

**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) October 2, 2018

CONSTELLATION BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-08495
(Commission
File Number)

16-0716709
(IRS Employer
Identification No.)

207 High Point Drive, Building 100, Victor, NY 14564
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(585) 678-7100**

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 (see General Instruction A.2. below):

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

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

Emerging growth company

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

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

At a meeting held on October 2, 2018, the Human Resources Committee (the “Committee”) of the Board of Directors (the “Board”) of Constellation Brands, Inc. (the “Company”), took the following actions with regard to certain compensatory arrangements for certain of the Company’s senior management personnel, including its executive officers.

Third Amendment to 2005 Supplemental Executive Retirement Plan

The Committee approved the Third Amendment to the Company’s 2005 Supplemental Executive Retirement Plan (the “SERP”). Effective December 31, 2018, this amendment suspends any further participation in the SERP and suspends any further Company contributions to the SERP for services after December 31, 2018. The foregoing description is qualified in its entirety by the terms of the Third Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Adoption of Constellation Brands Non-Qualified Savings Plan

The Committee also adopted the Constellation Brands Non-Qualified Savings Plan (the “Plan”) effective as of January 1, 2019. The Plan is intended to make participants whole for certain employer contributions that are not provided under the Constellation Brands, Inc. 401(k) and Profit Sharing Plan (“401(k) Plan”) due to certain Internal Revenue Code limitations on the amount of benefits that may be provided under the 401(k) Plan. The Plan also provides an elective deferral opportunity for eligible participants. Amounts contributed to the Plan are credited with earnings and losses under investment options as permitted by the Company from time to time. Participants are immediately vested in all deferrals and Company contributions to the Plan. The Plan is intended to comply with the requirements of Section 409A of the Internal Revenue Code. The foregoing description is qualified in its entirety by the terms of the Plan, a copy of which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

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

Amended and Restated By-Laws

On October 3, 2018, the Board of Directors of Constellation Brands, Inc. approved an amendment and restatement of the Company’s By-Laws, with immediate effect. The amendments:

- Add requirements that shareholders furnish security ownership information and meet other requirements in connection with providing advance notice of shareholder meeting proposals and director nominations.
- Identify that the Company elects to follow Section 141(c)(2) of the General Corporation Law of the State of Delaware.
- Remove the descriptions of the powers and duties of officers and authorize the Board of Directors to prescribe such powers and duties by way of resolutions.
- Add a forum selection clause stating that the sole and exclusive forum for certain matters shall be the Court of Chancery of the State of Delaware, unless the Company consents otherwise in writing.

Other changes include administrative updates and ministerial changes of various provisions, including, but not limited to, annual and special meetings of shareholders, election of directors, stock certificates and form of records.

The foregoing description of the Company's Amended and Restated By-Laws is qualified in all respects by reference to the text of the Amended and Restated By-Laws, a copy of which is filed 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.

The following exhibits are filed as part of this Current Report on Form 8-K:

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated By-Laws of Constellation Brands, Inc.
10.1	Third Amendment to the Constellation Brands, Inc. 2005 Supplemental Executive Retirement Plan
10.2	Constellation Brands Non-Qualified Savings Plan

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
(3)	ARTICLES OF INCORPORATION AND BYLAWS
(3.1)	Amended and Restated By-Laws of Constellation Brands, Inc. (filed herewith).
(10)	MATERIAL CONTRACTS
(10.1)	Third Amendment to the Constellation Brands, Inc. 2005 Supplemental Executive Retirement Plan (filed herewith). *
(10.2)	Constellation Brands Non-Qualified Savings Plan (filed herewith). *

* Designates management contract or compensatory plan or arrangement.

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: October 4, 2018

CONSTELLATION BRANDS, INC.

By: /s/ David Klein

David Klein

Executive Vice President and
Chief Financial Officer

~~AMENDED AND RESTATED~~

BY-LAWS

OF

CONSTELLATION BRANDS, INC.

(Amended ~~as of February 12~~ and Restated on October 3, 2018)

ARTICLE I

STOCKHOLDERS

Section 1.1 Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date, time and place, ~~if any~~, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting. ~~The Corporation may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.~~

Section 1.2 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, or by a committee of the Board of Directors which has been duly designated by the Board of Directors, and whose powers and authority, as expressly provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons. ~~Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. The Corporation may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors.~~

Section 1.3 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a ~~written~~ notice of the meeting shall be given ~~which that~~ shall state the place, ~~if any~~, date and hour of the ~~meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such~~ meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the ~~written Corporation's Restated Certificate of Incorporation (as it may be amended from time to time, the "Restated Certificate of Incorporation") or these By-Laws, the~~ notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at ~~such the~~ meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at ~~his~~ ~~such stockholder's~~ address as it appears on the records of the Corporation.

Section 1.4 Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the

adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 1.5 Quorum. The Corporation's authorized capital stock consists of Class A Common Stock (the "Class A Common"), Class B Common Stock (the "Class B Common"), Class 1 Common Stock (the "Class 1 Common") and Preferred Stock (the "Preferred Stock"). At each meeting of stockholders, except as otherwise provided by law, the Corporation's Restated Certificate of Incorporation or these By-Laws, the holders of shares representing a majority of the votes entitled to be cast at the meeting by the holders of all outstanding shares entitled to vote, present in person or ~~represented~~ by proxy, shall constitute a quorum. In the absence of a quorum, ~~the chairperson of the meeting or~~ the stockholders so present may adjourn the meeting from time to time in the manner provided in Section 1.4 of these By-Laws until a quorum shall attend. Such an adjournment ~~by the stockholders so present~~ may be approved by the affirmative vote ~~of the holders~~ of a majority of the votes entitled to be cast by the stockholders present or represented by proxy at such meeting notwithstanding that a quorum is not present. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.76 Organization. Meetings of stockholders shall be presided over (i) by the Chairman of the Board, if any, or ~~in his absence any person designated by the Chairman of the Board,~~ (ii) ~~in the absence of or failure to designate by the foregoing,~~ by the Vice Chairman of the Board, if any, or ~~in his absence any person designated by the Vice Chairman of the Board,~~ (iii) ~~in the absence of or failure to designate by the foregoing,~~ by the Chief Executive Officer, ~~or~~ (iv) ~~in his absence of the foregoing,~~ by the President, (v) ~~in the absence of the foregoing,~~ persons by a ~~chairman~~ chairperson designated by the Board of Directors, or (vi) ~~in the absence of such designation by a chairman~~ chairperson chosen at the meeting. The Secretary ~~or an Assistant Secretary~~ shall act as secretary of the meeting, but in his ~~or her~~ absence the ~~chairman~~ chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7 Voting. At each meeting of stockholders (a) each holder of Class A Common present in person or represented by proxy at the meeting and entitled to vote on a matter shall be entitled to cast one (1) vote for each share of Class A Common held by such holder, (b) each holder of Class B Common present in person or represented by proxy at the meeting and entitled to vote on a matter shall be entitled to cast ten (10) votes for each share of Class B Common held by such holder, (c) each holder of Class 1 Common present in person or represented by proxy at the meeting and entitled to vote on a matter shall be entitled to cast one (1) vote for each share of Class 1 Common held by such holder, and (d) each holder of Preferred Stock present in person or represented by proxy at the meeting shall be entitled to such voting rights as shall be provided for in the Certificate of Designations relating to the Preferred Stock held by such holder. Except as otherwise provided by law, Section 2.2 of these By-Laws pertaining to the election of directors, or the ~~Corporation's~~ Restated Certificate of Incorporation, all classes of stock entitled to vote with respect to a matter shall vote together as a single class, ~~and the affirmative vote~~ All matters presented to the stockholders at a meeting at which a quorum is present shall, unless a different or minimum vote is required by the Restated Certificate of Incorporation, these By-Laws (including, but not limited to, Section 2.2 of these By-Laws pertaining to the election of the directors), the rules and regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case, such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority of the votes entitled to be cast by stockholders present in person or represented by proxy at the meeting and entitled to vote on the matter

~~shall be the act of the stockholders.~~ Except as otherwise required by law or by the Restated Certificate of Incorporation, the Board of Directors may require a larger vote upon any election or question.

Section 1.8 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy in any manner permitted by the General Corporation Law of the State of Delaware, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person, ~~or~~ by filing an instrument in writing revoking the proxy ~~or with the Secretary of the Corporation or by validly submitting~~ another duly executed proxy bearing a later date ~~with the Secretary of the Corporation.~~

Section 1.9 Fixing Date for Determination of Stockholders of Record.

(A) 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 to express consent to corporate action in writing without a meeting, 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 record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting, ~~nor more than sixty days prior to any other action.~~ If no record date is fixed ~~-(1) by the Board of Directors,~~ the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; ~~and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.~~ 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.

(B) In order that the Corporation may determine the stockholders 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 a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Restated Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record

date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 1.10 List of Stockholders Entitled to Vote. The Secretary Corporation shall prepare ~~and make;~~ at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. 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 ten (10) days prior to the meeting; either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at a the principal place within of business of the city where Corporation. If the meeting is to be held, which at a place shall be specified in the notice of the meeting, or, if not so specified, at the offices of the transfer agent. ~~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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 1.11 Action by Consent of Stockholders. Unless otherwise restricted by the Restated Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted- and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to the corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing; and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

~~Section 1.12 — Business at Meetings of Stockholders. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given~~

Section 1.12 Inspectors of Election. The Board of Directors by resolution shall appoint one or more inspectors of election, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meeting of stockholders or any adjournment thereof, and to make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. In the event that no inspector or alternate so appointed or designated is able to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the

meeting. Each inspector, before discharging his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors shall have the duties prescribed by law.

Section 1.13. Nominations and Business at Meetings of Stockholders.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors any committee thereof, or (c) otherwise properly brought before the meeting by a by any stockholder: of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.13.

