

**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): **April 29, 2005**

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))
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Item 1.01 Entry Into a Material Definitive Agreement.

At the Annual Meeting of Stockholders of the The Middleby Corporation (the "Company") held on May 11, 2005 (the "Annual Meeting"), the Company's stockholders voted upon and approved (i) an amendment and restatement of The Middleby Corporation Management Incentive Compensation Plan (the "MIC Plan") to increase the maximum bonus that can be paid to any eligible employee under such plan for any single fiscal year from \$2,400,000 to \$3,500,000; and (ii) an amendment to The Middleby Corporation 1998 Stock Incentive Plan (the "1998 Plan") to (a) increase the number of shares available for grants under such plan by an additional 250,000 shares of the Company's common stock (the "Common Stock") to an aggregate of 1,750,000 shares, (b) increase the maximum number of shares that may be subject to awards made to any participant under such plan in any single fiscal year to 200,000 shares of Common Stock, and (c) require that the exercise price per share of any option granted under such plan must be at least 100% of the Common Stock's fair market value on the date of grant.

Additional information concerning the amendments to the MIC Plan and the 1998 Plan was "previously reported" (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended) in the Company's definitive proxy statement dated April 12, 2005 relating to the Annual Meeting filed with the Securities and Exchange Commission on April 12, 2005, which information is incorporated herein by this reference.

The foregoing descriptions of the amendments to the MIC Plan and the 1998 Plan are not intended to be complete and are qualified in their entirety by reference to the MIC Plan, as amended and restated on May 11, 2005, and the amendment to the 1998 Plan, filed as Exhibit 10.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K, each of which is incorporated herein by this reference.

Also at the Annual Meeting, the Company's stockholders elected Robert B. Lamb and Gordon O'Brien as new non-management directors, each of whom will receive compensation from the Company as described under the heading "Director Compensation" in the Company's definitive proxy statement dated April 12, 2005 relating to the Annual Meeting filed with the Securities and Exchange Commission on April 12, 2005, which is incorporated herein by reference.

Effective at the Annual Meeting, A. Don Lummus retired from the Company's Board of Directors at the age of 69, after serving as a director since 1984. In light of his long and dedicated service to the Company, the Board of Directors agreed to waive the retirement age requirement for Mr. Lummus. Mr. Lummus will thus receive full benefits under the Company's director's retirement plan, as described under the heading "Directors' Retirement Plan" in the Company's definitive proxy statement dated April 12, 2005 relating to the Annual Meeting filed with the Securities and Exchange Commission on April 12, 2005, which is incorporated herein by this reference.

Item 3.03 Material Modifications to Rights of Security Holders.

At the Annual Meeting, the Company's stockholders approved an amendment and restatement of the Company's certificate of incorporation (the "Charter") to, among other things:

- i. Revise Section 8 of the Charter to explicitly state that any indemnified person is entitled to indemnification rights provided from other sources and explicitly state that the intent of the indemnification provision is that, notwithstanding any repeal or modification by the stockholders of such provision, the rights of any indemnified person existing at such time of the repeal or modification of such provision shall not be adversely affected with respect to acts or omissions occurring prior to such repeal or modification; and
- ii. Add a new section to the Charter specifically authorizing the Company's Board of Directors to amend, adopt, alter or repeal the Company's bylaws by majority vote, apart from the stockholders' separate and existing rights to amend the Company's bylaws; and

At its May 11, 2005 meeting, in accordance with the Company's revised Charter, the Board of Directors approved the Amended and Restated Bylaws of the Company, which amend the Company's prior bylaws to, among other things:

- i. Clarify that the Company's Board of Directors has the right to amend, adopt, alter or repeal the Company's bylaws by majority vote apart from the stockholders separate and existing rights to amend the Company's bylaws;

- ii. Allow the Board of Directors or the Chairman of the Board of a stockholders meeting to prescribe rules and regulations regarding the conduct of a stockholders meeting; the determination of when the polls shall open and close for any given matter to be voted on at the meeting; rules and procedures for maintaining order at the meeting and the safety of those present; limitations on attendance at or participation in the meeting to stockholders of record of the Company, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; restrictions on entry to the meeting after the time fixed for the commencement thereof; and limitations on the time allotted to questions or comments by participants;
- iii. Implement advance notice provisions and other customary procedural requirements for stockholder proposals; and
- iv. Implement advance notice provisions and other customary procedural requirements for nomination of directors by stockholders.

