

**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): **February 19, 2018**

**THE MIDDLEBY CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**1-9973**  
(Commission File Number)

**36-3352497**  
(IRS Employer  
Identification No.)

**1400 Toastmaster Drive, Elgin, Illinois**  
(Address of Principal Executive Offices)

**60120**  
(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))

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.

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

(e) On February 19, 2018, The Middleby Corporation, a Delaware corporation (the "Company"), along with Middleby Marshall Inc., a Delaware corporation ("MMI"), entered into an amendment to the Employment Agreement dated January 25, 2013 with Selim A. Bassoul, the Company's Chief Executive Officer and President (the "Bassoul Amendment"). Also on February 19, 2018, the Company, along with MMI, entered into an amendment to the Employment Agreement dated March 21, 2013 with Timothy J. FitzGerald, the Company's Vice President and Chief Financial Officer (the "FitzGerald Amendment" and, collectively with the Bassoul Amendment, the "Amendments"). Pursuant to the Amendments, each of Messrs. Bassoul and FitzGerald will continue to serve the Company and MMI in their present capacities for a three year term ending on December 31, 2020.

The Bassoul Amendment provides for an increase, effective as of January 1, 2018, in Mr. Bassoul's base salary from \$1,000,000 to \$1,500,000, and provides that the base salary for purposes of the calculation of the retirement benefit provided under Mr. Bassoul's Employment Agreement will remain at \$1,000,000. The FitzGerald Amendment provides for an increase, effective as of January 1, 2018, in Mr. FitzGerald's base salary from \$650,000 to \$850,000.

Except as expressly provided by the Amendments, the employment agreements for each of Messrs. Bassoul and FitzGerald remain in full force and effect.

On February 19, 2018, the Company, along with MMI, entered into an Employment Agreement (the "Brewer Agreement") with David Brewer, the Company's Chief Operating Officer, Commercial Foodservice Equipment Group. The Brewer Agreement, effective as of January 1, 2018, has a term ending on December 31, 2020.

Pursuant to the Brewer Agreement, Mr. Brewer will continue to serve as the Company's Chief Operating Officer, Commercial Foodservice Equipment Group. Mr. Brewer will receive a base salary of \$750,000 and shall be eligible to participate in the Company's Value Creation Incentive Plan.

Under the Brewer Agreement, Mr. Brewer's employment may be terminated by the Company or by Mr. Brewer at any time. If the Company terminates Mr. Brewer's employment without "cause" (as defined in the Brewer Agreement), or if Mr. Brewer resigns his employment due to a material diminution of his duties as Chief Operating Officer, Mr. Brewer will be entitled to a lump sum payment equal to two times the sum of his annual base salary as in effect immediately prior to the date of termination. Mr. Brewer would also receive a pro rata payment of any annual bonus

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earned based on actual performance for the year of termination if he incurs a termination without cause.

In the event any amount payable to Mr. Brewer is deemed under the Internal Revenue Code to be made in connection with a change in control of the Company, and such payments would result in the excise tax imposed on "excess parachute payments" under the Internal Revenue Code (an "Excise Tax"), the Brewer Agreement provides that Mr. Brewer's payments will be reduced to an amount that would not result in the imposition of the Excise Tax, to the extent that such reduction would result in a greater after-tax benefit to Mr. Brewer.

The foregoing summaries of the Amendments and the Brewer Agreement do not purport to be complete and are qualified in their respective entirety by reference to each of the Bassoul Amendment, the FitzGerald Amendment and the Brewer Agreement, respectively, copies of which are filed as Exhibit 10.1, 10.2 and 10.3 hereto and are incorporated herein by reference.

#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment to Employment Agreement between The Middleby Corporation, Middleby Marshall Inc. and Selim A. Bassoul, dated February 19, 2018.
10.2	Amendment to Employment Agreement between The Middleby Corporation, Middleby Marshall Inc. and Timothy J. FitzGerald, dated February 19, 2018.
10.3	Employment Agreement between The Middleby Corporation, Middleby Marshall Inc. and David Brewer, dated February 19, 2018.

