

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): March 7, 2005

THE MIDDLEBY CORPORATION  
(Exact Name of Registrant as Specified in its Charter)

Delaware 1-9973 36-3352497  
(State or Other Jurisdiction (Commission File Number) (IRS Employer  
of Incorporation) Identification No.)

1400 Toastmaster Drive, Elgin, Illinois 60120  
(Address of Principal Executive Offices) (Zip Code)

(847) 741-3300  
(Registrant's telephone number, including area code)

N/A  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Item 1.01 Entry Into Material Agreements.

1. Employment Agreement With Executive Officer. On March 7, 2005, The Middleby Corporation (the "Company") and Middleby Marshall Inc. ("MMI") entered into an Employment Agreement (the "Employment Agreement") with Timothy J. FitzGerald, the Company's Vice President and Chief Financial Officer ("Mr. FitzGerald"), which supercedes both a severance agreement dated March 1, 2004 and a retention agreement dated July 22, 2004 (collectively, the "Prior Agreements"). The term of the Employment Agreement will continue until March 1, 2010, unless Mr. FitzGerald's employment is earlier terminated under the terms of the Employment Agreement.

Under the Employment Agreement, Mr. FitzGerald will continue to serve as the Vice President and Chief Financial Officer of the Company and of MMI (collectively, the "Employer"). The Employer is obligated to pay Mr. FitzGerald an annual base salary of \$250,000, and Mr. FitzGerald is eligible to earn an annual incentive bonus under the Company's management incentive compensation plan. The Company is also obligated to grant Mr. FitzGerald an aggregate of 50,000 shares of restricted stock of the Company pursuant to the terms and conditions set forth in a Restricted Stock Agreement further described below. The restricted shares granted to Mr. FitzGerald will vest ratably over a five year period, commencing on December 31, 2005 and will become fully vested on December 31, 2009, generally as long as Mr. FitzGerald remains employed by the Company on each applicable vesting date.

Under the Employment Agreement, Mr. FitzGerald's employment may be terminated by the Employer or by Mr. FitzGerald at any time, or by the death of Mr. FitzGerald. If the Employer terminates Mr. FitzGerald's employment without "cause" (as defined in the Employment Agreement), or if Mr. FitzGerald terminates his employment within six months following a "change in control" of the Company (as defined in the Employment Agreement), Mr. FitzGerald will be entitled to a lump sum payment equal to two times the sum of: (a) Mr.

FitzGerald's annual base salary for the full calendar year immediately prior to the date of termination, and (b) the greater of (i) the amount of his annual bonus paid under the Company's management incentive plan with respect to the full calendar year immediately prior to the year of termination and (ii) the average of Mr. FitzGerald's annual bonuses paid under the management incentive plan for each of the two calendar years immediately prior to the year of termination. Mr. FitzGerald will also be entitled to an additional payment (referred to as a "gross-up" payment) to cover the amount of any excise tax, including income taxes and excise taxes incurred with respect to the gross-up payment, in the event that any amount payable to him in connection with a change in control of the Company results in the excise tax imposed on "excess parachute payments" under the Internal Revenue Code.

2. Restricted Stock Agreement With Executive Officers. On March 7, 2005, the Company entered into Restricted Stock Agreements substantially in the form filed herewith as Exhibit 10.2 (each, a "Restricted Stock Agreement") pursuant to the Company's 1998 Stock Incentive Plan ("Plan") with the following executive officers of the Company: (a) Selim A. Bassoul, Chairman, President and Chief Executive Officer of the Company and MMI ("Mr. Bassoul"), in connection with restricted stock granted to Mr. Bassoul in December 2004 and January 2005, which grants were previously disclosed on the Company's Current Report on Form 8-K filed on December 28, 2004(b) Mr. FitzGerald in connection with the restricted stock granted under the Employment Agreement. In addition to setting forth the vesting schedule of the restricted stock (as previously disclosed in the case of Mr. Bassoul and as described above, in the case of Mr. FitzGerald), the Restricted Stock Agreements provide that, among other things, the restricted stock will immediately vest if: (a) the Employer terminates the grantee's employment other than for "cause", or (b) the grantee terminates his employment within six months following a "change in control".

