company or the successor to the Company (or a Related Company) if the Participant terminates employment or service after (i) a substantial adverse alteration in the nature of the Participant's status or responsibilities from those in effect immediately prior to the Change in Control, or (ii) a material reduction in the Participant's annual base salary and target bonus, if any, or, in the case of a Participant who is an Outside Director, the Participant's annual compensation, as in effect immediately prior to the Change in Control. If, upon a Change in Control, awards in other shares or securities are substituted for outstanding Awards pursuant to subsection 2.2, and immediately following the Change in Control the Participant becomes employed by (if the Participant was an employee immediately prior to the Change in Control) or a board member of (if the Participant was an Outside Director immediately prior to the Change in Control) the entity into which the Company merged, or the purchaser of substantially all of the assets of the Company, or a successor to such entity or purchaser, the Participant shall not be treated as having terminated employment or service for purposes of this subsection 2.3 until such time as the Participant terminates employment or service with the merged entity or purchaser (or successor), as applicable.

2.4 Limits Applicable to Non-Employee Directors. Notwithstanding any other provision of the Plan to the contrary, the aggregate value of all Awards granted under the Plan to any Outside Director for any calendar year shall not exceed (a) \$300,00 in total value or (b) in the event such Outside Director is first appointed or elected to the Board in such calendar year, \$400,000 in total value. For purposes of the foregoing limitation, the value of an Award shall be its grant date fair value, as determined in accordance with ASC 718 or successor provision but excluding the impact of estimated forfeitures related to service-based vesting conditions.

3. STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

3.1 Options and SARs. The Committee shall designate the Participants to whom Options or SARs are to be granted under this Section 3 and shall determine the number of shares of Common Stock subject to each such Option or SAR and the other terms and conditions thereof, not inconsistent with the Plan. Without limiting the generality of the foregoing, the Committee may not grant dividend equivalents (current or deferred) with respect to any Option or SAR granted under the Plan. An Option will be deemed to be a Non-Qualified Option unless it is specifically designated by the Committee as an Incentive Stock Option.

3.2 Exercise Price. The "Exercise Price" of each Option and SAR granted under this Section 3 shall be established by the Committee at the time the Option or SAR is granted; provided, however, that in no event shall such price be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant (or, if greater, the par value of a share of Common Stock).

3.3 Limits on Incentive Stock Options. If the Committee grants Incentive Stock Options, then to the extent that the aggregate fair market value of shares of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company and all Subsidiaries) exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options to the extent required by section 422 of the Code. Any Option that is intended to constitute an Incentive Stock Option shall satisfy any other requirements of section 422 of the Code and, to the extent such Option does not satisfy such requirements, the Option shall be treated as a Non-Qualified Stock Option.

3.4 Term and Exercisability. Except as otherwise expressly provided in the Plan, an Option or SAR granted under the Plan shall be exercisable in accordance with the following:

- (a) The terms and conditions relating to exercise and vesting of an Option or SAR shall be established by the Committee to the extent not inconsistent with the Plan, and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise or the achievement of Common Stock ownership guidelines by the Participant.
- (b) No Option or SAR may be exercised by a Participant prior to the date on which it is exercisable (or vested) or after the Expiration Date applicable thereto. In no event shall an Option or SAR expire later than the tenth anniversary of the grant date of such Option or SAR.

3.5 Payment of Exercise Price. The payment of the Exercise Price of an Option granted under this Section 3 shall be subject to the following:

- (a) Subject to the following provisions of this subsection 3.5, the full Exercise Price of each share of Common Stock purchased upon the exercise of any Option shall be paid at the time of such exercise (except that, in the case of an exercise through the use of cash equivalents (including broker-assisted cashless exercise), payment may be made as soon as practicable after the exercise) and, as soon as practicable thereafter, a certificate representing the shares of Common Stock so purchased shall be delivered to the person entitled thereto or shares of Common Stock so purchased or such shares of Common Stock shall otherwise be registered in the name of the Participant on the records of the Company's transfer agent and credited to the Participant's account.