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#### EXHIBIT INDEX

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#### SIGNATURES

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

THE MIDDLEBY CORPORATION

Dated: February 21, 2018

By: /s/ Timothy J. FitzGerald  
Timothy J. FitzGerald  
Vice President,  
Chief Financial Officer and  
Chief Accounting Officer

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## AMENDMENT TO EMPLOYMENT AGREEMENT

AMENDMENT TO EMPLOYMENT AGREEMENT (“Amendment”) dated as of February 19, 2018 between The Middleby Corporation, a Delaware corporation (the “Company”), Middleby Marshall Inc., a Delaware corporation (“MMI,” and collectively with the Company, the “Employer”) and Selim A. Bassoul (“Employee”).

WHEREAS, the Employer is a party to an employment agreement with Employee dated January 25, 2013 (the “Agreement”), the term of which was scheduled to end on December 31, 2017;

WHEREAS, the Employer desires to continue and extend the term of employment of Employee as President and Chief Executive Officer of the Company and MMI, and Employee desires to continue to serve the Employer in his present capacities;

WHEREAS, the Employer and Employee wish to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants herein contained, 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 Employer and Employee hereby agree as follows:

1. Effective as of December 31, 2017, Section 2 of the Agreement (“Term”) is amended in its entirety to read as follows:

“The employment of Employee by the Employer under this Agreement as provided in Section 1 shall be extended and shall be for a period commencing at the end of the calendar day on December 31, 2017 (such that January 1, 2018 shall be the “Effective Date”) and ending at the end of the calendar day on December 31, 2020, unless sooner terminated as hereinafter provided.”

2. Effective as of the Effective Date, Section 4(a) of the Agreement (“Base Salary”) is hereby amended by removing the term “One Million Dollars” and replacing it with the term “One Million, Five Hundred Thousand Dollars.”
3. Effective as of the Effective Date, Section 5(a) of the Agreement is hereby amended to add a new sentence at the end thereof to read as follows:

Notwithstanding the foregoing, upon the occurrence of a Change of Control (as defined in the Value Creation Incentive Plan), (i) the provisions of Section 9 of the Value Creation Incentive Plan shall apply with respect to Employee’s entitlement to incentive compensation with respect to the then current Performance Period (as defined in the Value Creation Incentive Plan) and any completed Performance Periods at the time of the Change of Control and (ii) the Compensation Committee of the Board of Directors of the Company may in its

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sole discretion determine that the amount of incentive compensation to be paid under the Value Creation Incentive Plan shall be in respect of the full Performance Period for the year of the Change of Control.

4. Effective as of the Effective Date, the Agreement is hereby amended to replace the definition of the term “Retirement Salary,” which first appears in Section 6(a) of the Agreement (“Retirement Benefits”), with the following definition:

For purposes of this Agreement, the term “Retirement Salary” shall mean One Million Dollars.

5. Effective as of the Effective Date, a new Section 18 (“Indemnification”) is hereby added to the Agreement, to read as follows:

18. Indemnification. In his capacity as a director, manager, officer, or employee of the Employer or serving or having served any other entity as a director, manager, officer, or employee at the Employer’s request, Employee shall be indemnified and held harmless by the Employer to the fullest extent allowed by law from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which Employee may be involved, or threatened to be involved, as a party or otherwise by reason of Employee’s status, which relate to or arise out of the Employer, their assets, business or affairs. The Company shall advance all expenses incurred by Employee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in this Section 18, including but not necessarily limited to legal counsel, expert witnesses or other litigation-related expenses. Employee shall be entitled to coverage under the Employer’s or the Company’s directors and officers liability insurance policy in effect at any time in the future to no lesser extent than any other officers or directors of the Employer. After Employee is no longer employed by the Employer, the Employer shall keep in effect the provisions of this Section 18, which provision shall not be amended except as required by applicable law or except to make changes permitted by law that would enlarge the right of indemnification of Employee. Notwithstanding anything herein to the contrary, the provisions of this Section 18 shall survive the termination of this Agreement for any reason and the expiration of the term of this Agreement.

6. Except as set forth herein, the Agreement shall continue in full force and effect in accordance with its terms.
7. This Amendment may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all of which counterparts taken together will constitute one and the same agreement.

THE MIDDLEBY CORPORATION

By: /s/ John R. Miller III  
John R. Miller III  
Chairman, The Middleby Corporation  
Compensation Committee

MIDDLEBY MARSHALL INC.