Copies of the Employment Agreement and the form of Restricted Stock Agreement are attached hereto as Exhibits 10.1 and 10.2, respectively. The descriptions of the Employment Agreement and form of Restricted Stock Agreement in this Current Report on Form 8-K are qualified in their entirety by reference to the complete copies of the agreements attached hereto as exhibits.

Item 1.02 Termination of Material Definitive Agreements.

In connection with Mr. FitzGerald's Employment Agreement, the Prior Agreements with Mr. FitzGerald have been terminated in their entirety.

ITEM 9.01. Financial Statements and Exhibits.

(c) Exhibits.

Exhibit No.	Description
Exhibit 10.1	Employment Agreement, dated March 7, 2005, by and between The Middleby Corporation, Middleby Marshall Inc. and Timothy J. FitzGerald
Exhibit 10.2	Form of Restricted Stock Agreement pursuant to The Middleby Corporation 1998 Stock Incentive Plan

SIGNATURES

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

THE MIDDLEBY CORPORATION

Dated: March 8, 2005

By: /s/ Timothy J. FitzGerald

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 Vice President and Chief Financial Officer

Exhibit No.	Description
Exhibit 10.1	Employment Agreement, dated March 7, 2005, by and between The Middleby Corporation, Middleby Marshall Inc. and Timothy J. FitzGerald
Exhibit 10.2	Form of Restricted Stock Agreement pursuant to The Middleby

Corporation 1998 Stock Incentive Plan

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") dated as of March 7, 2005 is entered into by and between The Middleby Corporation, a Delaware corporation (the "Company"), Middleby Marshall Inc., a Delaware corporation ("MMI"), (collectively the "Employer"), and Timothy J. Fitzgerald ("Employee").

R E C I T A L S

The Employer is a party to a severance agreement with Employee, dated March 1, 2004, (the "Prior Agreement") and a retention agreement with Employee, dated July 22, 2004, (the "Retention Agreement"), each of which is intended to be superceded by this Agreement.

The Employer desires to continue and extend the term of employment of Employee as Vice President and Chief Financial Officer of the Company and as Vice President and Chief Financial Officer of MMI, and Employee desires to serve the Employer in such capacities, all on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Employee's employment by the Employer, the compensation to be paid Employee while employed by the Employer, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Employment. The Employer agrees to employ Employee and Employee agrees to be employed by the Employer subject to the terms and provisions of this Agreement.
2. Term. The employment of Employee by Employer as provided in Section 1 will be for a period commencing on the date of this Agreement (the "Effective Date") and ending on March 1, 2010, unless sooner terminated as hereinafter provided.
3. Duties. Employee shall serve as Vice President and Chief Financial Officer of the Company and Vice President and Chief Financial Officer of MMI, or in such other executive capacities as the Board of Directors of the Company or MMI, as applicable, may designate and shall have such powers and duties as may be from time to time prescribed by the Board of Directors of the Company or MMI, as applicable. Employee shall devote substantially all of his time and effort as reasonably may be required for him to perform the duties and responsibilities to be performed by him under the terms of this Agreement.
4. Compensation.
  - (a) Base Salary. The Employer shall pay to Employee a base salary at a rate per annum of \$250,000, payable in accordance with the normal payroll practices of Employer.
  - (b) Incentive Compensation. Employee shall be eligible to participate in the Management Incentive Plan previously adopted by the Employer, subject to all terms and conditions thereof. Under such plan, if the Employer attains certain pre-established performance goals (attainment of such goals to be determined after taking into account any incentive compensation to be paid to Employee and any other participating employees under the Plan), Employee shall be entitled to receive (i) 80% of his Base Salary as in effect at the beginning of the fiscal year to which the award relates, and (ii) for each year, an additional \$5,800 for each \$120,000 by which the Employer's actual EBITDA exceeds the goal. The performance goals, which are based on the Employer's EBITDA, are set forth on Exhibit A hereto. The maximum bonus payable to Employee under the Management Incentive Plan shall be \$600,000 and the Employer will modify the Management Incentive Plan accordingly. Notwithstanding the foregoing, the Employee's participation in the Management Incentive Plan with respect to fiscal year 2004 shall not be affected hereby and shall be governed by the terms of the

Management Incentive Plan as in effect for Employee immediately prior to the date hereof.