- (b) Subject to applicable law, the Exercise Price shall be payable in cash or cash equivalents (including broker-assisted cashless exercise), by tendering, by actual delivery or by attestation (including by means of a net exercise), shares of Common Stock valued at Fair Market Value as of the day of exercise or by a combination thereof; provided, however, that shares of Common Stock may not be used to pay any portion of the Exercise Price unless the holder thereof has good title, free and clear of all liens and encumbrances.

3.6 Post-Exercise Limitations. The Committee, in its discretion, may impose such restrictions on shares of Common Stock acquired pursuant to the exercise of an Option as it determines to be desirable, including, without limitation, restrictions relating to disposition of the shares and forfeiture restrictions based on service, performance, Common Stock ownership by the Participant, conformity with the Company's recoupment or clawback policies as in effect from time to time, compliance with restrictive covenants, and such other factors as the Committee determines to be appropriate.

3.7 No Repricing. Except for either adjustments pursuant to subsection 2.2 of the Plan (relating to the adjustment of shares), or reductions of the exercise price approved by the Company's stockholders, the exercise price for any outstanding Option or SAR may not be decreased after the date of grant nor may an outstanding Option or SAR granted under the Plan be surrendered to the Company as consideration for the grant of a replacement Option or SAR with a lower exercise price or a Full Value Award. Except as approved by the Company's stockholders, in no event shall any Option or SAR granted under the Plan be surrendered to the Company in consideration for a cash payment if, at the time of such surrender, the exercise price of the Option or SAR is greater than the then current Fair Market Value of a share of Common Stock. In addition, no repricing of an Option shall be permitted without the approval of the Company's stockholders if such approval is required under the rules of any stock exchange on which the Common Stock is listed.

3.8 Tandem Common Stock Options and SARs. A Option may but need not be in tandem with an SAR, and an SAR may but need not be in tandem with an Option (in either case, regardless of whether the original award was granted under this Plan or another plan or arrangement). If an Option is in tandem with an SAR, the exercise price of both the Option and SAR shall be the same, and the exercise of the Option or SAR with respect to a share of Common Stock shall cancel the corresponding tandem SAR or Option right with respect to such share. If an SAR is in tandem with an Option but is granted after the grant of the Option, or if an Option is in tandem with an SAR but is granted after the grant of the SAR, the later granted tandem Award shall have the same exercise price as the earlier granted Award, but the exercise price for the later granted Award may not be less than the Fair Market Value of the Common Stock at the time of such grant.

3.9 Expiration Date. The "Expiration Date" with respect to an Option or SAR means the date established as the Expiration Date by the Committee at the time of the grant (as the same may be modified in accordance with the terms of the Plan); provided, however, that the Expiration Date with respect to any Option or SAR shall not be later than the earliest to occur of the ten-year anniversary of the date on which the Option or SAR is granted or the following dates, unless the following dates are determined otherwise by the Committee:

- (a) if the Participant's Termination Date occurs by reason of death or Disability, the one-year anniversary of such Termination Date;
- (b) if the Participant's Termination Date occurs for reasons other than death or Disability or Cause, the three-month anniversary of such Termination Date; or
- (c) if the Participant's Termination Date occurs for Cause, the day preceding the Termination Date.

In no event shall the Expiration Date of an Option or SAR be later than the ten-year anniversary of the date on which the Option or SAR is granted (or such shorter period required by law or the rules of any stock exchange on which the Common Stock is listed).

4. FULL VALUE AWARDS

A “Full Value Award” is a grant of one or more shares of Common Stock or a right to receive one or more shares of Common Stock in the future (including restricted stock, restricted stock units, deferred stock units, performance stock and performance stock units). Such grants may be subject to one or more of the following, as determined by the Committee:

- (a) The grant may be in consideration of a Participant’s previously performed services or surrender of other compensation that may be due.
- (b) The grant may be contingent on the achievement of performance or other objectives (including completion of service) during a specified period.
- (c) The grant may be subject to a risk of forfeiture or other restrictions that will lapse upon the achievement of one or more goals relating to completion of service by the Participant or achievement of performance or other objectives.