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.13, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such any proposed business (other than nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received the Secretary of the Corporation at the principal executive offices of the Corporation not less than 120 days before the date of the Corporation's proxy statement that was released to stockholders in connection with its previous annual meeting of stockholders. If the date of the annual meeting has been changed by more later than 30 days from the date of the previous the close of business on the one hundred twentieth (120th) day, nor earlier than the close of business on the one hundred fiftieth (150th) day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date or if no annual meeting was held during the previous preceding year, then the notice must be received a reasonable time before the Corporation begins to print and mail its proxy materials. A stockholder's notice to the Secretary shall set forth as to each matter notice by the stockholder must be so delivered not earlier than the close of business on the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). 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. A stockholder's notice to the Secretary shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the Corporation's proxy statement as a nominee of the stockholder and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the annual meeting; (w) a brief description of the business desired to be brought before the annual meeting, and 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 the By-Laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the annual meeting, (x) the name, address and telephone number of the stockholder proposing such business, (y) the class and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf

~~the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of the capital stock of the Corporation which are owned beneficially owned by the stockholder, and (z) any material interest of the stockholder in such business. A stockholder who makes a proposal shall provide the Corporation with such additional information regarding the proposal as shall be reasonably requested by the Corporation, including, without limitation, any information necessary for the Corporation to comply with federal and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities laws. The Chairman of the annual meeting stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the Corporation, (v) 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 by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this paragraph (A) of this Section 1.13 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.~~

~~(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 1.13 and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.13 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.~~

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.13. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 1.13 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred fiftieth (150th) day prior to such special meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such special meeting or the tenth (10th) day following the day on which the Corporation first makes a public announcement of the date of the special meeting at which directors are to be elected. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General.

(1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.13 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.13. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the provisions of this Section 1.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made, solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(vi) of this Section 1.13) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.13, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 1.13, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or

in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 1.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.13; provided however, that any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.13 (including paragraphs (A)(1)(c) and (B) hereof), and compliance with paragraphs (A)(1)(c) and (B) of this Section 1.13 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of (A)(2), business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 1.13 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

Section 1.14. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairperson of the meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairperson of any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting ~~in accordance with the provisions of this Section 1.12, and if he~~ and if such chairperson should so determine, ~~he~~ such chairperson shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Number; Qualifications. The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. ~~Directors shall be elected at the annual meeting of stockholders and each director elected shall hold office until his successor is elected and qualified.~~ Directors need not be stockholders.

Section 2.2 Election; Resignation; Removal; Vacancies. ~~Directors shall be elected at each annual meeting of stockholders and each director elected shall hold office for a term of one year or until his or her successor is elected and qualified, subject to such director's earlier death, resignation, disqualification, or removal. Any director may resign at any time upon notice to the Corporation. At every meeting of stockholders called for the election of directors, the holders of Class A Common, voting as a class, shall be entitled to elect one-fourth (1/4) of the number of directors to be elected at such meeting (rounded, if the total number of directors to be elected at such meeting is not evenly divisible by four (4), to the next higher whole number), and the holders of Class B Common, voting as a class, shall be entitled to elect the remaining number of directors to be elected at such meeting. Irrespective of the foregoing, if the number of outstanding Class B Common shares is less than 12 1/2% of the total number of outstanding shares of Class A Common and Class B Common, then the holders of the Class A Common shall be entitled to elect one-fourth (1/4) of the number of directors to be elected at such meeting (rounded, if the total number of directors to be elected at such meeting is not evenly divisible by four (4), to the next higher whole number) and shall be entitled to participate with the holders of the Class B Common voting as a single class in the election of the remaining number of directors to be elected at such meeting, provided that the holders of Class A Common shall have one (1) vote per share and the holders of Class B Common shall have ten (10) votes per share. In each case, the directors shall be elected by a plurality of the votes entitled to be cast by the stockholders who are present in person or represented by proxy at the meeting and entitled to vote on the election of directors. If, during the interval between annual meetings for the election of directors, the number of directors who have been elected by either the holders of the Class A Common or the Class B Common shall, by reason of resignation, death, retirement, disqualification or removal, be reduced, the vacancy or vacancies in directors so created may be filled by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director. Any director so elected by the remaining directors to fill any such vacancy may be removed from office by the vote of the holders of a majority of the shares of the Class A Common and the Class B Common voting as a single class, provided that the holders of Class A Common shall have one (1) vote per share and the holders of Class B Common shall have ten (10) votes per share. During the interval between annual meetings, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled by the members of the Board of Directors in accordance with the General Corporation Law of the State of Delaware.~~

Section 2.3 Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined notices thereof need not be given.

Section 2.4 Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, ~~the~~ President, any Vice-President, the Secretary, or by any two members of the Board of Directors. ~~At least one days' notice thereof~~ Notice of a special meeting of the Board of Directors shall be given ~~by at least twenty-four hours before~~ the person or persons calling

~~the special meeting; either Such notice shall be given~~ personally, by mail, ~~or by telegram~~ telephone, or electronic transmission.

Section 2.5 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board ~~of Directors~~, may participate in a meeting ~~of such Board or committee thereof~~ by means of conference telephone or ~~similar other~~ communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this ~~By-Law Section~~ shall constitute presence in person at such meeting.

Section 2.6 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the whole Board ~~of Directors~~ shall constitute a quorum for the transaction of business. Except in cases in which the Restated Certificate of Incorporation, ~~or~~ these By-Laws ~~or applicable law~~ otherwise ~~provide~~ provides, the vote 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.

Section 2.7 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in his absence by the Vice Chairman of the Board, if any, or in his absence by the Chief Executive Officer; ~~(if also a director)~~, or in his ~~or her~~ absence by the President; ~~(if also a director)~~, or in the absence of the foregoing persons by a ~~chairman~~ chairperson chosen at the meeting. The Secretary ~~or an Assistant Secretary~~ shall act as secretary of the meeting, but in ~~his~~ their absence the ~~chairman~~ chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8 Action by Unanimous Consent of Directors. Unless otherwise restricted by the ~~certificate~~ Restated Certificate of Incorporation ~~incorporation~~ or these ~~bylaws~~ By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any 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 thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the ~~board~~ Board of Directors or committee in accordance with applicable law.

ARTICLE III

COMMITTEES

Section 3.1 Committees. ~~The Corporation hereby elects to be governed by Section 141(c)(2) of the General Corporation Law of the State of Delaware.~~ The Board of Directors may, ~~by resolution passed by a majority of the whole Board,~~ designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board ~~of Directors~~ may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, ~~she~~ or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent ~~permitted by law and to the extent~~ provided in the resolution of the Board of Directors, 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, and may authorize the seal of the Corporation to be affixed to all papers which may require it; ~~but no such committee shall have power or authority in reference to amending the Restated Certificate of Incorporation of the Corporation; adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and~~

~~assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, or amending these By-Laws; and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.~~

Section 3.2 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these By-Laws.

ARTICLE IV

OFFICERS

Section 4.1 Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall ~~choose~~ elect a President and Secretary, and it may, if it so determines, choose a Chairman of the Board and a Vice Chairman of the Board from among its members. The Board of Directors may also choose a Chief Executive Officer, one or more Vice-Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, and may choose such other officers as it may deem necessary, ~~each of whom shall have such titles and duties as shall be determined by the Board of Directors or desirable~~. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding ~~this~~ his or her election, and until his or her successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by reason of death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors ~~at any regular or special meeting~~.

~~Section 4.2—Chairman of the Board. The Chairman of the Board, if there be one, shall preside at all meetings of the Board of Directors and of the stockholders, and shall perform such other duties as the Board may direct.~~

~~Section 4.3—Chief Executive Officer. The Chief Executive Officer shall be the principal executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation, unless otherwise provided by the Board of Directors. He shall preside at meetings of the stockholders and of the Board of Directors under the circumstances described in Section 1.7 or 2.7, respectively, and shall see that orders and resolutions of the Board of Directors are carried into effect. He shall have general powers of supervision and shall be the final arbiter of all differences among officers of the Corporation and his decision as to any matter affecting the Corporation shall be final and binding as between the officers of the Corporation subject only to the Board of Directors.~~

~~Section 4.4—President. The President shall have responsibility for the active management of the business of the Corporation, and, in the instance that the offices of President and Chief Executive Officer are not held by the same person, shall be under the general supervision of the Chief Executive Officer. In general, he shall perform all duties incident to the office of President, and such other duties as the Chief Executive Officer or the Board of Directors may from time to time prescribe. The President shall preside at meetings of the stockholders and of the Board of Directors under the circumstances described in Section 1.7 or 2.7, respectively.~~

~~Section 4.5—Vice Presidents.~~ In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

~~Section 4.6—Secretary.~~ The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the stockholders and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or Chief Executive Officer, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

~~Section 4.7—Assistant Secretary.~~ The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

~~Section 4.8—Treasurer.~~ The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and property of whatever kind in his possession or under his control belonging to the Corporation.

~~Section 4.9—Assistant Treasurer.~~ The Assistant Treasurer, or if there be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 4.2. Powers and Duties of Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed in a resolution by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 4.3. Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, Vice Chairman, Chief Executive Officer, President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 4.3 which may be delegated to an attorney or agent may also be exercised directly by the Chairman of the Board, Vice Chairman, Chief Executive Officer, President or any Vice President.