- (c) Restricted Stock Grant. The Company shall cause Employee to be granted an aggregate of 50,000 shares of restricted stock of the Company pursuant to the 1998 Stock Incentive Plan (the "Restricted Stock"), under the terms and conditions set forth in the form of Restricted Stock Agreement attached hereto as Exhibit B.

5. Termination.

- (a) Employee's employment hereunder may be terminated by Employer or by Employee at any time, or by the death of Employee. Such termination shall automatically terminate all of the Employer's obligations not theretofore accrued under this Agreement other than as specifically set forth in this Agreement or in any employee benefit plan, program or arrangement in which Employee participates. If the Employer terminates Employee's employment under this Agreement (as hereafter amended or extended) without "Cause," as defined below, or if employment is terminated due to Employee's death or disability, incentive compensation under the Management Incentive Plan for any year shall be deemed to have accrued as of the date of termination if and to the extent that incentive compensation under the Management Incentive Plan would have been payable to Employee if he had been employed on the last day of such fiscal year and shall be (i) pro rated based on the number of days that Employee was employed during the fiscal year and (ii) payable in the following fiscal year, on the earlier of April 1 or at the same time as incentive compensation under the Management Incentive Plan for such year is paid to those employees who are still employed by the Employer.

- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that (i) the Employer terminates Employee's employment under this Agreement (as hereafter amended or extended) without "Cause," as defined below, (for this purpose, not including termination due to Employee's death or disability) or (ii) Employee terminates his employment under this Agreement within the six-month period immediately following a "Change in Control" (as defined below), by providing written notice of such termination to the Employer, Employee shall be entitled to an amount equal to two (2) times the sum of (A) Employee's annual base salary for the full calendar year immediately prior to the date of the termination and (B) the greater of (x) the amount of Employee's incentive compensation under the Management Incentive Plan with respect to the full calendar year immediately prior to the date of the termination and (y) the average of Employee's incentive compensation under the Management Incentive Plan for each of the two calendar years immediately prior to the date of the termination, payable in one lump sum within thirty (30) days of the date of termination.

- (c) For purposes of this Section 5, the term "Cause" shall mean gross negligence, willful misconduct, breach of fiduciary duty involving personal profit, substance abuse, or commission of a felony.

- (d) For purposes of this Agreement, the term "Change in Control" shall mean an increase, on or after the date of this Agreement, in ownership to twenty percent (20%) or more of the outstanding voting securities of the Company held by any person or group of persons who are acting

together for the purpose of acquiring, holding, voting or disposing of such voting securities; provided, however, that an increase in ownership to twenty (20%) or more of the outstanding voting securities of the Company held by Employee or group of persons which includes Employee who are acting together for the purpose of acquiring, holding, voting or disposing of such voting securities shall not constitute a Change in Control.

Example 1: On April 16, 2004 individual A owns 2.42% of the total outstanding voting securities of Company. Thereafter, individual A commences a series of open market and private purchases, and on January 10, 2005 for the first time his holdings exceed 20% of the outstanding voting securities of the Company. A Change of Control occurs on January 10, 2005.

Example 2: On a date subsequent to this Agreement individual B, who

owned no voting securities of Company prior to the date of this Agreement, commences a series of open market and private purchases, and on January 11, 2005 for the first time his holdings exceed 20% of the outstanding voting securities of the Company. A Change of Control occurs on January 11, 2005.