The grant of Full Value Awards may also be subject to such other conditions, restrictions and contingencies, as determined by the Committee, including provisions relating to dividend or dividend equivalent rights and deferred payment or settlement, conformity with the Company’s recoupment or clawback policies as in effect from time to time, compliance with restrictive covenants, and such other factors as the Committee determines to be appropriate.. Notwithstanding the foregoing, no dividends or dividend equivalent rights will be paid or settled on Full Value Awards that have not otherwise been earned or vested.

5. COMMITTEE

5.1 Administration. The authority to control and manage the operation and administration of the Plan shall be vested in the committee described in subsection 5.2 (the “Committee”) in accordance with this Section 5. If the Committee does not exist, or for any other reason determined by the Board, the Board may take any action under the Plan that would otherwise be the responsibility of the Committee.

5.2 Selection of Committee. So long as the Company is subject to Section 16 of the Exchange Act, the Committee shall be selected by the Board and shall consist of not fewer than two members of the Board or such greater number as may be required for compliance with Rule 16b-3 issued under the Exchange Act and shall be comprised of persons who are independent for purposes of applicable stock exchange listing requirements. Notwithstanding any other provision of the Plan to the contrary, with respect to any Awards to Outside Directors, the Committee shall be the Board.

5.3 Powers of Committee. The authority to manage and control the operation and administration of the Plan shall be vested in the Committee, subject to the following:

- (a) Subject to the provisions of the Plan, the Committee will have the authority and discretion to (i) select Eligible Persons who will receive Awards under the Plan, (ii) determine the time or times of receipt of Awards, (iii) determine the types of Awards and the number of shares of Common Stock covered by the Awards, (iv) establish the terms, conditions, performance targets, restrictions, and other provisions of Awards, (v) modify the terms of, cancel or suspend Awards, (vi) reissue or repurchase Awards, and (vii) accelerate the exercisability or vesting of any Award. In making such Award determinations, the Committee may take into account the nature of services rendered by the respective employee, the individual’s present and potential contribution to the Company’s or a Related Company’s success and such other factors as the Committee deems relevant.

- (b) Subject to the provisions of the Plan, the Committee will have the authority and discretion to conclusively interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements made pursuant to the Plan and to make all other determinations that may be necessary or advisable for the administration of the Plan.
- (c) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons.
- (d) Except as otherwise expressly provided in the Plan, where the Committee is authorized to make a determination with respect to any Award, such determination shall be made at the time the Award is made, except that the Committee may reserve the authority to have such determination made by the Committee in the future (but only if such reservation is made at the time the Award is granted, is expressly stated in the Agreement reflecting the Award and is permitted by applicable law).

Without limiting the generality of the foregoing, it is the intention of the Company that, to the extent that any provisions of this Plan or any Awards granted hereunder are subject to section 409A of the Code, the Plan and the Awards comply with the requirements of section 409A of the Code and that the Plan and Awards be administered in accordance with such requirements and the Committee shall have the authority to amend any outstanding Awards to conform to the requirements of section 409A.

5.4 Delegation by Committee. Except to the extent prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time.

5.5 Information to be Furnished to Committee. The Company and the Related Companies shall furnish the Committee such data and information as may be required for it to discharge its duties. The records of the Company and the Related Companies as to an employee's or Participant's employment or provision of services, termination of employment or cessation of the provision of services, leave of absence, reemployment and compensation shall be conclusive on all persons unless determined to be incorrect. Participants and other persons entitled to benefits under the Plan must furnish the Committee such evidence, data or information as the Committee considers desirable to carry out the terms of the Plan.

5.6 Liability and Indemnification of Committee. No member or authorized delegate of the Committee shall be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his own fraud or willful misconduct; nor shall the Company or any Related Company be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a director or employee of the Company or Related Company. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, shall be indemnified by the Company against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted against the Committee or its members or authorized delegates by reason of the performance of a Committee function if the Committee or its members or authorized delegates did not act dishonestly or in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification shall not duplicate but may supplement any coverage available under any applicable insurance.