ARTICLE V

STOCK

Section 5.1 Certificates. The shares of ~~stock of~~ the Corporation shall be represented by certificates except to the extent that the Board of Directors ~~has adopted one may provide by resolution~~ or ~~more~~ resolutions ~~providing~~ that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution ~~adopted by the Board of Directors that relates to shall not apply to~~ outstanding shares represented by a certificate ~~shall not apply to such outstanding shares~~ until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by ~~the Chairman or any two authorized officers of the Corporation, including, but not limited to, the Chairman of the Board of Directors, the~~ Vice Chairman of the Board of Directors, if any, ~~or the Chief Executive Officer, President, or a any~~ Vice-President, ~~and by~~ the Treasurer, ~~or an Assistant Treasurer, or the Secretary or and an Assistant Secretary, of the Corporation,~~ certifying the class and number of shares ~~of owned by such holder in~~ the Corporation ~~registered in certificate form that are owned by him.~~ Any ~~of~~ or all ~~of~~ the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if ~~he were such officer, transfer agent, or registrar at the date of issue. Within a reasonable time after the issuance or transfer of~~ uncertificated shares, the Corporation shall send to the registered owner thereof a written notice setting forth the class and number of shares of the Corporation registered in his name. ~~Any stock certificates issued and any notices given shall include such other information and legends as shall be required by law or necessary to give effect to any applicable transfer, voting or similar restrictions~~ such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.2 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or ~~his such owner's~~ legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. If shares represented by a stock certificate alleged to have been lost, stolen or destroyed have become uncertificated shares, the

Corporation may, in lieu of issuing a new certificate, cause such shares to be reflected on its books as uncertificated shares and may require the owner of the lost, stolen or destroyed certificate, or ~~his such owner's~~ legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate.

Section 5.3 Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Upon the receipt by the Corporation or the transfer agent of the Corporation of proper evidence of succession, assignment or authority to transfer with respect to uncertificated shares, it shall be the duty of the Corporation to record the transaction upon its books.

Section 5.4 Registered Stockholders. 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 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 5.5 Transfer Agents; Registrars; Regulations. The Board of Directors may appoint a transfer agent and one or more co-transfer agents and registrar and one or more co-registrars and may make, or authorize any such agent to make, all such rules and regulations deemed expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Fiscal Year. The fiscal year of the Corporation shall be March 1 to the last day of February, unless otherwise determined by resolution of the Board of Directors.

Section 6.2 Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 6.3 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any ~~written~~ waiver of notice, ~~signed given~~ by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the stockholders, directors, or ~~member members~~ of a committee of directors need be specified in ~~any written a~~ waiver of notice.

Section 6.4 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for

such purpose, if: (1) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. All directors, including interested directors, may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 6.5 Form of Records. Any records ~~maintained administered~~ by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, ~~punch-cards, magnetic tape, photographs, micro-photographs, or~~ any other information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 6.6 Amendment of By-Laws. These By-Laws may be altered, amended or repealed, and new By-Laws made, by the Board of Directors, but the stockholders may make additional By-Laws and may alter and repeal any By-Laws whether adopted by them or otherwise.

Section 6.7. Forum Selection. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery of the State of Delaware, or (4) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section.

**THIRD AMENDMENT
TO THE
CONSTELLATION BRANDS, INC.
2005 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN**

WHEREAS, Constellation Brands, Inc. (the “Company”) maintains the Constellation Brands, Inc. 2005 Supplemental Executive Retirement Plan (the “SERP”), for the benefit of eligible employees of the Company and its affiliates; and

WHEREAS, the Company desires to amend the SERP to freeze participation in and future contributions to the SERP, to continue to credit participant balances resulting from investment gains and losses, and to distribute such amounts pursuant to the terms of the SERP, such changes to become effective as of December 31, 2018; and

WHEREAS, under Section 4.1 of the Constellation SERP, the Human Resources Committee of the Board of Directors of the Company (the “Committee”) is authorized to amend the SERP, and the Committee has determined that amendment of the SERP now is necessary and desirable;

NOW, THEREFORE, pursuant to the power reserved to the Committee under Section 4.1 of the SERP, the SERP is hereby amended, in the following particulars:

1. By adding the following sentence to the end of Section 2.1:

Notwithstanding the foregoing, Participation in the SERP shall be frozen effective December 31, 2018.

2. By adding the following sentence to the end of Section 2.3:

Notwithstanding the foregoing, no annual Benefit Credits will be contributed to the SERP for service after December 31, 2018.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, on behalf of the Company, the undersigned officer has executed this amendment this 3rd day of October, 2018.

Date: October 3, 2018

CONSTELLATION BRANDS, INC.

By: /s/Jeffrey Viviano
Name: Jeffrey Viviano
Title: Vice President, Compensation and Benefits

**CONSTELLATION BRANDS
NON-QUALIFIED SAVINGS PLAN**

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PREAMBLE

Constellation Brands, Inc. hereby establishes the Constellation Brands Non-Qualified Savings Plan, set forth herein, which is an unfunded non-qualified deferred compensation plan for a select group of management and/or highly compensated employees. Under the terms of the Plan, Eligible Individuals may elect to defer receipt of a portion of their Compensation to a later Taxable Year.

Participants shall have no right, either directly or indirectly, to anticipate, sell, assign or otherwise transfer any benefit accrued under the Plan. In addition, no Participant shall have any interest in any assets set aside as a source of funds to satisfy benefit obligations under the Plan. Participants shall have the status of general unsecured creditors of the Plan Sponsor, and the Plan shall constitute an unsecured promise by the Plan Sponsor to make benefit payments in the future.

The Plan is intended to be “a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees” within the meaning of ERISA Sections 201(2) and 301 (a)(3), is intended to comply with the requirements of Code Section 409A and the regulations and binding guidance issued thereunder to avoid adverse tax consequences, and shall be interpreted and administered to the extent possible in a manner consistent with that intent.

ARTICLE I

DEFINITIONS

- 1.1 **Account.** The bookkeeping account or accounts established for each Participant to record his or her benefit under the Plan.
- 1.2 **Affiliate.** Any corporation or business entity that would be considered a single employer with the Plan Sponsor pursuant to Code Sections 414(b) or 414(c).
- 1.3 **Aggregated Plan.** A nonqualified deferred compensation plan that is required to be aggregated and treated with the Plan as a single plan under Code Section 409A.
- 1.4 **Annual Bonus.** The cash compensation paid to a Participant under the Plan Sponsor's annual bonus program, including amounts excludible from gross income that are contributed by the Participant on a pre-tax basis to a salary reduction retirement or welfare plan (including amounts contributed to this Plan).
- 1.5 **Annual Enrollment Materials.** For any Taxable Year, the Plan Guide, Compensation Deferral Agreement, and any other forms, documents, or other materials concerning the terms of the Plan.
- 1.6 **Beneficiary.** An individual, individuals, trust or other entity designated by the Participant to receive his or her benefit in the event of the Participant's death. If more than one Beneficiary survives the Participant, the Participant's benefit shall be divided equally among all such Beneficiaries, unless otherwise provided in the Beneficiary Designation form. Nothing herein shall prevent the Participant from designating primary and contingent Beneficiaries.
- 1.7 **Benefit Benchmarks.** Hypothetical investment funds or benchmarks made available to Participants by the Plan Administrator for purposes of valuing benefits under the Plan.
- 1.8 **Board.** The Board of Directors of the Plan Sponsor.
- 1.9 **Change in Control Event.** A Change in Control Event is a "Change in Control" under the definition set forth below, provided that such event is also "a change in control event" within the meaning of Code Section 409A.

"Change in Control" means

- (a) the consummation of:
- (i) any consolidation or merger of the Plan Sponsor in which the Plan Sponsor is not the continuing or surviving corporation or pursuant to which any shares of Class A Stock or Class 1 Stock of the Plan Sponsor are to be converted into cash, securities or other property, provided that the consolidation or merger is not with a corporation which was a direct or

indirect wholly-owned subsidiary of the Plan Sponsor or one of its Affiliates immediately before the consolidation or merger; or

(ii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Plan Sponsor; or

(b) the consummation of a complete liquidation or dissolution of the Plan Sponsor;
or

(c) any person (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) other than any of the Permitted Holders becoming the beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of 35% or more of the voting control of the Plan Sponsor's then outstanding common stock, provided that such person shall not be a wholly-owned subsidiary of the Plan Sponsor immediately before it becomes such 35% beneficial owner of voting control; or

(d) individuals who constitute the Incumbent Board cease for any reason to constitute at least a majority of the Plan Sponsor's Board of Directors (for this purpose "Incumbent Board" means at any time those persons who are then members of the Board of Directors of the Plan Sponsor and who either (i) are members of the Plan Sponsor's Board of Directors on the date hereof, or (ii) have been elected, or have been nominated for election by the Plan Sponsor's stockholders, by the affirmative vote of at least two-thirds of the directors comprising the Incumbent Board at the time of such election or nomination (either by a specific vote or by approval of the proxy statement of the Plan Sponsor in which such person is named as a nominee for director without objection to such nomination)).

1.10 *Class Year Account.* The balance credited to a Participant's or Beneficiary's Account for a Taxable Year, including: (a) the Participant's Compensation Deferrals relating to Regular Salary paid for services performed during the Taxable Year; (b) Compensation Deferrals relating to the Annual Bonus paid for services performed for the Plan Sponsor's fiscal year commencing during the Taxable Year; (c) Matching Credits and Discretionary Credits, if any, with respect to amounts earned for such Taxable Year even if paid in a subsequent year (i.e., the Annual Bonus); and (d) Investment Debits and Credits allocable to the Class Year Account (as determined by the Plan Sponsor, in its discretion).

1.11 *Code.* The Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

1.12 *Compensation.* A Participant's Regular Salary and Annual Bonus and excluding all other forms of compensation, including, without limitation, amounts paid under this Plan.

1.13 *Compensation Deferral Agreement.* The written or electronic deferral agreement in such form and subject to such terms as specified by the Plan Administrator. Such agreement is

between an Eligible Individual and the Plan Sponsor to defer Eligible Individual's receipt of Compensation. Such agreement shall state the deferral amount or percentage of Compensation to be withheld from the Eligible Individual's Compensation, and the form and timing of the Participant's deferral elections.