Additional information concerning the amendments to the Charter and the Company's bylaws was "previously reported" (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended) in the Company's definitive proxy statement, dated April 12, 2005, relating to the Annual Meeting, filed with the Securities and Exchange Commission on April 12, 2005, which is incorporated herein by reference.

The foregoing descriptions of the Company's restated Charter and amended and restated bylaws are not intended to be complete and are qualified in their entirety by reference to the Company's Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on May 13, 2005 and the Company's Amended and Restated Bylaws, which are filed with this Current Report on Form 8-K as Exhibit 3.1 and Exhibit 3.2, respectively, each of which is incorporated herein by this reference.

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

See the disclosure under Item 3.03 above regarding amendments to the Company's certificate of incorporation and bylaws, which disclosure is incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

- (c) Exhibits.

Exhibit No.	Description
Exhibit 3.1	Restated Certificate of Incorporation of The Middleby Corporation.
Exhibit 3.2	Amended and Restated Bylaws of The Middleby Corporation.
Exhibit 10.1	The Middleby Corporation Amended and Restated Management Incentive Compensation Plan, effective as of January 1, 2005.
Exhibit 10.2	Amendment to the Middleby Corporation 1998 Stock Incentive Plan, effective as of January 1, 2005.

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: May 17, 2005

By: /s/ TIMOTHY J. FITZGERALD

Timothy J. FitzGerald
Vice President, Chief Financial Officer and Secretary

EXHIBIT INDEX

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QuickLinks

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[Item 3.03 Material Modifications to Rights of Security Holders.](#)

[Item 5.03 Amendments to Articles of Incorporation or Bylaws: Change in Fiscal Year.](#)

[Item 9.01. Financial Statements and Exhibits.](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

**RESTATED
CERTIFICATE OF INCORPORATION OF
THE MIDDLEBY CORPORATION**

(EFFECTIVE AS OF MAY 13, 2005)

The Middleby Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "GCL"), does hereby certify as follows:

- A. The name of the Corporation is The Middleby Corporation. The original certificate of incorporation of the Corporation was filed with the office of the Secretary of State of Delaware on March 12, 1985.
- B. This restated certificate of incorporation was duly adopted by the Board of Directors and the holders of a majority of outstanding capital stock of the Corporation entitled to vote thereon at a duly convened meeting of stockholders in accordance with the provisions of Sections 242 and 245 of the GCL.
- C. The text of the certificate of incorporation of the Corporation as amended hereby is restated to read in its entirety as follows:
 - 1. The name of the Corporation is The Middleby Corporation.
 - 2. The address of the registered agent of the Corporation is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle.

The registered agent at such address is The Corporation Trust Company.

- 3. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- 4. The Corporation shall have authority to issue 2,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock") and 20,000,000 shares of Common Stock, par value \$.01 per share ("Common Stock"). The Preferred Stock shall be issuable in series with such designations, relative rights, preferences and limitations as may be fixed from time to time by the Board of Directors.

The designations, preferences and relative, participating, optional and other special rights of the Preferred Stock (unless otherwise fixed by the Board of Directors) and the qualifications, limitations and restrictions thereof, are as follows:

- (a) The shares of Preferred Stock may be divided into and issued in one or more series, and each series shall be so designated so as to distinguish the shares thereof from the shares of all other series. All shares of Preferred Stock shall be identical except in respect of particulars which may be fixed by the Board of Directors. Each share of a series shall be identical in all respects with all other shares of such series, except as to the date from which dividends thereon shall be cumulative on any series as to which dividends are cumulative. Shares of Preferred Stock of any series which have been retired in any manner, including shares redeemed or reacquired by the Corporation and shares which have been converted into or exchanged for shares of any other class, or any series of the same or any other class, shall have the status of authorized but unissued shares of Preferred Stock and may be reissued as shares of the series of which they were originally a part.
 - (b) Before any shares of Preferred Stock of any series shall be issued, the Board of Directors, pursuant to authority hereby expressly vested in it, shall fix by resolution or resolutions the following provisions in respect of the shares of each such series so far as the same are not inconsistent with the provisions herein applicable to all series of Preferred Stock:
 - (i) the distinctive designations of each series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) from time to time by like action of the Board of Directors;
 - (ii) the annual rate or amount of dividends payable on shares of such series, whether such dividends shall be cumulative or non-cumulative, the conditions upon which and/or the dates when such dividends shall be payable and the date from which dividends on cumulative series shall accrue and be cumulative on all shares of such series issued prior to the payment date for the first dividend of such series;
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(iii) whether such series shall be redeemable and, if so, the terms and conditions of such redemption, including the time or times when and the price or prices at which shares of such series shall be redeemable;