By: /s/ John R. Miller III  
John R. Miller III  
Chairman, The Middleby Corporation  
Compensation Committee

EMPLOYEE

By: /s/ Selim A. Bassoul  
Selim A. Bassoul

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## AMENDMENT TO EMPLOYMENT AGREEMENT

AMENDMENT TO EMPLOYMENT AGREEMENT (“Amendment”) dated as of February 19, 2018 between The Middleby Corporation, a Delaware corporation (the “Company”), Middleby Marshall Inc., a Delaware corporation (“MMI,” and collectively with the Company, the “Employer”) and Timothy J. FitzGerald (“Employee”).

WHEREAS, the Employer is a party to an employment agreement with Employee dated March 21, 2013 (the “Agreement”);

WHEREAS, the Employer desires to continue and extend the term of employment of Employee as Vice President and Chief Financial Officer of the Company and MMI, and Employee desires to continue to serve the Employer in his present capacities;

WHEREAS, the Employer and Employee wish to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants herein contained, 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 Employer and Employee hereby agree as follows:

1. Effective immediately, Section 2 of the Agreement (“Term”) is amended in its entirety to read as follows:

“The term of this Agreement shall be for a period commencing on January 1, 2018 (the “Effective Date”) and ending on December 31, 2020, unless sooner terminated as provided in Section 5.”

2. Effective as of the Effective Date, Section 4(a) of the Agreement (“Base Salary”) is hereby amended by removing the term “\$650,000” and replacing it with the term “\$850,000.”
3. Effective as of the Effective Date, Section 5(a) of the Agreement is hereby amended to add a new sentence at the end thereof to read as follows:

Notwithstanding the foregoing, upon the occurrence of a Change of Control (as defined in the Value Creation Incentive Plan), (i) the provisions of Section 9 of the Value Creation Incentive Plan shall apply with respect to Employee’s entitlement to incentive compensation with respect to the then current Performance Period (as defined in the Value Creation Incentive Plan) and any completed Performance Periods at the time of the Change of Control and (ii) the Compensation Committee of the Board of Directors of the Company may in its sole discretion determine that the amount of incentive compensation to be paid under the Value Creation Incentive Plan shall be in respect of the full Performance Period for the year of the Change of Control.

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4. Effective as of the Effective Date, a new Section 17 (“Indemnification”) is hereby added to the Agreement, to read as follows:

17. **Indemnification.** In his capacity as a director, manager, officer, or employee of the Employer or serving or having served any other entity as a director, manager, officer, or employee at the Employer’s request, Employee shall be indemnified and held harmless by the Employer to the fullest extent allowed by law from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which Employee may be involved, or threatened to be involved, as a party or otherwise by reason of Employee’s status, which relate to or arise out of the Employer, their assets, business or affairs. The Company shall advance all expenses incurred by Employee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in this Section 17, including but not necessarily limited to legal counsel, expert witnesses or other litigation-related expenses. Employee shall be entitled to coverage under the Employer’s or the Company’s directors and officers liability insurance policy in effect at any time in the future to no lesser extent than any other officers or directors of the Employer. After Employee is no longer employed by the Employer, the Employer shall keep in effect the provisions of this Section 17, which provision shall not be amended except as required by applicable law or except to make changes permitted by law that would enlarge the right of indemnification of Employee. Notwithstanding anything herein to the contrary, the provisions of this Section 17 shall survive the termination of this Agreement for any reason and the expiration of the term of this Agreement.

5. Except as set forth herein, the Agreement shall continue in full force and effect in accordance with its terms.
6. This Amendment may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all of which counterparts taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

THE MIDDLEBY CORPORATION

By: /s/ John R. Miller III  
 John R. Miller III  
 Chairman, The Middleby Corporation  
 Compensation Committee

MIDDLEBY MARSHALL INC.

By: /s/ John R. Miller III  
John R. Miller III  
Chairman, The Middleby Corporation  
Compensation Committee

EMPLOYEE

By: /s/ Timothy J. FitzGerald  
Timothy J. FitzGerald

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## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") dated as of February 19, 2018 is entered into by and among The Middleby Corporation, a Delaware corporation (the "Company"), Middleby Marshall Inc., a Delaware corporation ("MMI"), (collectively the "Employer"), and David Brewer ("Employee").