- 1.14 Compensation Deferrals.** That portion of a Participant's Compensation which is deferred under the terms of this Plan.
- 1.15 Disability.** Any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, and for which the Participant is receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant's Plan Sponsor; provided that such condition also satisfies the requirements of a disability under Code Section 409A.
- 1.16 Discretionary Credits.** Amounts described in Section 2.5.
- 1.17 Distributable Event.** The events entitling a Participant or Beneficiary to a payment of benefits under the Plan, which shall be: Separation from Service; death; Disability; the occurrence of an Interim Distribution Date; the occurrence of an Unforeseeable Emergency; the occurrence of a Change in Control Event; and Income Inclusion Under Code Section 409A.
- 1.18 Domestic Partner.** An individual who satisfies that requirements for being treated as a Participant's domestic partner under the Plan Sponsor's corporate policies. The Plan Administrator in its sole discretion shall determine whether an individual meets the requirements of a Domestic Partner and shall have the right to request documentary proof of the existence of a Domestic Partner relationship, which proof may include, but is not limited to, a joint checking account, a joint mortgage or lease, driver's licenses showing the same address, the registration of a domestic partnership or civil union in states that recognize such relationships or such other proof as the Plan Administrator may determine.
- 1.19 Effective Date.** The date as of which the Plan becomes effective, which generally is January 1, 2019, provided that the terms of the Plan shall apply to Taxable Years commencing on and after January 1, 2019, and shall apply to Regular Salary earned for Taxable Years beginning on or after January 1, 2019 and Annual Bonuses earned for fiscal years of the Plan Sponsor beginning on or after March 1, 2019.
- 1.20 Eligible Individual.** Unless otherwise specified by the Plan Administrator, including in the Annual Enrollment Materials for a particular Taxable Year, an employee of the Plan Sponsor who: (i) holds a position of Vice President or higher; and (ii) is paid at a salary grade of 21 or higher. Only those individuals who are part of a select group of management and/or highly compensated individuals, as determined by the Plan Sponsor in its sole discretion, may be designated as Eligible Individuals under the Plan.
- 1.21 ERISA.** The Employee Retirement Income Security Act of 1974, as amended. Reference to any section or subsection of ERISA includes reference to any comparable or

succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

- 1.22 *Income Inclusion Under Code Section 409A.*** Shall have the meaning set forth in Section 6.9.
- 1.23 *Interim Distribution Date.*** April 1st of the year specified by the Participant in the Participant's Compensation Deferral Agreement as the year of payment for an in-service distribution date; provided that such year is at least three years after the first day of the Taxable Year in which the services giving rise to the Compensation Deferrals, Matching and/or Discretionary Credits subject to the Interim Distribution Date are to be performed.
- 1.24 *Investment Credits and Debits.*** Bookkeeping adjustments to Participants' Accounts to reflect the hypothetical interest, earnings, appreciation, losses and depreciation that would be accrued or realized if assets equal to the value of such Accounts were invested in accordance with such Participants' Benefit Benchmarks.
- 1.25 *Matching Credits.*** Credits described in Section 2.4.
- 1.26 *Normal Retirement Age.*** The date the Participant attains at least age 60 with at least 5 years of service with the Plan Sponsor.
- 1.27 *Participant.*** An Eligible Individual who is currently deferring a portion of his or her Compensation under this Plan, or who is currently eligible for Matching Credits or Discretionary Credits, or an Eligible Individual or former Eligible Individual who is entitled to the payment of benefits under the Plan.
- 1.28 *Permitted Holder.*** (a) Marilyn Sands, her descendants (whether by blood or adoption), her descendants' spouses, her siblings, the descendants of her siblings (whether by blood or adoption), Hudson Ansley, Lindsay Caleo, William Caleo, Courtney Winslow, or Andrew Stern, or the estate of any of the foregoing individuals, or The Sands Family Foundation, Inc., (b) trusts which are for the benefit of any combination of the individuals and foundation described in clause (a), or any trust for the benefit of any such trust, or (c) partnerships, limited liability companies or any other entities which are controlled by any combination of the individuals described in clause (a) or the estate of any such individuals, The Sands Family Foundation, Inc., a trust referred to in the foregoing clause (b), or an entity that satisfies the conditions of this clause (c).
- 1.29 *Plan.*** The Constellation Brands Non-Qualified Savings Plan established by the Plan Sponsor as set forth herein, which may be amended from time to time.
- 1.30 *Plan Guide.*** For any Taxable Year, the plan guide concerning the terms of Compensation Deferrals, and, if applicable, any Matching Credits or Discretionary Credits.
- 1.31 *Plan Administrator.*** The Human Resources Committee of the Board, or such other committee appointed by the Board of the Plan Sponsor to administer the Plan as provided herein. For avoidance of doubt, in no event shall a Participant who is a member of such

committee be permitted to make decisions regarding his or her benefits under this Plan; rather, such decisions shall be made by the other members of any committee appointed to act as the Plan Administrator. If a Change in Control Event occurs with respect to the Plan Sponsor, the existing Plan Administrator shall be removed, and a new Plan Administrator shall be appointed as provided in Section 8.9.

- 1.32 *Plan Sponsor.*** Constellation Brands, Inc., including any successor to such corporation or business that assumes the obligations of such corporation or business. Solely for purposes of identifying Eligible Individuals, the term Plan Sponsor shall include an entity that is an Affiliate of the Plan Sponsor, and is designated as a Participating Affiliate on Exhibit A attached hereto. Only Constellation Brands, Inc. shall have the power to amend this Plan, appoint the Plan Administrator, or exercise any of the powers described in Section 8.3 hereof.
- 1.33 *Qualified Plan.*** The Constellation Brands, Inc. 401(k) and Profit Sharing Plan.
- 1.34 *Regular Salary.*** The Participant's base salary paid by the Plan Sponsor, including amounts excludible from gross income that are contributed by the Participant on a pre-tax basis to a salary reduction retirement or welfare plan (including amounts contributed to this Plan).
- 1.35 *Separation from Service.*** A Participant shall have a Separation from Service under the circumstances described below; provided that such separation also qualifies as "separation from service" within the meaning of Code Section 409A.

A Participant who is a common law employee has a Separation from Service if the Participant voluntarily or involuntarily terminates employment with the Plan Sponsor and all Affiliates. A termination of employment occurs if the facts and circumstances indicate that the Plan Sponsor and the Participant reasonably anticipate that no further services will be performed after a certain date or that the level of bona fide services the Participant will perform after such date (whether as an employee or an independent contractor) will decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period (or the full period of services if the Participant has been providing services for less than 36 months). Notwithstanding the foregoing, the employment relationship is treated as continuing while the Participant is on military leave, sick leave or other bona fide leave of absence if the period of leave does not exceed 6 months, or if longer, provided the Participant retains the right to reemployment with the Plan Sponsor or an Affiliate under an applicable statute or contract.

- 1.36 *Specified Employee.*** A key employee (as defined in Code Section 416(i) without regard to paragraph (5) thereof) of a Plan Sponsor or its Affiliates. A Participant is a key employee if the Participant meets the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii) (applied in accordance with the regulations thereunder and disregarding Code Section 416(i)(5)) at any time during the 12-month period ending each December 31. If a Participant is a key employee at any time during the 12-month period ending on such December 31, the Participant is treated as a Specified Employee for the 12-month period

beginning on the following April 1. Specified Employees shall be determined consistent with the requirements of Code Section 409A.

- 1.37 **Spouse.** The individual to whom a Participant is married, or was married in the case of a deceased Participant who was married at the time of his or her death.
- 1.38 **Taxable Year.** The 12-consecutive-month period beginning each January 1 and ending each December 31.
- 1.39 **Trust.** The agreement, if any, between the Plan Sponsor and the Trustee under which assets may be delivered by the Plan Sponsor to the Trustee to offset liabilities assumed by the Plan Sponsor under the Plan. Any assets held under the terms of the Trust shall be the exclusive property of the Plan Sponsor and shall be subject to the creditor claims of the Plan Sponsor with respect to whom such Trust has been established. Participants shall have no right, secured or unsecured, to any assets held under the terms of the Trust.
- 1.40 **Trustee.** The institution named by the Plan Sponsor in the Trust agreement, if any, and any corporation which succeeds the Trustee by merger or by acquisition of assets or operation of law.
- 1.41 **Unforeseeable Emergency.** A severe financial hardship to the Participant resulting from an illness or accident of the Participant or the Participant's Spouse, Beneficiary or dependent (as defined in Code Section 152 without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B)), loss of the Participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. An Unforeseeable Emergency shall be determined consistent with the requirements of Code Section 409A.
- 1.42 **Valuation Date.** The date on which Participant Accounts under the Plan are valued. The Valuation Date shall be each business day of the Taxable Year on which the New York Stock Exchange and, if a Trust has been established in connection with the Plan, the Trustee are open for business.

ARTICLE II

ELIGIBILITY AND PARTICIPATION

- 2.1 **Eligibility.** Eligible Individuals, as designated by the Plan Sponsor, may participate in the Plan. Generally, Eligible Individuals may commence participating in the Plan for Taxable Years commencing after they become Eligible Individuals.
- 2.2 **Participation.** An Eligible Individual's participation in the Plan is subject to the Plan Administrator providing written notification to such Eligible Individual of his or her eligibility to participate in the Plan.
- 2.3 **Compensation Deferral Agreement.** In order to defer Compensation under the Plan for a given Taxable Year, an Eligible Individual must enter into a Compensation Deferral

Agreement with the Plan Sponsor authorizing the deferral of a portion of the Participant's Compensation for such Taxable Year.

Upon receipt of a properly completed and executed Compensation Deferral Agreement, the Plan Administrator shall notify the Plan Sponsor to withhold that portion of the Participant's Compensation specified in the Agreement. In no event will the Participant be permitted to defer more than 75% of the Participant's Regular Salary or 100% of the Participant's Annual Bonus.

Subject to Section 7.1, the Compensation Deferral Agreement shall remain in effect for the duration of the Taxable Year to which it relates. The Compensation Deferral Agreement shall not remain in effect for subsequent Taxable Years. Rather, Participants must make new elections for each year.

A Compensation Deferral Agreement must be completed and returned to the Plan Sponsor prior to the first day of the Taxable Year in which services are performed for the Compensation deferred and shall be irrevocable except as otherwise provided hereunder.