(iv) the amount payable on shares of such series in the event of liquidation, dissolution or winding up of the affairs of the Corporation;

(v) whether such series shall be convertible into or exchangeable for shares of any other class, or any series of the same or any other class, and if so, the terms and conditions thereof, including the date or dates when such shares shall be convertible into or exchangeable for shares of any other class, or any series of the same or any other class, the price or prices or the rate or rates at which shares of such series shall be so convertible or exchangeable, and any adjustments which shall be made in such conversion or exchange prices or rates;

(vi) whether such series shall have any voting rights in addition to those prescribed by law and, if so, the terms and conditions of exercise of such voting rights; and

(vii) any other designations, preferences and relative, participating, optional or other special rights, and any qualifications, limitations and restrictions thereof.

5. (a) So long as any shares of Preferred Stock of any series shall be outstanding, the Corporation will not declare or pay any dividends on the Common Stock (other than dividends payable solely in shares of Common Stock) or make any distributions of any kind, either directly or indirectly, in respect of shares of Common Stock, or make any payment on account of the purchase, redemption or other acquisition of Common Stock, unless on the payment, distribution or redemption date, as the case may be, all dividends on the then outstanding shares of Preferred Stock of all series of Preferred Stock then outstanding have been paid.

(b) In case the Corporation shall not pay in full all dividends required to be paid on all shares of all series of Preferred Stock at the time outstanding to the full extent of the preference, if any, to which each such series is entitled, all series which are of equal rank with respect to such dividends, including accumulations thereof, if any, shall be entitled to such dividends in proportion to the amounts that would be payable on such series if all dividends were paid in full. Accumulations of dividends shall not bear interest.

(c) In case the Corporation shall not pay in full all amounts required to be paid on all shares of all series of Preferred Stock at the time outstanding in the event of the liquidation, dissolution or winding up of the affairs of the Corporation, the shares of all series of Preferred Stock shall share ratably in the payment of all amounts payable in the event of such liquidation, dissolution or winding up in accordance with the sums which would be payable on such shares if all amounts payable on such liquidation, dissolution or winding up were paid in full.

(d) When dividends shall have been paid (or declared and set aside for payment) on the Preferred Stock to the full extent of the preference, if any, to which the Preferred Stock is entitled, dividends on the remaining class or classes of stock may then be paid out of the funds of the Corporation which are legally available therefor.

6. The property, affairs and business of the corporation shall be managed by its Board of Directors consisting of not fewer than three (3) nor more than eleven (11) persons. The exact number of directors within the maximum and minimum limitation specified herein shall be fixed from time to time by resolution adopted by the majority of the Board of Directors. The directors shall be elected and shall hold office for such term and be subject to removal as provided in the By-Laws of the Corporation.

7. No agreement or plan providing for the dissolution, liquidation, merger or consolidation of the Corporation or the sale, lease, or transfer of substantially all of its assets, shall be effective, unless approved by the affirmative vote of not less than two-thirds of the votes of all the shares of stock outstanding and entitled to vote thereon.

8. Directors, officers, employees and other agents of the Corporation, and persons who serve at its request as Directors, officers, employees, or other agents of another organization in which the Corporation directly or indirectly owns shares or of which it is a creditor, shall be indemnified by the

Corporation to the fullest extent permitted by law, which indemnification shall include, but not be limited to, payment by the Corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payments if he shall be adjudicated to be not entitled to indemnification under the law. Any such indemnification shall be provided although the person to be indemnified is no longer an officer, director, employee, or agent of the Corporation or of such other organization. No indemnification shall be provided for any person with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article 9 shall not be exclusive of any other right which any person may have or hereafter acquire under this certificate of incorporation, the Bylaws, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of this Article 8 by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director, officer, employee or agent of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

9. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty by such director as a director; provided, however, that this Article 9 shall not eliminate or limit the liability of a director (except to the extent provided by applicable law) (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. This Article 9 shall not apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to the date this Article 9 becomes effective. No amendment to or repeal of this Article 9 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

10. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of at least a majority of the entire Board of Directors shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of a majority of outstanding capital stock entitled to vote thereon.

11. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this restated certificate of incorporation to be executed on its behalf this 11th day of May.

By: /s/ TIMOTHY J. FITZGERALD

Name: Timothy J. FitzGerald
Title: Vice President and Chief Financial Officer

QuickLinks

[RESTATED CERTIFICATE OF INCORPORATION OF THE MIDDLEBY CORPORATION](#)

**AMENDED AND RESTATED
BYLAWS
OF
THE MIDDLEBY CORPORATION
a Delaware corporation
(hereinafter called the "Corporation")

(EFFECTIVE AS OF MAY 13, 2005)**

**ARTICLE I
STOCKHOLDERS**

Section 1.1 ANNUAL MEETING.

An annual meeting of stockholders for the purpose of electing directors and of transacting such other business as may come before it shall be held each year at such date, time and place, either within or without the State of Delaware, as may be specified by the Board of Directors.

Section 1.2 SPECIAL MEETINGS.

Special meetings of stockholders for any purpose or purposes may be held at any time upon call of the Chairman of the Board, the President, or a majority of the Board of Directors, at such time and place either within or without the State of Delaware as may be stated in the call and notice. The ability of stockholders to call a special meeting of stockholders is hereby specifically denied.

Section 1.3 NOTICE OF MEETINGS.

Notice of stockholders' meetings, stating the place, date and hour thereof, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by the Chairman of the Board, the President or the Secretary to each stockholder of record entitled to vote thereat at least ten days but not more than sixty days before the date of the meeting, unless a different period is prescribed by law.

Section 1.4 QUORUM.

Except as otherwise provided by law or the certificate of incorporation or these Bylaws, at any meeting of stockholders, the holders of a majority of the outstanding shares of each class of stock entitled to vote at the meeting shall be present or represented by proxy in order to constitute a quorum for transaction of any business. In the absence of a quorum, a majority in interest of the stockholders present or the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 1.5 of these Bylaws until a quorum shall attend.

Section 1.5 ADJOURNMENT.

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 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 1.6 ORGANIZATION.

The Chairman of the Board, or in his absence the President, or in their absence the Vice President, shall call to order meetings of stockholders and shall act as chairman of such meetings. The Board of Directors or, if the Board fails to act, the stockholders may appoint any stockholder or any director or officer of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board, the President and the Vice President.

The Secretary of the Corporation shall act as secretary of all meetings of stockholders, but in the absence of the Secretary, the chairman of the meeting may appoint any other person to act as secretary of the meeting.

Section 1.7 VOTING.

Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws and except for the election of directors, at any meeting duly called and held at which a quorum is present, a majority of the votes cast at such meeting upon a given question by the holders of outstanding shares of stock of all classes of stock of the Corporation entitled to vote thereon who are present in person or by proxy shall decide such questions. At any election of directors at which a quorum is present, the directors shall be elected by a plurality of the votes cast at such election.

Section 1.8 CONDUCT OF MEETINGS.

The Board of Directors may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, 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 chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 1.9 NATURE OF BUSINESS AT MEETINGS OF STOCKHOLDERS.

No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.9 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 1.9.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any

material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 1.9; *provided, however*, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 1.9 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Section 1.10 NOMINATION OF DIRECTORS.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.10 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 1.10.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 1.10. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 NUMBER AND TERM OF OFFICE.

The property, affairs and business of the Corporation shall be managed by its Board of Directors consisting of not fewer than three (3) nor more than eleven (11) persons. The exact number of directors within the maximum and minimum limitations specified herein shall be fixed from time to time by resolution adopted by the majority of the Board of Directors.

The directors, except as provided in the next paragraph of this Section 2.1, shall be elected at the annual meeting of stockholders, and each director shall hold office, subject to the provisions of this Article, until the next annual meeting of stockholders and until his successor is duly elected and qualified, or until such director's earlier death, resignation or removal.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 2.2 CHAIRMAN OF THE BOARD.