(e) Parachute Payments

(i) To the extent that any amount payable to Employee (hereunder or otherwise) alone or together with other compensation constitutes a "parachute payment" within the meaning of section 280G(b)(2) of the Internal Revenue Code of 1986, as amended, (the "Code") that would result in some or all of the compensation owed being characterized as "excess parachute payments" (as defined by section 280G(b)(1) of the Code), and would, therefore, be subject to an excise tax under section 4999 of the Code (the "Excise Tax"), the Employer shall pay to Employee, at the time specified below, that additional amount (the "Gross-Up Payment") necessary to reimburse Employee for the amount of any (i) Excise Tax, (ii) federal, state and local income and employment taxes (including additional Excise Tax) payable with respect to the Gross-Up Payment, and (iii) interest, penalties or additions to tax payable by Employee with respect to the Excise Tax or the Gross-Up Payment. For purposes of determining the amount of the Gross-Up Payment, Employee shall be deemed to pay federal income taxes at the highest marginal rates of taxation applicable to individuals as are in effect in the calendar year in which the Gross-Up Payment is to be made and state and local income taxes at the highest marginal rates of taxation applicable to individuals as are in effect in the state and locality of Employee's residence, and/or any other state or locality that may be applicable, in the calendar year in which the Gross-Up Payment is to be made, net of the maximum reduction in federal income taxes that can be obtained from deduction of such state and local taxes, taking into account any limitations applicable to individuals subject to federal income tax at the highest marginal rates.

(ii) The Gross-Up Payments provided for in Section 5(e)(i) above shall be made upon the earlier of (i) the payment to Employee of compensation in the nature of a parachute payment or (ii) the imposition upon Employee or payment by Employee of any Excise Tax.

(iii) If it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that the Excise Tax is less than the amount taken into account under Section 5(e)(i) above, Employee shall repay to the Employer within thirty (30) days of Employee's receipt of notice of such final determination the portion of the Gross-Up Payment attributable to such reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax and federal, state and local income and

employment taxes imposed on the Gross-Up Payment being repaid by Employee, if such repayment results in a reduction in Excise Tax or a federal, state and local income tax deduction). If it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that the Excise Tax exceeds the amount taken into account under Section 5(e)(i) above (including by reason of any payment the existence or amount of which cannot be determined at the time of the Gross-Up Payment), the Employer shall make any additional Gross-Up Payment in respect of such excess within thirty (30) days of the Employer's receipt of notice of such final determination.

(iv) Notwithstanding anything contained herein or in the Management Incentive Plan to the contrary, the amount of any payments made pursuant to this Section 5(e) shall be excluded from the calculation of EBITDA under the Management Incentive Plan for purposes of determining bonuses thereunder.

6. Payment. Payment of all compensation and benefits to Employee hereunder shall be made in accordance with the relevant policies of the Employer in effect from time to time and shall be subject to all applicable employment and withholding taxes.
7. Successors. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, Employer and its successors and assigns. This Agreement shall inure to the benefit of Employee's heirs, legatees, legal representatives and assigns, but neither this Agreement nor any right or interest hereunder shall be assignable by Employee without Employer's prior written consent.
8. Notices. All notices, requests, demands and other communications made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given (a) if delivered, at the time delivered or (b) if mailed, at the time mailed at any general or branch United States Post Office enclosed in a certified post-paid envelope addressed to the address of the respective parties as follows:

To the Company: 1400 Toastmaster Drive  
Elgin, Illinois 60120  
Attention: Chief Executive Officer

To MMI: 1400 Toastmaster Drive  
Elgin, Illinois 60120  
Attention: Chief Executive Officer

To Employee: Timothy J. FitzGerald  
1400 Toastmaster Drive,  
Elgin, Illinois 60010

or to such other address as the party to whom notice is to be given may have previously furnished to the other party in writing in the manner set forth above, provided that notices of changes of address shall only be effective upon receipt.