## RECITALS

Employee currently serves the Company as its Chief Operating Officer, Commercial Foodservice Equipment Group; and

The Employer desires to continue the employment relationship and Employee desires to serve the Employer in such capacity, all pursuant to the terms and conditions described herein.

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 term of this Agreement shall be for a period commencing on January 1, 2018 (the "Effective Date") and ending on December 31, 2020, unless sooner terminated as provided in Section 5.
  3. Duties. Employee shall serve as Chief Operating Officer, Commercial Foodservice Equipment Group of the Company, or in such other executive capacities as the Board of Directors of the Company or MMI, as applicable (the "Board"), may designate and shall have such powers and duties as may be from time to time prescribed by the Board. 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 \$750,000, payable in accordance with the normal payroll practices of Employer.
    - (b) Incentive Compensation. Employee shall be eligible to participate in, and earn an annual bonus under, the management incentive programs adopted by the Employer from time to time, subject to all terms and conditions thereof, based upon the achievement of performance targets established in the sole discretion of Employer.
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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 Employer's annual incentive programs for any year shall be deemed to have accrued as of the date of termination if and to the extent that incentive compensation under such annual incentive program 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 March 15 or at the same time as incentive compensation under the annual incentive program for such year is paid to those employees who are still employed by the Employer. Notwithstanding the foregoing, upon the occurrence of a Change of Control (as defined in the Value Creation Incentive Plan), (i) the provisions of Section 9 of the Value Creation Incentive Plan shall apply with respect to Employee's entitlement to incentive compensation with respect to the then current Performance Period (as defined in the Value Creation Incentive Plan) and any completed Performance Periods at the time of the Change of Control and (ii) the Compensation Committee of the Board may in its sole discretion determine that the amount of incentive compensation to be paid under the Value Creation Incentive Plan shall be in respect of the full Performance Period for the year of the Change of Control.
    - (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that 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), Employee shall be entitled to a lump sum amount equal to two (2) times Employee's annual base salary as in effect immediately prior to the date of the termination, payable in one lump sum within thirty (30) days of the date of termination.
    - (c) If the duties assigned by the Employer to Employee are materially diminished, or become inconsistent with those assigned to the Chief Operating Officer of a principal division of a similarly situated publicly traded company, and such change in duties is not cured by the Employer within ten (10) days following receipt by the Board of written notice from Employee, such change in duties shall be deemed a termination by the Employer of Employee's employment without Cause, pursuant to the terms of this Agreement, and Employee shall be entitled to resign his employment hereunder and to thereafter receive all rights, benefits and payments set forth in Sections 5(a) and (b).

- (d) For purposes of this Section 5, the term “Cause” shall mean termination of Employee’s employment due to his willful misconduct in respect of his obligations to the Company occurring during the course of his employment, including violations of the Company’s code of conduct or code of ethics, which in either case results in or would reasonably be expected to result in material damage to the property, business or reputation of the Company or its affiliates; provided, however, that in no event shall unsatisfactory job performance alone be deemed to be Cause; and provided, further, that, to the extent curable, Employee shall have 30 calendar days after receiving written notice from the Company in which to cure any of the actions or inactions that would otherwise result in Cause.
- (e) Notwithstanding anything to the contrary contained herein (or any other agreement entered into by and between the Employer and Employee or any incentive arrangement or plan offered by the Company), in the event that any amount or benefit paid or distributed to Employee pursuant to this Agreement, taken together with any amounts or benefits otherwise paid to Employee by the Employer (collectively, the “Covered Payments”), would constitute an “excess parachute payment” as defined in Section 280G of the Code, and would thereby subject Employee to an excise tax under Section 4999 of the Code (an “Excise Tax”), the provisions of this Section 5(e) shall apply. If the aggregate present value (as determined for purposes of Section 280G of the Code) of the Covered Payments exceeds the amount which can be paid to Employee without Employee incurring an Excise Tax, then, solely to the extent that Employee would be better off on an after tax basis by receiving the maximum amount which may be paid hereunder without Employee becoming subject to the Excise Tax, as determined by Employee in his sole discretion, the amounts payable to Employee under this Agreement (or any other agreement by and between the Employee and Employee or pursuant to any incentive arrangement or plan offered by the Company) shall be reduced (but not below zero) to the maximum amount which may be paid hereunder without Employee becoming subject to the Excise Tax (such reduced payments to be referred to as the “Payment Cap”). In the event Employee receives reduced payments and benefits as a result of application of this Section 5(e), Employee shall have the right to designate which of the payments and benefits otherwise set forth herein (or any other agreement between the Company and Employee or any incentive arrangement or plan offered by the Company) shall be received in connection with the application of the Payment Cap, subject to the following sentence. Reduction shall first be made from payments and benefits which are determined not to be nonqualified deferred compensation for purposes of Section 409A of the Code, and then shall be made (to the extent necessary) out of payments and benefits which are subject to Section 409A of the Code and which are due at the latest future date.