2.4 *Matching Credits.* Subject to the requirements of Code Section 409A, the Plan Sponsor may credit the Account of a Participant with Matching Credits. For each Taxable Year, the Matching Credit will be equal to the difference between (a) the matching contribution that would have been credited to the Participant's account under the Qualified Plan for the applicable year if the Participant's contributions to the Qualified Plan had included Compensation Deferrals made by the Participant under this Plan for such year but otherwise subject to the applicable limitations of the Qualified Plan such as the maximum compensation limitation of Code Section 401(a)(17) and the maximum annual addition limitation of Code Section 415, and (b) the matching contribution actually credited to the Participant's account under the Qualified Plan for the year. The Matching Credit will generally be made in the first quarter of the year following the year to which the Matching Credit relates; provided that such Credit will be made as soon as administratively practicable after the Participant's Separation from Service, death or Disability if such date is sooner. Notwithstanding the forgoing, a Participant will receive a Matching Credit under this Plan for a Taxable Year only if the Participant has made the maximum salary reduction contributions permitted under the Qualified Plan during the applicable year.

2.5 *Discretionary Credits.* Subject to the requirements of Code Section 409A, the Plan Sponsor may credit the Account of a Participant with Discretionary Credits. For each Taxable Year, the Discretionary Credit will be equal to the difference between (a) the Safe Harbor Employer Basic Contributions, as defined under the Qualified Plan, that would have been credited to the Participant's account under the Qualified Plan for the applicable year if (i) the Participant's compensation included Compensation Deferrals made by the Participant under this Plan for such year; and (ii) the contribution under the Qualified Plan was calculated without regard to Code limitations, including the maximum compensation limitation of Code Section 401(a)(17) and/or the maximum annual addition limitation of Code Section 415, and (b) the Safe Harbor Employer Basic Contributions actually credited to the Participant's account under the Qualified Plan for the year.

This Discretionary Credit will generally be made in the first quarter of the year following the year to which the Discretionary Credit relates; provided that such Credit will be made as soon as administratively practicable after the Participant's Separation from Service, death or Disability if such date is sooner.

- 2.6** *Establishing a Reserve for Plan Liabilities.* The Plan Sponsor may, but is not required to, establish one or more Trusts to which the Plan Sponsor may transfer such assets as the Plan Sponsor determines in its sole discretion to assist in meeting its obligations under the Plan. Any such assets shall be the property of the Plan Sponsor and remain subject to the claims of the Plan Sponsor's creditors, to the extent provided under any Trust established with respect to such Plan Sponsor. The Trustee shall have no duty to determine whether the amounts forwarded by the Plan Sponsor are the correct amount or that they have been transmitted in a timely manner.

ARTICLE III

PARTICIPANT ACCOUNTS AND REPORTS

- 3.1** *Establishment of Accounts.* The Plan Administrator shall establish and maintain individual recordkeeping Accounts, Class Year Accounts and subaccounts, as applicable, on behalf of each Participant for purposes of determining each Participant's benefits under the Plan. A Participant's Account does not represent the Participant's ownership of, or any ownership interest in, any assets which may be set aside to satisfy the Plan Sponsor's obligations under the Plan.

- 3.2** *Account Maintenance.* As of each Valuation Date, the Plan Administrator shall credit each Participant's Accounts with the following:

- (a) An amount equal to any Compensation Deferrals made by the Participant since the last Valuation Date;
- (b) An amount equal to any Matching Credits and/or Discretionary Credits, and any forfeitures, if applicable, since the last Valuation Date; and
- (c) An amount equal to deemed Investment Credits under Section 3.3 since the last Valuation Date.

As of each Valuation Date, the Plan Administrator shall debit each Participant's Accounts with the following:

- (d) An amount equal to any distributions from the Plan to the Participant or Beneficiary since the last Valuation Date; and
- (e) An amount equal to deemed Investment Debits under Section 3.3 below since the last Valuation Date.

- 3.3** *Investment Credits and Debits.* The Accounts of Participants shall be adjusted for Investment Credits and Debits in accordance with this Section 3.3.

Participants shall have the right to specify one or more Benefit Benchmarks in which their Compensation Deferrals, Matching Credits and Discretionary Credits shall be deemed to be invested. The Benefit Benchmarks shall be utilized solely for purposes of adjusting their Accounts in accordance with procedures adopted by the Plan Administrator. The Plan Administrator shall provide the Participant with a list of the available Benefit Benchmarks. From time to time, in the sole discretion of the Plan Administrator, the Benefit Benchmarks available within the Plan may be revised. All Benefit Benchmark selections must be denominated in whole percentages unless the Plan Administrator determines that lower increments are acceptable. A Participant may make changes in the manner in which future Compensation Deferrals, Matching Credits and/or Discretionary Credits are deemed to be invested among the various Benefit Benchmarks available under the Plan in accordance with procedures established by the Plan Administrator. A Participant may re-direct the manner in which earlier Compensation Deferrals, Matching Credits and/or Discretionary Credits, as well as any appreciation (or depreciation), are deemed to be invested among the Benefit Benchmarks available under the Plan in accordance with procedures established by the Plan Administrator.

As of each Valuation Date, the Plan Administrator shall adjust the Accounts of each Participant for interest, earnings or appreciation (less losses and depreciation) with respect to the then balance of the Participant's Account equal to the actual results of the Participant's deemed Benefit Benchmark elections.

All notional acquisitions and dispositions of Benefit Benchmarks which occur within a Participant's Account, pursuant to the terms of the Plan, shall be deemed to occur at such times as the Plan Administrator shall determine to be administratively feasible in its sole discretion, and the Participant's Account shall be adjusted accordingly. Accordingly, if a distribution or reallocation must occur pursuant to the terms of the Plan and all or some portion of the Account must be valued in connection with such distribution or reallocation (to reflect Investment Credits and Debits), the Plan Administrator may in its sole discretion, unless otherwise provided for in the Plan, select a date or dates which shall be used for valuation purposes.

Notwithstanding anything to the contrary, any Investment Credits or Debits made to any Participant's Account following a Plan Termination or a Change in Control Event shall be made in a manner no less favorable to Participants than the practices and procedures employed under the Plan, or as otherwise in effect, as of the date of the Plan Termination or the Change in Control Event.

Notwithstanding the Participant's deemed Benefit Benchmark elections under the Plan, the Plan Sponsor shall be under no obligation to actually invest any amounts in such manner, or in any manner, and such Benefit Benchmark elections shall be used solely to determine the amounts by which the Participant's Account shall be adjusted under this Article III.

3.4 *Participant Statements.* The Plan Administrator shall provide each Participant with a statement showing the credits to and debits from his or her Account since the last statement date. Such statement shall be provided to Participants as soon as

administratively feasible following the end of each Taxable Year and on such other dates as agreed to by the Plan Sponsor and the party maintaining the Participant's Account records.

ARTICLE IV

WITHHOLDING OF TAXES

- 4.1 ***Withholding from Compensation.*** For any Taxable Year in which Compensation Deferrals, Matching Credits and/or Discretionary Credits are made to or vested within the Plan (as applicable), the Plan Sponsor shall withhold the Participant's share of income, FICA and other employment taxes from the portion of the Participant's Compensation not deferred. If deemed appropriate by the Plan Sponsor, all or any portion of a benefit under the Plan may be distributed in certain instances where necessary to facilitate compliance with applicable withholding requirements to the extent such distribution would not result in adverse tax consequences under Code Section 409A. The amount of any such distribution shall not exceed the amount necessary to comply with applicable withholding requirements.
- 4.2 ***Withholding from Benefit Distributions.*** The Plan Sponsor (or the Trustee of the Trust, as applicable) shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld by the Plan Sponsor, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Plan Sponsor.

ARTICLE V

VESTING

- 5.1 ***Vesting.*** A Participant shall be immediately vested in (i.e., shall have a non-forfeitable right to) all Compensation Deferrals. Unless otherwise set forth in the Annual Enrollment Materials for a Taxable Year, a Participant shall also be immediately vested in all Matching Credits and Discretionary Credits credited to his or her Account, including any Investment Credits or Debits associated therewith.

ARTICLE VI

PAYMENTS

- 6.1 ***Benefits.*** Except as otherwise provided under the Plan, a Participant's or Beneficiary's benefit payable under the Plan shall be the value of the Participant's Class Year Accounts at the time a Distributable Event occurs with respect to such Participant or Beneficiary. In no event will a Participant's right to a benefit under this Plan give such Participant a secured right or claim on any assets set aside by the Plan Sponsor to meet its obligations under the Plan. All payments from the Plan shall be subject to applicable tax withholding and shall commence (or be fully paid, in the event a lump sum form of distribution was

selected) no later than ninety (90) days after the occurrence of the Distributable Event, except as otherwise provided herein.

6.2 Timing of Distribution Elections.

- (a) Initial Elections. The Participant shall elect the form and timing of payment for each Class Year Account at the time the Participant submits (or is required to submit, in accordance with Section 2.3) his or her Compensation Deferral Agreement for the Taxable Year for which the Class Year Account is established. Such elections must be made consistent with the forms, rules and procedures specified by the Plan Administrator, as well as the requirements of Code Section 409A.

At the time specified above, the Participant may elect for each of his or her Class Year Accounts to receive a benefit in the form of a lump sum distribution or annual installment payments over a period of five (5) or ten (10) years commencing as of the earlier of:

- (i) The Interim Distribution Date specified by the Participant;
or
- (ii) The Participant's Separation from Service.

Notwithstanding the Participant's election, in the event of the Participant's Separation from Service prior to the Participant's Normal Retirement Age, death, or Disability, or the occurrence of a Change in Control Event, all amounts credited to each Participant's Account shall be paid to the Participant in a lump sum within ninety (90) days after occurrence of such Distributable Events. Additionally, as noted below, special distribution payments may also be made in the event of an Unforeseeable Emergency or as a consequence of an Income Inclusion Under Section 409A.