9. Modifications and Waivers. This Agreement may be modified or amended only by a written instrument executed by Employer and Employee. No term or condition of this Agreement shall be deemed to have been waived nor shall there be any estoppel to enforce any provision of this Agreement except by written instrument of the party charged with such waiver or estoppel.
10. Entire Agreement. This Agreement supersedes all prior agreements between the parties hereto relating to the subject matter hereof, including but not limited to the Prior Agreement and the Retention Agreement, and constitutes the entire agreement of the parties hereto relating to the subject matter hereof. However, nothing in this Agreement is intended or shall be interpreted to reduce the rate or eliminate any portion of Employee's compensation or benefits in effect immediately prior to the date hereof.
11. Law Governing. The validity, interpretation, construction, performance and enforcement of this Agreement shall be governed by the laws of the State of Illinois without regard to principles of conflicts of laws.
12. Invalidity. The invalidity or unenforceability of any term or terms of this agreement shall not invalidate, make unenforceable or otherwise affect any other term of this Agreement which shall remain in full force and effect.
13. Headings. The headings contained herein are for reference only and shall not affect the meaning or interpretation of this Agreement.
14. Joint and Several. The liability hereunder of the Company and MMI shall be joint and several.
15. Other Agreements. Employer agrees to modify any and all agreements, plans and contracts as may be necessary to effectuate the terms of this Agreement; provided, however, that to the extent shareholder approval is required by applicable law or regulation to effectuate any such modification, such modification shall be subject to shareholder approval.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

EMPLOYEE

THE MIDDLEBY CORPORATION

/s/ Timothy J. Fitzgerald  
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By /s/ Selim A. Bassoul  
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MIDDLEBY MARSHALL INC.

By /s/ Selim A. Bassoul  
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EXHIBIT A

EBITDA Goals

The following are the EBITDA goals to be used for purpose of determining incentive compensation under the Management Incentive Plan as set forth in the Agreement to which this Exhibit is attached:

Year	2005	2006	2007	2008	2009	2010	2011
EBITDA Goal*	48,985,685	54,863,967	61,447,643	68,821,360	77,079,923	86,329,515	96,689,057

\*Notes Regarding EBITDA Goals

Calculation of EBITDA. EBITDA shall be determined in the discretion of the Committee administering the MICP in accordance with Generally Accepted Accounting Principles. However, EBITDA shall exclude foreign exchange gains/losses and non-cash equity compensation and shall take into account any and all bonuses and incentive compensation payable to Company employees, including incentive compensation payable to employees participating under the MICP for the applicable year. The Committee administering the MICP shall have the authority to make appropriate adjustments to EBITDA goals to reflect the impact of extraordinary items not reflected in such goals. For purposes of the MICP, extraordinary items shall include (1) any profit or loss attributable to acquisitions or dispositions of stock or assets, (2) any changes in accounting standards or treatments that may be required or permitted by the Financial Accounting Standards Board or adopted by the Company or its subsidiaries after the goal is established, (3) all items of gain, loss or expense for the year related to restructuring charges for the Company or its subsidiaries, (4) all items of gain, loss or expense for the year determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business (including but not limited to any costs allocated to the Company by any entity that acquires the Company), (5) all items of gain, loss or expense for the year related to discontinued operations that do not qualify as a segment of a business as defined in APB Opinion No. 30 (or successor literature), (6) the impact of capital expenditures, (7) the impact of share repurchases and other changes in the number of outstanding shares, (8) fees and expenses associated with a business transaction such as investment banking fees and/or legal, accounting or tax planning fees, and (9) such other items as may be pre-scribed by Section 162(m) of the Code and the treasury regulations thereunder as may be in effect from time to time, and any amendments, revisions or successor provisions and any changes thereto.

If actual EBITDA for any particular full year exceeds the goal for that year to the extent that it also exceeds the goal for the next following year, the EBITDA goal for such next following year shall be automatically increased to equal the actual EBITDA for such prior year. EBITDA goals for subsequent years do not automatically change. For example, if the actual EBITDA for 2005 is \$60,000,000, then the EBITDA Goal for 2006 will automatically increase to \$60,000,000; however, the EBITDA goals for 2007 through 2011 shall not automatically adjust at that time.