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.

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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:	David Brewer 1400 Toastmaster Drive, Elgin, Illinois 60120

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 the 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 and constitutes the entire agreement of the parties hereto relating to the subject matter 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.

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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 Liability. The liability hereunder of the Company and MMI shall be joint and several.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Section 409A. It is intended that the payments and benefits under this Agreement comply with, or as applicable, constitute a short-term deferral or otherwise be exempt from, the provisions of Section 409A of the Code and the regulations and other guidance issued thereunder (“Section 409A”). The Employer shall administer and interpret this Agreement in a manner so that such payments and benefits comply with, or are otherwise exempt from, the provisions of Section 409A. Any provision that would cause this Agreement to fail to satisfy Section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by Section 409A). Notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, Employee shall not be considered to have terminated employment with the Employer for purposes of this Agreement and no payments shall be due to Employee under this Agreement providing for payment of amounts on termination of employment unless Employee would be considered to have incurred a “separation from service” from the Employer within the meaning of Section 409A. To the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Agreement during the six-month period immediately following Employee’s termination of employment shall instead be paid on the first business day after the date that is six months following Employee’s termination of employment (or upon death, if earlier). In addition, for purposes of this Agreement, each amount to be paid or benefit to be provided to Employee pursuant to this Agreement which constitutes deferred compensation subject to Section 409A shall be construed as a separate identified payment for purposes of Section 409A.

With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, of in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, and (iii) such payments shall be made on or before the last day of Employee’s taxable year following the taxable year in which the expense occurred. Any tax gross-up payment as provided herein shall be made in any event no later than the end of the calendar year immediately following the calendar year in which Employee remits the related taxes, and any reimbursement of expenses incurred due to a tax audit or litigation shall be made no later than the end of the calendar year immediately following the calendar year in which

the taxes that are the subject of the audit or litigation are remitted to the taxing authority, or, if no taxes are to be remitted, the end of the calendar year following the calendar year in which the audit or litigation is completed.

17. Indemnification. In his capacity as a director, manager, officer, or employee of the Employer or serving or having served any other entity as a director, manager, officer, or employee at the Employer’s request, Employee shall be indemnified and held harmless by the Employer to the fullest extent allowed by law from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which Employee may be involved, or threatened to be involved, as a party or otherwise by reason of Employee’s status, which relate to or arise out of the Employer, their assets, business or affairs. The Company shall advance all expenses incurred by Employee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in this Section 17, including but not necessarily limited to legal counsel, expert witnesses or other litigation-related expenses. Employee shall be entitled to coverage under the Employer’s or the Company’s directors and officers liability insurance policy in effect at any time in the future to no lesser extent than any other officers or directors of the Employer. After Employee is no longer employed by the Employer, the Employer shall keep in effect the provisions of this Section 17, which provision shall not be amended except as required by applicable law or except to make changes permitted by law that would enlarge the right of indemnification of Employee. Notwithstanding anything herein to the contrary, the provisions of this Section 17 shall survive the termination of this Agreement for any reason and the expiration of the term of this Agreement.

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

THE MIDDLEBY CORPORATION

By: /s/ John R. Miller III  
John R. Miller III  
Chairman, The Middleby Corporation  
Compensation Committee

MIDDLEBY MARSHALL INC.

By: /s/ John R. Miller III  
John R. Miller III  
Chairman, The Middleby Corporation  
Compensation Committee

EMPLOYEE

By: /s/ David Brewer  
David Brewer

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