- (b) Subsequent Changes in Time and Form of Payment. Subject to the requirements of Code Section 409A, a Participant may elect to change the time or form of payment of amounts distributable upon a Separation from Service or elect to change the time of payment of amounts distributable upon an Interim Distribution Date, provided, however, that any such election shall be effective only if:
- (i) the election does not accelerate the time or schedule of any payment within the meaning of Code Section 409A;
 - (ii) the election does not take effect until at least twelve (12) months after the date on which the election is made;
 - (iii) the first payment with respect to which such election is made is deferred for a period of 5 years from the date such payment would otherwise have been made; and

- (iv) for a change to a payment made upon an Interim Distribution Date, such election is made at least 12 months before such Interim Distribution Date.

The Plan Administrator shall have sole and absolute discretion to decide whether such a request shall be approved but may approve no more than one such request for any Participant with respect to any Class Year Account.

- (c) Failures to Elect. If a Participant fails to properly elect the form or time of distribution for his or her Class Year Account, or cannot make a timely election under Code Section 409A, the Participant shall be deemed to have elected to receive his or her Class Year Account in a single lump sum commencing on his or her Separation from Service.

6.3 *Separation from Service Payment*. In the event of a Participant's Separation from Service, the Participant's Class Year Account shall be paid in the form of a cash lump sum or, if elected by the Participant and the Separation from Service occurs after the Participant's Normal Retirement Age, in annual cash payments (over a period of five (5) or ten (10) years) as elected for the Class Year Account. For purposes of Code Section 409A, installment payments shall be treated as a single payment. If applicable, the initial installment shall be based on the value of the Participant's Class Year Account, measured on the date of his or her Separation from Service, and shall be equal to $1/n$ (where 'n' is equal to the total number of annual benefit payments not yet distributed). Subsequent installment payments shall be computed in a consistent fashion, with the measurement date being the anniversary of the original measurement date and subsequent installment payments being made within 90 days of such anniversary date. Election of the form of the Separation from Service payment with respect to a Class Year Account must be provided to the Plan Administrator at the time required by Section 6.2 of this Plan. The Participant's election of a Separation from Service payment form is irrevocable, except as provided in Section 6.2(b)

In the event a Participant incurs a Separation from Service before the Participant's Normal Retirement Age, all of the Participant's Class Year Accounts shall be paid in the form of a lump sum payment within ninety (90) days after the Separation from Service, notwithstanding any election that the Participant has made.

Notwithstanding the foregoing, a distribution resulting from a Separation from Service by a Participant who is a Specified Employee on the date of Separation from Service shall be made within the ninety (90) days following the date that is 6 months after the Separation from Service or, if earlier, within the ninety (90) days following the death of the Specified Employee. The first payment made following the 6-month period described in the preceding sentence shall include all payments that otherwise would have been made after Separation from Service but for the delay required by this paragraph.

6.4 *Interim Distribution Date Payments*. A Participant may make an election, at the time required by Section 6.2, to have his or her Class Year Account to which the election relates paid to him or her at an Interim Distribution Date designated by the Participant. Such Class Year Account shall be payable in a single cash lump sum payment or in

annual installments of five (5) or ten (10) years, as elected by the Participant. Payments shall commence within ninety (90) days after the applicable Interim Distribution Date as designated by the Participant. If applicable, the initial installment shall be based on the value of the Participant's Class Year Account, measured on the date of his or her designated Interim Distribution Date, and shall be equal to $1/n$ (where 'n' is equal to the total number of annual benefit payments not yet distributed). Subsequent installment payments shall be computed in a consistent fashion, with the measurement date being the anniversary of the original measurement date and subsequent installment payments being made within ninety (90) days of such anniversary date. Election of the form of the Interim Distribution Date payment must be provided to the Plan Administrator at the time required by Section 6.2 of this Plan. The Participant's election of an Interim Distribution Date form is irrevocable, except as provided in Section 6.2(b).

For an election to commence distributions at an Interim Distribution Date, such elected Interim Distribution Date must occur before the Participant incurs a Separation from Service, death, or Disability or the occurrence of a Change in Control Event. Additionally, in the event a Participant incurs a Separation from Service before the Participant's Normal Retirement Age and after the commencement of an Interim Distribution Date, all of the Participant's Class Year Accounts that have commenced payment shall be paid in the form of a lump sum payment within ninety (90) days after the Separation from Service.

- 6.5 *Death Benefit.*** In the event of the Participant's death, whether before or after the Participant has otherwise incurred a Distributable Event or commenced receiving payments from the Plan, the Participant's Beneficiary shall receive the balance of the Participant's Account in a single lump-sum cash payment as soon as practicable following the Participant's death, but in no event later than December 31st of the calendar year following the calendar year in which death occurs.
- 6.6 *Disability Benefit.*** In the event that a Participant incurs a Disability, whether before or after the Participant has otherwise incurred a Distributable Event or commenced receiving payments from the Plan, the Participant shall receive the balance of the Participant's Account in a single lump-sum cash payment within ninety (90) days of the Disability. The Plan Administrator shall have complete discretion to determine whether the circumstances of the Participant constitute a Disability and the time at which such Disability occurs consistent with the terms of the Plan.
- 6.7 *Payment upon Change in Control Event.*** Notwithstanding any provision or election to the contrary, in the event of a Change in Control Event, all amounts credited to each Participant's Account shall be paid to the Participant in a lump sum within ninety (90) days after the Change in Control Event.

Subject to the requirements of Code Section 409A, in the event that a Participant is an employee of an Affiliate, other than the Plan Sponsor, and the Affiliate has a Change of Control Event, all amounts credited to such Participant's Account shall be paid to the Participant in a lump sum within ninety (90) days after the Change in Control Event.

Notwithstanding the preceding sentence, such distribution shall only occur if neither the Plan Sponsor nor an entity that is an Affiliate after such transaction employs the Participant after such transaction. For this purpose, an Affiliate shall be deemed to have a Change of Control Event with respect to any event that would be a Change of Control Event within the meaning of Section 1.8(a) or (c), if the term "Plan Sponsor" were replaced with the term "Affiliate" each time it is used therein.

- 6.8 *Unforeseeable Emergency Distribution.*** If a Participant has an Unforeseeable Emergency, as defined herein, the Plan Administrator may pay to the Participant that portion of his or her Account which the Plan Administrator determines is reasonably necessary to satisfy the emergency to the extent permissible under Code Section 409A. The amounts distributed to the Participant as a result of an Unforeseeable Emergency may not exceed the amounts reasonably necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by cancellation of Compensation Deferrals pursuant to Section 7.1. A Participant requesting an Unforeseeable Emergency Distribution shall apply for the payment in writing on a form approved by the Plan Administrator and shall provide such additional information as the Plan Administrator may require. The Plan Administrator shall have complete discretion to determine whether the financial hardship of the Participant constitutes an Unforeseeable Emergency under the Plan. If, subject to the sole discretion of the Plan Administrator, the request for a withdrawal is approved, the distribution shall be made within ninety (90) days after the date of approval by the Plan Administrator.
- 6.9 *Payment upon Income Inclusion Under Section 409A.*** To the extent permitted under Code Section 409A, if the Plan Administrator determines at any time that the Plan fails to meet the requirements of Code Section 409A with respect to a Participant, the Plan Administrator shall distribute to the Participant the amount from the Participant's Account that is required to be included in income as a result of such failure. Such payment shall be made in a single lump-sum payment upon such determination.
- 6.10 *Beneficiary Designation.*** Unless otherwise set forth in the Annual Enrollment Materials for a particular Taxable Year, a Participant shall have the right to designate a Beneficiary and to amend or revoke such designation at any time in writing. Such designation, amendment or revocation shall be effective upon receipt by and acknowledgment from the Plan Administrator. If the Beneficiary is a minor or incompetent, benefits may be paid to a legal guardian, trustee, or other proper representative of the Beneficiary, and such payment shall completely discharge the Plan Sponsor and the Plan of all further obligations hereunder.

If no Beneficiary designation is made, if the Beneficiary designation is held invalid, or if no Beneficiary survives the Participant, and benefits are determined to be payable following the Participant's death, the Plan Administrator shall direct that payment of

benefits be made to the person or persons in the first of the below categories in which there is a survivor. The categories of successor beneficiaries, in order, are as follows:

- (a) Participant's Spouse;
- (b) Participant's Domestic Partner; and
- (c) Participant's estate.

6.11 Claims Procedure. All claims for benefits under the Plan, and all questions regarding the operation of the Plan, shall be submitted to the Plan Administrator in writing. The Plan Administrator has complete discretion and authority to interpret and construe any provision of the Plan, and its decisions regarding claims for benefits hereunder are final and binding.

- (a) **Presentation of Claim.** Any Participant, Beneficiary or person claiming benefits under the Plan (such Participant, Beneficiary or other person being referred to below as a "Claimant") may deliver to the Plan Administrator a written claim for a determination with respect to benefits distributable to such Claimant from the Plan. The claim must state with particularity the determination desired by the Claimant.

Any claim by a Participant that a payment made under the Plan is less than the amount to which the Participant is entitled must be made in writing pursuant to the foregoing provisions of this Section within 180 days after the date of such payment. Notwithstanding any other provision of the Plan, including the provisions of Section 5.1, a Participant shall forfeit all rights to any amounts claimed if the Participant fails to make claim as provided in the preceding sentence.