The directors may elect one of their members to be Chairman of the Board of Directors. The Chairman shall be subject to the control of and may be removed by the Board of Directors. He shall perform such duties as may from time to time be assigned to him by the Board.

Section 2.3 MEETINGS.

The annual meeting of the Board of Directors, for the election of officers and the transaction of such other business as may come before the meeting, shall be held without notice at the same place as, and immediately following, the annual meeting of the stockholders.

Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Special meetings of the Board of Directors shall be held at such time and place as shall be designated in the notice of the meeting whenever called by the Chairman of the Board, the President or by a majority of the directors then in office.

Section 2.4 NOTICE OF SPECIAL MEETINGS.

The Secretary, or in his absence any other officer of the Corporation, shall give each director notice of the time and place of holding of special meetings of the Board of Directors by mail at least two days before the meeting, or by telegram, cable or radiogram or personal service at least one day before the meeting. Unless otherwise stated in the notice thereof, any and all business may be transacted at any meeting without specification of such business in the notice.

Section 2.5 QUORUM AND ORGANIZATION OF MEETINGS.

A majority of the total number of members of the Board of Directors as constituted from time to time shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice or waiver. Except as otherwise provided by law or by these Bylaws, a majority of the directors present at any meeting at which a quorum is present may decide any question brought before such meeting. Meetings shall be presided over by the Chairman of the Board, or in his absence by the President, or in the absence of both by such other persons as may be selected by the directors. The Secretary of the Corporation shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.6 COMMITTEES.

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 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 a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he 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 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 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 Bylaws; and, unless the resolution expressly so provided, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Each committee which may be established by the Board of Directors or these Bylaws may fix its own rules and procedures. Notice of meetings of committees, other than of regular meetings provided for by the rules, shall be given to committee members. All action taken by committees shall be recorded in minutes of the meetings.

Section 2.7 ACTION WITHOUT MEETING.

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 or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 2.8 TELEPHONE MEETINGS.

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

ARTICLE III

OFFICERS

Section 3.1 EXECUTIVE OFFICERS.

The executive officers of the Corporation shall be a Chairman of the Board, a President, one or more Vice Presidents, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may elect or appoint such other officers (including a Controller and one or more Assistant Treasurers and Assistant Secretaries) as it may deem necessary or desirable, each of whom shall hold office for such term as may be prescribed by the Board of Directors from time to time. Any person may hold at one time two or more offices.

Section 3.2 POWERS AND DUTIES.

The Chairman of the Board or, in his absence, the President, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman shall be the chief executive officer of the Corporation, reporting only to the Board of Directors. In the absence of the Chairman, the President shall perform all the duties of the Chairman. The officers and agents of the Corporation shall each have such powers and perform such duties in the management of the business and affairs of the Corporation as generally pertain to their respective offices, as well as such powers and duties as from time to time may be prescribed by the Board of Directors.

ARTICLE IV

RESIGNATIONS, REMOVALS AND VACANCIES

Section 4.1 RESIGNATIONS.

Any director or officer of the Corporation, or any member of any committee, may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board of Directors, the President or the Secretary of the corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified therein, upon receipt thereof. The acceptance of such resignation shall not be necessary to make it effective.

Section 4.2 REMOVALS.

The Board of Directors, at any meeting thereof, or by written consent, may, to the extent permitted by law, at any time, remove with or without cause from office or terminate the employment of any officer or member of any committee.

Section 4.3 VACANCIES.

Any vacancy in the office of any officer through death, resignation, removal, disqualification or other cause, may be filled at any time by a majority of the directors then in office (even though less than a quorum) and, subject to the provisions of this Article, the person chosen shall hold office until his successor shall have been chosen and shall have qualified.

ARTICLE V

CAPITAL STOCK

Section 5.1 STOCK CERTIFICATES.

The certificates for shares of the capital stock of the Corporation shall be in such form as shall be prescribed by law and approved, from time to time, by the Board of Directors.

Section 5.2 TRANSFER OF SHARES.

Shares of the capital stock of the Corporation may be transferred on the books of the Corporation only by the holder of such shares or by his duly authorized attorney, upon the surrender to the Corporation or its transfer agent of the certificate for such shares properly endorsed.

Section 5.3 FIXING RECORD DATE.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

Section 5.4 REGULATIONS.

The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, registration, cancellation and replacement of certificates for shares of stock of the Corporation.