5.7 Special Vesting Rules. Except for (a) Awards granted under the Plan with respect to shares of Common Stock which do not exceed, in the aggregate, five percent of the total number of shares of Common Stock reserved for issuance pursuant to subsection 2.1, (b) Awards granted in lieu of other compensation, or (c) Awards that are a form of payment of earned performance awards or other incentive compensation provided that the performance period relating to such performance or incentive awards

was at least one year, if a Participant's right to become vested in an Award is conditioned on the completion of a specified period of service with the Company or any Related Company Subsidiaries being required, then the required period of service shall be at least one (1) year, except if accelerated in the event of the participant's death or Disability, or involuntary termination.

6. MISCELLANEOUS

6.1 Effective Date and Term. This Plan, as amended and restated, shall be effective as of the date that it is approved by the Board (the "Effective Date"); provided, however, that no Awards shall be granted under the Plan, as amended and restated, prior to the Approval Date. The Plan shall be unlimited in duration and, in the event of Plan termination, shall remain in effect as long as any shares of Common Stock awarded under it are outstanding and not fully vested; provided, however, that no new Awards will be made under the Plan on or after the tenth anniversary of the Effective Date. Any Awards granted under the Plan prior to the Approval Date shall be subject to the terms and conditions of the Plan as in effect prior to the Approval Date.

6.2 Limit on Distribution. Distribution of Common Stock or other amounts under the Plan shall be subject to the following:

- (a) Notwithstanding any other provision of the Plan, the Company shall have no liability to deliver any Common Stock under the Plan or make any other distribution of benefits under the Plan unless such delivery or distribution would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity.
- (b) In the case of a Participant who is subject to Section 16(a) and 16(b) of the Exchange Act, the Committee may, at any time, add such conditions and limitations to any Award to such Participant, or any feature of any such Award, as the Committee, in its sole discretion, deems necessary or desirable to comply with Section 16(a) or 16(b) and the rules and regulations thereunder or to obtain any exemption therefrom.
- (c) To the extent that the Plan provides for issuance of certificates to reflect the transfer of Common Stock, the transfer of such Common Stock may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed.

6.3 Liability for Cash Payments. Subject to the provisions of this Section 6, each Related Company shall be liable for payment of cash due under the Plan with respect to any Participant to the extent that such payment is attributable to the services rendered for that Related Company by the Participant. Any disputes relating to liability of a Related Company for cash payments shall be resolved by the Committee.

6.4 Withholding. All Awards and other payments under the Plan are subject to withholding of all applicable taxes, which withholding obligations may be satisfied, with the consent of the Committee, through the surrender of Common Stock which the Participant already owns or to which a Participant is otherwise entitled under the Plan; provided, however, previously-owned Common Stock that has been held by the Participant or Common Stock to which the Participant is entitled under the Plan may only be used to satisfy the minimum tax withholding required by applicable law (or other rates that will not have a negative accounting impact).

6.5 Transferability. Awards under the Plan are not transferable except as designated by the Participant by will or by the laws of descent and distribution or, unless otherwise provided by the Committee, pursuant to a qualified domestic relations order (within the meaning of the Code and applicable rules thereunder). To the extent that the Participant who receives an Award under the Plan has the right to exercise such Award, the Award may be exercised during the lifetime of the Participant only by the Participant. Notwithstanding the foregoing provisions of this subsection 6.5, unless otherwise provided by the Committee, Awards may be transferred to or for the benefit of the Participant's family

(including, without limitation, to a trust or partnership for the benefit of a Participant's family), subject to such procedures as the Committee may establish. In no event shall an Incentive Stock Option be transferable to the extent that such transferability would violate the requirements applicable to such option under section 422 of the Code.

6.6 Notices. Any notice or document required to be filed with the Committee under the Plan will be properly filed if delivered or mailed by registered mail, postage prepaid, to the Committee, in care of the Company or the Related Company, as applicable, at its principal executive offices. The Committee may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan (other than a notice of election) may be waived by the person entitled to notice.

6.7 Form and Time of Elections. Unless otherwise specified herein, each election required or permitted to be made by any Participant or other person entitled to benefits under the Plan, and any permitted modification or revocation thereof, shall be in writing filed with the applicable Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee shall require.