THE MIDDLEBY CORPORATION  
1998 STOCK INCENTIVE PLAN  
RESTRICTED STOCK AGREEMENT

This RESTRICTED STOCK AGREEMENT (this "Agreement"), dated as of the \_\_\_ day of \_\_\_\_\_, 2005, is entered into by and between The Middleby Corporation, a Delaware corporation (the "Company"), Middleby Marshall Inc., a Delaware Corporation ("MMI") (together, the "Employer"), and \_\_\_\_\_ (the "Grantee" and, together with the Company, the "Parties").

RECITALS

A. Pursuant to the Company's 1998 Stock Incentive Plan (the "Plan"), the Board of Directors of the Company (the "Board"), as the administrator of the Plan, has determined to grant to the Grantee restricted shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), on the terms and conditions set forth herein, and hereby grants such restricted shares.

B. Such grant is made in satisfaction of certain obligations of the Employer under Section \_\_\_ of the employment agreement between the Company, MMI, and the Grantee, dated \_\_\_\_\_, 2005, (the "Employment Agreement").

Any capitalized terms not defined herein shall have their respective meanings set forth in the Plan.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Grant of Restricted Stock. The Grantee is entitled to \_\_\_\_\_ shares of Common Stock pursuant to the terms and conditions of this Agreement (the "Restricted Stock") granted as of \_\_\_\_\_, 2005, (the "Date of Grant"), subject to the restrictions set forth below and the terms of this Agreement. The Grantee shall not be required to pay any cash consideration in exchange for the Restricted Shares.

2. Restrictions and Restricted Period.

(a) Restrictions. Shares of Restricted Stock granted hereunder may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of and shall be subject to a risk of forfeiture as described in Section 4 below until the lapse of the Restricted Period (as defined below).

(b) Restricted Period. The restrictions set forth above shall lapse and the shares of Restricted Stock shall become vested and transferable (provided, that such transfer is otherwise in accordance with federal and state securities laws) as to: \_\_\_\_\_ of the shares of Restricted Stock on December 31, 2005; \_\_\_\_\_ shares of the Restricted Stock on December 31, 2006; \_\_\_\_\_ shares of the Restricted Stock on December 31, 2007; \_\_\_\_\_ shares of the Restricted Stock on December 31, 2008; \_\_\_\_\_ shares of the Restricted Stock on December 31, 2009, provided in each case that the Grantee is employed by the Employer on such date (the "Restricted Period").

3. Rights of a Stockholder. From and after the Date of Grant and for so long as the Restricted Stock is held by or for the benefit of the Grantee, the Grantee shall have all the rights of a stockholder of the Company with respect to the Restricted Stock, including, but not limited to, the right to receive dividends and the right to vote such shares. If there is any stock dividend, stock split or other change in character or amount of the Restricted Stock, then in such event, any and all new, substituted or additional securities to which Grantee is entitled by reason of the Restricted Stock shall be immediately subject to the Restrictions with the same force and effect as the Restricted Stock subject to such Restrictions immediately before such event.

4. Cessation of Employment.

(a) Forfeiture. If the Grantee's employment with the Employer is terminated for any reason other than those set forth in Section 4(b) of this Agreement, then any portion of the Restricted Stock for which the Restricted Period has not lapsed shall be forfeited to the Company without payment of any

consideration by the Company, and neither the Grantee nor any of his successors, heirs, assigns, or personal representatives shall thereafter have any further rights or interests in such shares of Restricted Stock.

(b) Accelerated Vesting. If the Grantee's employment is terminated by the Employer for reasons other than "Cause" (as defined in the Employment Agreement) or the Grantee terminates his employment within the six-month period immediately following a "Change in Control" (as defined in the Employment Agreement), by providing written notice of such termination to the Employer, the Restricted Stock shall immediately vest in full.

5. Certificates. Restricted Stock granted herein may be evidenced in such manner as the Board shall determine. If certificates representing Restricted Stock are registered in the name of the Grantee, then the Company may retain physical possession of the certificate until the Restricted Period has lapsed.