ARTICLE VI

MISCELLANEOUS

Section 6.1 CORPORATE SEAL.

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal" and "Delaware."

Section 6.2 FISCAL YEAR.

The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 6.3 NOTICES AND WAIVERS THEREOF.

Whenever any notice whatever is required by these Bylaws or by the certificate of incorporation, or by any law to be given to any stockholder, director or officer, such notice, except as otherwise provided by law, may be given personally or by mail, or, in the case of directors or officers, by telegram, cable or radiogram, addressed to such address as appears on the books of the Corporation. Any notice given by telegram, cable or radiogram shall be deemed to have been given when it shall have been delivered for transmission and any notice given by mail shall be deemed to have been given when it shall have been deposited in the United States mail with postage thereon prepaid.

Whenever a notice is required to be given by any statute, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the meeting or the time stated therein, shall be deemed equivalent in all respects to such notice.

Section 6.4 STOCK OF OTHER CORPORATIONS OR OTHER INTERESTS.

Unless otherwise directed by the Board of Directors, the Chairman, the President, the Secretary and such attorneys or agents of the Corporation as may be from time to time authorized by the Board of Directors or the Chairman shall have full power and authority on behalf of this Corporation to attend, and to act and vote in person or by proxy at, any meeting of the holders of securities of any corporation or other entity in which this Corporation may own or hold shares or other securities, and at such meetings such persons shall possess and may exercise all the rights and powers incident to the ownership of such shares or other securities which this Corporation, as the owner or holder thereof, might have possessed and exercised if present. The Chairman, the President, the Secretary or such attorneys or agents may also execute and deliver on behalf of the Corporation powers of attorney, proxies, consents, waivers and other instruments relating to the shares or securities owned or held by this Corporation.

ARTICLE VII

AMENDMENT

Section 7.1 AMENDMENTS.

These bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the stockholders or by the Board of Directors; *provided, however*, that notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 7.2 ENTIRE BOARD OF DIRECTORS.

As used in this Article VII and in these bylaws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

QuickLinks

[AMENDED AND RESTATED BYLAWS OF THE MIDDLEBY CORPORATION a Delaware corporation \(hereinafter called the "Corporation"\)](#)

**The Middleby Corporation Amended and Restated
Management Incentive Compensation Plan**

1. *General.* The Management Incentive Compensation Plan (hereinafter, the "Plan" or "MICP"), as amended from time to time, was initially adopted and approved by the stockholders of The Middleby Corporation ("Company") in 2001. This document sets forth an amendment and restatement of the Plan effective as of January 1, 2005.
2. *Purpose.* The MICP is intended to provide an incentive for superior performance and to motivate participating employees toward the highest levels of achievement and business results, to tie their goals and interests to those of the Company and its stockholders, and to enable the Company to attract and retain highly qualified executive officers. In addition, the MICP is intended to preserve the Company's tax deduction for bonus compensation paid to "covered employees" within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code") by meeting the requirements for performance-based compensation under Section 162(m) of the Code.
3. *Administration.* The MICP shall be administered by the Compensation Committee of the Company's Board of Directors (the "Board") or a subcommittee of such committee (the "Committee"). All members of the Committee shall be persons who qualify as "outside directors" as defined under Section 162(m) of the Code. The Committee shall have full power and authority to administer and interpret the provisions of the MICP and to adopt such rules, regulations, agreements, guidelines and instruments for the administration of the MICP and for the conduct of its business as the Committee deems necessary or advisable. Except with respect to matters which under the Code are required to be determined in the sole and absolute discretion of the Committee, the Committee shall have full power to delegate to any officer or employee of the Company the authority to administer and interpret the procedural aspects of the MICP, subject to the MICP's terms, including adopting and enforcing rules to decide procedural and administrative issues. The Committee may rely on opinions, reports or statements of officers or employees of the Company or any subsidiary thereof and of Company counsel (inside or retained counsel), public accountants and other professional or expert persons. No member of the Committee shall be liable for any action taken or determination made in good faith with respect to the MICP.
4. *Eligibility.* Any officer or key employee of the Company is eligible to participate in the MICP if selected by the Committee for participation.
5. *EBITDA Performance Measure.* Payment of bonuses under the MICP to the Company's executive officers who are "covered employees" as defined under Section 162(m) of the Code shall be subject to the attainment of pre-established written performance goals approved by the Committee prior to the 90th day following the commencement of the Company's fiscal year. The performance goal shall be the Company's adjusted earnings before interest, income taxes, depreciation and amortization ("EBITDA") for the fiscal year. Payment of bonuses to participants in the MICP who are not "covered employees" may be based on the EBITDA of any subsidiary, division or segment of the Company. EBITDA goals may include a threshold level of performance at which no payment will be made, levels of performance at which specified payments will be made and a maximum level of performance above which no additional payment will be made. In no event shall the Committee have the discretion to increase the amount of incentive compensation that would otherwise become payable to a covered employee upon the attainment of the EBITDA goal previously established for such covered employee. The maximum payment that may be made to any individual under the MICP with respect of any fiscal year shall be \$3,500,000.
6. *Calculation of EBITDA.* EBITDA shall be determined in the discretion of the Committee in accordance with Generally Accepted Accounting Principles. However, EBITDA shall exclude foreign exchange gains/losses 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 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 prescribed 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.