6.8 Agreement With the Company or Related Company. At the time of an Award to a Participant under the Plan, the Committee may require a Participant to enter into an agreement with the Company or the Related Company, as applicable (the "Agreement"), in a form specified by the Committee, agreeing to the terms and conditions of the Plan and to such additional terms and conditions, not inconsistent with the Plan, as the Committee may, in its sole discretion, prescribe.

6.9 Limitation of Implied Rights.

- (a) Neither a Participant nor any other person shall, by reason of the Plan, acquire any right in or title to any assets, funds or property of the Company or any Related Company whatsoever, including, without limitation, any specific funds, assets, or other property which the Company or any Related Company, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant shall have only a contractual right to the amounts, if any, payable under the Plan, unsecured by any assets of the Company and any Related Company. Nothing contained in the Plan shall constitute a guarantee by the Company or any Related Company that the assets of such companies shall be sufficient to pay any benefits to any person.
- (b) The Plan does not constitute a contract of employment or continued service, and selection as a Participant will not give any employee the right to be retained in the employ or service of the Company or any Related Company, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan, no Award under the Plan shall confer upon the holder thereof any right as a stockholder of the Company prior to the date on which he fulfills all service requirements and other conditions for receipt of such rights and shares of Common Stock are registered in his name.

6.10 Evidence. Evidence required of anyone under the Plan may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties.

6.11 Action by the Company or Related Company. Any action required or permitted to be taken by the Company or any Related Company shall be by resolution of its board of directors or governing body or by action of one or more members of the board or governing body (including a committee of the board or governing body) who are duly authorized to act for the board or, in the case of any Related Company which is a partnership, by action of its general partner or a person or persons authorized by the general partner, or (except to the extent prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed) by a duly authorized officer of the Company.

6.12 Gender and Number. Where the context admits, words in any gender shall include any other gender, words in the singular shall include the plural and the plural shall include the singular.

6.13 Applicable Law. The provisions of the Plan shall be construed in accordance with the laws of the State of Delaware, without giving effect to choice of law principles.

6.14 Foreign Employees. Notwithstanding any other provision of the Plan to the contrary, the Committee may grant Awards to eligible persons who are foreign nationals on such terms and conditions different from those specified in the Plan as may, in the judgment of the Committee, be necessary or desirable to foster and promote achievement of the purposes of the Plan. In furtherance of such purposes, the Committee may make such modifications, amendments, procedures and subplans as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or a Related Company operates or has employees. The foregoing provisions of this subsection 6.14 shall not be applied to increase the share limitations of Section 2 or to otherwise change any provision of the Plan that would otherwise require the approval of the Company's stockholders.

6.15 Recoupment/Forfeiture. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, unless otherwise specified by the Committee, any Awards under the Plan and any shares of Common Stock or cash issued pursuant to the Plan shall be subject to the Company's compensation recovery, clawback, and recoupment policies as in effect from time to time.

7. AMENDMENT AND TERMINATION.

The Board may, at any time, amend or terminate the Plan, and the Board or the Committee may amend any Award Agreement, provided that no amendment or termination may, in the absence of written consent to the change by the affected Participant (or, if the Participant is not then living, the affected beneficiary), adversely affect the rights of any Participant or beneficiary under any Award granted under the Plan prior to the date such amendment is adopted by the Board (or the Committee, if applicable); and further provided that adjustments pursuant to subsection 2.2 shall not be subject to the foregoing limitations of this Section 7; and further provided that the provisions of subsection 3.7 (relating to Option and SAR repricing) cannot be amended unless the amendment is approved by the Company's stockholders; and provided further that, no other amendment shall be made to the Plan without the approval of the Company's stockholders if such approval is required by law or the rules of any stock exchange on which the Common Stock is listed. It is the intention of the Company that, to the extent that any provisions of this Plan or any Awards granted hereunder are subject to section 409A of the Code, the Plan and the Awards comply with the requirements of section 409A of the Code and that the Board shall have the authority to amend the Plan as it deems necessary to conform to section 409A. Notwithstanding the foregoing, the Company does not guarantee that Awards under the Plan will comply with section 409A and the Committee is under no obligation to make any changes to any Award to cause such compliance.