- (b) **Notification of Decision.** The Plan Administrator shall consider a Claimant's claim within a reasonable time, and shall notify the Claimant in writing:
 - (i) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or
 - (ii) that the Plan Administrator has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:
 - (1) the specific reason(s) for the denial of the claim, or any part of it;
 - (2) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;
 - (3) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;

- (4) a description of the claim review procedure set forth in Section 6.11(c) below, including information regarding any applicable time limits and a statement regarding the Claimant's right to bring an action under ERISA Section 502(a) following an adverse determination on review;
- (5) if the decision involved the Disability of the Participant, either the specific internal rules, guidelines, protocols, standards, or other similar criteria of the Plan relied upon during the claim or, alternatively, a statement that such criteria of the Plan do not exist;
- (6) if the decision involved the Disability of the Participant, a discussion of the decision, including an explanation of the basis for disagreeing with or not following (i) the views of a health care professional who treated the Claimant, (ii) the views of medical or vocational experts whose advice was obtained on behalf of the Plan (without regard to whether such advice was relied upon for the decision), and (iii) a determination by the Social Security Administration;
- (7) if the decision involved the Disability of the Participant and was based on a medical necessity, experimental treatment or similar exclusion/limit, an explanation of the scientific or clinical judgment for the decision (applying the terms of the Plan to Claimant's medical circumstances) or a statement that Claimant can request a copy of such explanation, free of charge, upon request; and
- (8) if the decision involved the Disability of the Participant, a statement that the Claimant may request access to, and copies of, all relevant documents, free of charge.

The Plan Administrator will notify the Claimant of an adverse decision within ninety (90) days after the date the claim was received, unless the Plan Administrator determines there are special circumstances that require an extension of time in which to make a decision. If an extension of time is needed, the Plan Administrator shall notify the Claimant of the extension before the expiration of the original 90-day period. The notice will include a description of the special circumstances requiring an extension of time and an estimate of the date it expects a decision to be made. The extension shall not exceed an additional 90-day period.

If the adverse decision relates to a claim involving the Disability of the Participant, the Plan Administrator will notify the Claimant of an adverse decision within forty-five (45) days after the date the claim was received, unless the Plan Administrator determines that matters beyond its control require an extension of time in which to make a decision. If an extension of time is needed, the Plan

Administrator shall notify the Claimant of the extension before the expiration of the original 45-day period. The notice will include a description of the circumstances necessitating the extension and an estimate of the date it expects a decision to be made. The extension shall not exceed an additional 30-day period unless, within the 30-day period the Plan Administrator again determines that more time is needed due to matters beyond its control, in which case notice of the need for not more than an additional thirty (30) days is provided to the Claimant before the first 30-day period expires. The notice will include a description of the circumstances requiring the extension and an estimate of the date it expects a decision to be made. Any extension notice will include information regarding the standards on which a determination of Disability will be made, the outstanding issues which prevent a decision from being made, and any additional information which is needed in order to reach a decision. The Claimant will have forty-five (45) days to supply any additional information.

If the Plan Administrator notifies the Claimant of the need for an extension of time to make a decision regarding his or her claim in accordance with this Section 6.11(b), and the extension is needed due to the Claimant's failure to provide information necessary to decide the claim, the period of time in which the Plan Administrator must make a decision does not include the time between the date the notice of the extension was sent to the Claimant and the date the Claimant responds to the request for additional information.

(c) **Review of a Denied Claim.** Within sixty (60) days after receiving a notice from the Plan Administrator that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Plan Administrator a written request for a review of the denial of the claim. During the 60-day review period, the Claimant (or the Claimant's duly authorized representative):

- (i) may review relevant documents;
- (ii) may submit written comments or other documents relating to the claim;
- (iii) may request access to and copies of all relevant documents, free of charge;
- (iv) may request a hearing, which the Plan Administrator, in its sole discretion, may grant.

The Plan Administrator will consider all documents and other information submitted by the Claimant in reviewing its previous decision, including documents not available to or considered by it during its initial determination.

If the appeal relates to a determination of the Plan Administrator involving the Disability of the Participant, the Claimant will have one-hundred-eighty (180) days following receipt of a denial to file a written request for review. In such event, no deference shall be given to the initial benefit determination, and the review shall be conducted by an appropriate fiduciary who is someone other than

the individual who made the initial determination or a subordinate of such individual. If the initial determination was based in whole or in part on a medical judgment, the reviewer shall consult with an appropriately trained and experienced health care professional, and shall disclose the identity of any experts who provided advice with regard to the initial decision. The health care professional whose advice is sought during the appeal process will not be an individual who was consulted during the initial determination, nor a subordinate of such an individual. If the review includes new or additional evidence or rationale considered, relied upon, or generated by the Plan or reviewer, the reviewer shall provide the Claimant with such evidence or rationale, free of charge, sufficiently in advance of issuing a decision on review to allow Claimant time to respond prior to such date.

(d) **Decision on Review.** The Plan Administrator shall render its decision on review promptly, and not later than sixty (60) days after the filing of a written request for review of the denial, unless a hearing is held or other special circumstances require additional time, in which case the Plan Administrator's decision must be rendered within one-hundred-twenty (120) days after such date. If an extension of time is needed, the Plan Administrator shall notify the Claimant of the extension before the expiration of the original 60-day period. The notice will include a description of the circumstances requiring the extension and an estimate of the date it expects a decision to be made. Such decision must be written in a manner calculated to be understood by the Claimant, and if the decision on review is adverse it must contain:

- (i) specific reasons for the decision;
- (ii) specific reference(s) to the pertinent Plan provisions upon which the decision was based;
- (iii) a statement that the Claimant may receive, upon request and free of charge, access to and copies of relevant documents and information;
- (iv) a statement describing any voluntary appeal procedures under the Plan and the Claimant's right to bring an action under ERISA Section 502(a) (and if the decision involved the Disability of the Participant, a description of any applicable contractual limitation period that applies to the Claimant's right to bring an action, including the calendar date on which such contractual limitation period expires);
- (v) if the decision involved the Disability of the Participant, either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in denying the claim on appeal or, alternatively, a statement that such criteria of the Plan does not exist;
- (vi) if the decision involved the Disability of the Participant, a statement that the Claimant and the Plan may have other voluntary alternative dispute

resolution options, such as mediation, and that the Claimant may find out what options are available by contacting the local U.S. Department of Labor Office and the state insurance regulatory agency;

- (vii) if the decision involved the Disability of the Participant, a discussion of the decision, including an explanation of the basis for disagreeing with or not following (i) the views of a health care professional who treated the Claimant, (ii) the views of medical or vocational experts whose advice was obtained on behalf of the Plan (without regard to whether such advice was relied upon for the decision), and (iii) a determination by the Social Security Administration;
- (viii) if the decision involved the Disability of the Participant and was based on a medical necessity, experimental treatment or similar exclusion/limit, an explanation of the scientific or clinical judgment for the decision (applying the terms of the Plan to Claimant's medical circumstances) or a statement that Claimant can request a copy of such explanation, free of charge, upon request; and
- (ix) such other matters as the Plan Administrator deems relevant.

If the appeal involves the Disability of the Participant, the decision of the Plan Administrator will be made within forty-five (45) days after the filing of the written request for review, unless special circumstances require additional time, in which case the Plan Administrator's decision will be made within ninety (90) days after the date the request was filed. If an extension of time is needed, the Plan Administrator shall notify the Claimant of the extension before the expiration of the original 45-day period. The notice will include a description of the circumstances requiring the extension and an estimate of the date it expects a decision to be made.

If the Plan Administrator notifies the Claimant of the need for an extension of time to make a decision regarding his or her appeal in accordance with this Section 6.11(d), and the extension is needed due to the Claimant's failure to provide information necessary to decide the appeal, the period of time in which the Plan Administrator must make a decision does not include the time between the date the notice of the extension was sent to the Claimant and the date the Claimant responds to the request for additional information.

ARTICLE VII

CANCELLATION OF DEFERRALS

- 7.1 *Unforeseeable Emergency.*** If a Participant has an Unforeseeable Emergency, as defined herein, the Plan Administrator may cancel all future Compensation Deferrals pertaining to Compensation not yet earned and required to be made pursuant to the Participant's current Compensation Deferral Agreement if reasonably necessary to satisfy the

Participant's financial hardship subject to the standards and requirements for an Unforeseeable Emergency Distribution set forth in Section 6.8. If a Participant receives a hardship distribution from a qualified plan of the Plan Sponsor pursuant to Code Section 401(k)(2)(B)(IV), the Plan Administrator shall cancel all future Compensation Deferrals pertaining to Compensation not yet earned and required to be made pursuant to the Participant's current Compensation Deferral Agreement, and the Participant will be prohibited from making Compensation Deferrals under the Plan for at least six (6) months after receipt of the hardship distribution or such longer period as may be prescribed by the qualified plan. The Participant's eligibility for Matching Credits and/or Discretionary Credits shall be similarly canceled, and the Participant shall be eligible to defer Compensation again at a later time only as provided under Article II.

ARTICLE VIII

PLAN ADMINISTRATION

- 8.1 *Appointment.*** The Plan Administrator shall serve at the pleasure of the Plan Sponsor, who shall have the right to remove the Plan Administrator at any time upon thirty (30) days' written notice. The Plan Administrator shall have the right to resign upon thirty (30) days' written notice to the Plan Sponsor.
- 8.2 *Duties of Plan Administrator.*** The Plan Administrator shall be responsible to perform all administrative functions of the Plan. These duties include but are not limited to:
- (a) Communicating with Participants in connection with their rights and benefits under the Plan;
 - (b) Reviewing Benefit Benchmark elections received from Participants;
 - (c) Arranging for the payment of taxes (including income tax withholding), expenses and benefit payments to Participants under the Plan;
 - (d) Filing any returns and reports due with respect to the Plan;
 - (e) Interpreting and construing Plan provisions and settling claims for Plan benefits; and
 - (f) Serving as the Plan's designated representative for the service of notices, reports, claims or legal process.
- 8.3 *Plan Sponsor.*** The Plan Sponsor has sole responsibility for the establishment and maintenance of the Plan. The Plan Sponsor shall have the power and authority to appoint the Plan Administrator, Trustee and any other professionals as may be required for the administration of the Plan. The Plan Sponsor shall also have the right to remove any individual or party appointed to perform administrative, investment, fiduciary or other functions under the Plan. The Plan Sponsor may delegate any of its powers to the Plan Administrator, Board member or a committee of the Board.