6. Legends. The Company may require, as a condition of the issuance and delivery of certificates evidencing Restricted Stock pursuant to the terms hereof, that the certificates bear the legend as set forth immediately below, in addition to any other legends required under federal and state securities laws or as otherwise determined by the Board. All certificates representing any of the shares of Restricted Stock subject to the provisions of this Agreement shall have endorsed thereon the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER HELD BY THE ISSUER OR ITS ASSIGNEES(S) AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF THE SHARES, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

Such legend shall not be removed until such shares vest pursuant to the terms hereof.

7. Taxes. The Grantee shall pay to the Employer promptly upon request, at the time the Grantee recognizes taxable income in respect to the shares of Restricted Stock, an amount equal to the federal, state and/or local taxes the Company determines it is required to withhold under applicable tax laws with respect to the shares of Restricted Stock. In lieu of collecting payment from the Grantee, the Employer may, in its discretion, distribute vested shares of Common Stock net of the number of whole shares of Common Stock the fair market value of which is equal to the minimum amount of federal, state and local taxes required to be withheld under applicable tax laws. The Grantee understands that he (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Agreement.

8. Miscellaneous.

(a) Restrictions on Transfer. Shares of Restricted Stock may not be transferred or otherwise disposed of by the Grantee, including by way of sale, assignment, transfer, pledge, hypothecation or otherwise, except as permitted by the Committee, or by will or the laws of descent and distribution.

(b) Compliance with Law and Regulations. The award and any obligation of the Employer hereunder shall be subject to all applicable federal, state and local laws, rules and regulations and to such approvals by any government or regulatory agency as may be required. Any purported transfer or sale of the shares of Common Stock shall be subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any transferee shall hold such shares of Common Stock subject to all the provisions hereof and shall acknowledge the same by signing a copy of this Agreement.

(c) Invalid Transfers. No purported sale, assignment, mortgage, hypothecation, transfer, pledge, encumbrance, gift, transfer in trust (voting or other) or other disposition of, or creation of a security interest in or lien on, any of the shares of Restricted Stock by any holder thereof in violation of the provisions of this Restricted Stock Agreement shall be valid, and the Company will not transfer any of said shares of Restricted Stock on its books or otherwise nor will any of said shares of Restricted Stock be entitled to vote, nor will any dividends be paid thereon, unless and until there has been full compliance with said provisions to the satisfaction of the Company. The foregoing restrictions are in addition to and not in lieu of any other remedies, legal or equitable, available to enforce said provisions.

(d) Incorporation of Plan. This Agreement is made under the

provisions of the Plan (which is incorporated herein by reference) and shall be interpreted in a manner consistent with it. To the extent that this Agreement is silent with respect to, or in any way inconsistent with, the terms of the Plan, the provisions of the Plan shall govern and this Restricted Stock Agreement shall be deemed to be modified accordingly.

(e) Notices. Any notices required or permitted hereunder shall be addressed to the Employer, at its principal offices, or to the Grantee at the address then on record with the Employer, as the case may be, and deposited, postage prepaid, in the United States mail. Either party may, by notice to the other given in the manner aforesaid, change his or its address for future notices.

(f) Successor. This Agreement shall bind and inure to the benefit of the Employer, its successors and assigns, and the Grantee and his or her personal representatives and beneficiaries.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The Board shall have final authority to interpret and construe the Plan and this Agreement and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Grantee and his personal and legal representatives in respect of any questions arising under the Plan or this Agreement.

(h) Amendment. This Agreement may be amended or modified by the Employer at any time; provided that notice is provided to the Grantee in accordance with Section 8(e); and provided further that no amendment or modification that is adverse to the rights of the Grantee as provided by this Agreement shall be effective unless set forth in a writing signed by the parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

THE MIDDLEBY CORPORATION

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

MIDDLEBY MARSHALL INC.

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

The undersigned hereby accepts and agrees to all the terms and provisions of the foregoing Agreement.

\_\_\_\_\_  
[Grantee]

\_\_\_\_\_  
Address