- 8.4 *Administrative Fees and Expenses.*** All reasonable costs, charges and expenses incurred by the Plan Administrator or the Trustee in connection with the administration of the Plan or the Trust shall be paid by the Plan Sponsor. If not so paid, such costs, charges and expenses shall be charged to the Trust, if any, established in connection with the Plan. The Trustee shall be specifically authorized to charge its fees and expenses directly to the Trust. If the Trust has insufficient liquid assets to cover the applicable fees, the Trustee shall have the right to liquidate assets held in the Trust to pay any fees or expenses due.
- 8.5 *Plan Administration and Interpretation.*** The Plan Administrator shall have complete discretionary control and authority to determine the rights and benefits and all claims, demands and actions arising out of the provisions of the Plan or any Participant, Beneficiary, deceased Participant, or other person having or claiming to have any interest under the Plan. The Plan Administrator shall have complete discretion to interpret the Plan and to decide all matters under the Plan. Such interpretation and decision shall be final, conclusive, and binding on all Participants and any person claiming under or through any Participant. Any individual serving as Plan Administrator who is a Participant will not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Plan Administrator shall be entitled to rely on information furnished by a Participant, a Beneficiary, the Plan Sponsor, or other party. The Plan Administrator shall have the responsibility for complying with any reporting and disclosure requirements of ERISA.
- 8.6 *Powers, Duties, Procedures.*** The Plan Administrator may adopt such rules, may act in accordance with such procedures, may appoint such officers or agents, may delegate such powers and duties, may receive such reimbursements, and shall follow such claims and appeal procedures with respect to the Plan as it may establish, each consistently with the terms of the Plan.
- 8.7 *Information.*** To enable the Plan Administrator to perform its functions, the Plan Sponsor shall supply full and timely information to the Plan Administrator on all matters relating to the Compensation of Participants, their employment, retirement, death, Separation from Service, and such other pertinent facts as the Plan Administrator may require.
- 8.8 *Indemnification of Plan Administrator.*** The Plan Sponsor agrees to indemnify and to defend to the fullest extent permitted by law any officer(s), employee(s) or Board members who serve as Plan Administrator (including any such individual who formerly served as Plan Administrator) against all liabilities, damages, costs and expenses (including reasonable attorneys' fees and amounts paid in settlement of any claims approved by the Plan Sponsor) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.
- 8.9 *Plan Administration Following a Change in Control Event.*** Notwithstanding anything to the contrary in this Article VIII or elsewhere in the Plan or Trust, upon a Change in Control Event with respect to the Plan Sponsor the individual serving as Chief Executive Officer of such Plan Sponsor immediately prior to such Change in Control Event shall have the right to appoint an individual, third party or committee to serve as Plan

Administrator. Such appointment shall be made in writing and copies thereof shall be delivered to the Board, to the existing Plan Administrator, to the Trustee, and to all Plan Participants. The Trustee and all other service providers shall be entitled to rely fully on instructions received from the successor Plan Administrator and shall be indemnified to the fullest extent permitted by law for acting in accordance with the proper instructions of the successor Plan Administrator.

ARTICLE IX

TRUST FUND

- 9.1** *Trust.* The Plan Sponsor may establish a Trust for the purpose of accumulating assets which may, but need not be used, by the Plan Sponsor to satisfy some or all of its financial obligations to provide benefits to Participants under this Plan. Any trust created under this Section 9.1 shall be domiciled in the United States of America, and no assets of the Plan shall be held or transferred outside the United States. All assets held in the Trust shall remain the exclusive property of the Plan Sponsor and shall be available to pay creditor claims of the Plan Sponsor in the event of insolvency, to the extent provided under any Trust established with respect to such Plan Sponsor. The assets held in Trust shall be administered in accordance with the terms of the separate Trust Agreement between the Trustee and the Plan Sponsor.
- 9.2** *Unfunded Plan.* In no event will the assets accumulated by the Plan Sponsor in the Trust be construed as creating a funded Plan under the applicable provisions of ERISA or the Code, or under the provisions of any other applicable statute or regulation. Any funds set aside by the Plan Sponsor in Trust shall be administered in accordance with the terms of the Trust.
- 9.3** *Assignment and Alienation.* No Participant or Beneficiary of a deceased Participant shall have the right to anticipate, assign, transfer, sell, mortgage, pledge or hypothecate any benefit under this Plan. The Plan Administrator shall not recognize any attempt by a third party to attach, garnish or levy upon any benefit under the Plan except as may be required by law.

ARTICLE X

AMENDMENT AND PLAN TERMINATION

- 10.1** *Amendment.* The Plan Sponsor shall have the right to amend this Plan without the consent of any Participant or Beneficiary hereunder, provided that no such amendment shall have the effect of reducing any of the vested benefits to which a Participant or Beneficiary has accrued a right as of the effective date of the amendment. Notwithstanding the foregoing, the Plan Sponsor shall have the right to amend this Plan in any manner whatsoever without the consent of any Participant or Beneficiary to comply with the requirements of Code Section 409A and any binding guidance thereunder to avoid adverse tax consequences even if such amendment has the effect of reducing a vested benefit or existing right of a Participant or Beneficiary hereunder.

- 10.2 *Plan Termination.*** Subject to the requirements of Code Section 409A, the Plan Sponsor may terminate or discontinue the Plan in whole or in part at any time. No further Discretionary Credits or Matching Credits shall be made following Plan Termination, and no further Compensation Deferrals shall be permitted after the Taxable Year in which the Plan Termination occurs, except that the Plan Sponsor shall be responsible to pay any benefit attributable to vested amounts credited to the Participant's Account as of the effective date of termination (following any adjustments to such Accounts in accordance with Article III hereof). If the Plan is terminated in accordance with this Section 10.2, the Plan Administrator shall make distribution of the Participant's vested benefit upon the occurrence of a Distributable Event with respect to a Participant. A Participant's vested benefit shall be adjusted to reflect Investment Credits and Debits for all Valuation Dates between Plan Termination and the occurrence of a Participant's Distributable Event.
- 10.3 *Effect of Payment.*** The full payment of the balance of a Participant's vested Account under the provisions of the Plan shall completely discharge all obligations to a Participant and his designated Beneficiaries under this Plan and each of the Participant's Compensation Deferral Agreements shall terminate.

ARTICLE XI

MISCELLANEOUS

- 11.1 *Total Agreement.*** This Plan document, the Annual Enrollment Materials, Beneficiary designation, and other administration forms shall constitute the total agreement or contract between the Plan Sponsor and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by a Participant or Beneficiary. The Plan Sponsor or Plan Administrator shall have the right to establish such procedures as are necessary for the administration or operation of the Plan or Trust, and such procedures shall also be considered a part of the Plan unless clearly contrary to the express provisions thereof.
- 11.2 *Employment Rights.*** Neither the establishment of this Plan nor any modification thereof, nor the creation of any Trust or Account, nor the payment of any benefits, shall be construed as giving a Participant or other person a right to employment with the Plan Sponsor or any Affiliate or any other legal or equitable right against the Plan Sponsor or any Affiliate except as provided in the Plan. In no event shall the terms of employment of any Eligible Individual be modified or in any way be affected by the Plan.
- 11.3 *Non-Assignability.*** None of the benefits, payments, proceeds or claims of any Participant or Beneficiary shall be subject to attachment or garnishment or other legal process by any creditor of such Participant or Beneficiary, nor shall any Participant or Beneficiary have the right to alienate, commute, pledge, encumber or assign any of the benefits or payments or proceeds which he or she may expect to receive, contingently or otherwise under the Plan.
- 11.4 *Binding Agreement.*** Any action with respect to the Plan taken by the Plan Administrator or the Plan Sponsor or the Trustee or any action authorized by or taken at the direction of

the Plan Administrator, the Plan Sponsor or other authorized party shall be conclusive upon all Participants and Beneficiaries entitled to benefits under the Plan.

- 11.5 *Furnishing Information.*** A Participant or Beneficiary will cooperate with the Plan Administrator or any representative thereof by furnishing any and all information requested by the Plan Administrator and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Plan Administrator may deem necessary.
- 11.6 *Compliance with Code Section 409A.*** Notwithstanding any provision of the Plan to the contrary, all provisions of the Plan will be interpreted and applied to comply with the requirements of Code Section 409A and any regulations and applicable binding guidance so as to avoid adverse tax consequences. No provision of the Plan, however, is intended or shall be interpreted to create any right with respect to the tax treatment of the amounts paid or payable hereunder, and neither the Plan Sponsor nor any Affiliate shall under any circumstances have any liability to a Participant or Beneficiary for any taxes, penalties or interest due on amounts paid or payable under the Plan, including taxes, penalties or interest imposed under Code Section 409A.
- 11.7 *Insurance.*** The Plan Sponsors, on their own behalf or on behalf of the trustee of the Trust, and, in their sole discretion, may apply for and procure insurance on the life of the Participant, in such amounts and in such forms as they may choose. The Plan Sponsors or the trustee of the Trust, as the case may be, shall be the sole owner and beneficiary of any such insurance. The Participant shall have no interest whatsoever in any such policy or policies, and at the request of the Plan Sponsor shall submit to medical examinations and supply such information and execute such documents as may be required by the insurance company or companies to which the Plan Sponsor have applied for insurance.
- 11.8 *Governing Law.*** Construction, validity and administration of this Plan shall be governed by applicable Federal law and the law of the state of New York without regard to the conflict of law provisions of such state law. If any provision shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.
- 11.9 *Headings and Subheadings.*** Headings and subheadings in this Plan are inserted for convenience only and are not to be considered in the interpretation of the provisions hereof.

Date: October 3, 2018

CONSTELLATION BRANDS, INC.

By: /s/Jeffrey Viviano
Name: Jeffrey Viviano
Title: Vice President, Compensation and Benefits

Exhibit A

Participating Affiliates

Constellation Brands, Inc.
Constellation Brands U.S. Operations, Inc.
Constellation Leasing, LLC
Constellation Marketing Services, Inc.
Crown Imports, LLC
Franciscan Vineyards, Inc.
High West Distillery, LLC
High West Saloon, LLC
Home Brew Mart, Inc.