7. *Performance Period.* The performance period with respect to which bonuses shall be calculated and paid under the MICP shall generally be the fiscal year of the Company beginning on January 1 and ending on December 31.
8. *Payment of Bonuses.* Payments pursuant to the MICP, if any, shall be made after the completion of Company's year end audit and only after the Committee certifies in writing that the EBITDA goals with respect to which payments are to be made have been attained. As a condition to receiving a payment, each participant must have been employed by the Company for a minimum of six months during the Company's fiscal year and must have been employed on the last day of the Company's fiscal year; *provided, however, that* the Committee may elect to pay a pro-rata bonus (after the year end audit) to any participant whose employment with the Company was involuntarily terminated prior to the end of the Company's fiscal year if such participant was otherwise eligible to receive a bonus hereunder. Notwithstanding anything to the contrary herein, the Committee may also elect to pay pro-rata bonuses prior to end of the Company's fiscal year end based upon the achievement of pro-rata EBITDA goals. Payment of bonuses under the MICP may be subject to such additional requirements as the Committee may determine, including but not limited to, the Company's Stock Ownership Plan. Notwithstanding the foregoing, payments pursuant to the MICP, if any, shall be made no later than the date which is two and one-half (2¹/₂) months following the end of the fiscal year in which the payment was earned.
9. *Change of Control.* After the occurrence of a "Change of Control" (as defined below) of the Company, EBITDA shall be calculated in accordance with past practice and the terms of the Plan after the completion of the Company's year end audit; *provided, however, that* if it shall be impractical for the Company's EBITDA to be measured after a Change of Control then a pro-rata bonus shall be paid to participants based on EBITDA achieved prior to the Change of Control as of the most recent practicable date prior to the date the Change of Control occurred. If, after the Change of Control, the members of the Committee are replaced, the calculation of EBITDA shall be made in consultation with an individual, who immediately prior to the Change of Control, was serving on the Committee so as to ensure that EBITDA is calculated in accordance with past practice and the terms of the Plan and the new members of the Committee shall certify in writing that EBITDA was calculated in consultation with such individual and in accordance with past practice and the terms of the Plan. For purposes of the Plan, a "Change in Control" shall mean an increase, on or after January 1, 2005, 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 a participant or group of persons which includes a participant who are acting together for the purpose of acquiring, holding, voting or disposing of such voting securities shall not constitute a Change in Control.⁽¹⁾

(1) For example, on April 16, 2004 individual A (who is not a participant of the MICP) 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.

10. *No Right To Continued Employment.* Nothing in the MICP or in any bonus opportunity granted pursuant hereto shall confer upon any participant the right to continue in the employ of the Company or to be entitled to any remuneration or benefits not set forth in the MICP or to interfere with or limit in any way the right of the Company to terminate such participant's employment.
11. *Withholding Taxes.* Where a participant or other person is entitled to receive a payment hereunder, the Company shall have the right either to deduct from the payment, or to require the participant or such other person to pay to the Company prior to delivery of such payment, an amount sufficient to satisfy any federal, state, local or other withholding tax requirements.
12. *Amendment and Termination of the MICP.* The Board or the Committee may at any time and from time to time alter, amend, suspend, or terminate the MICP in whole or in part; *provided that*, no amendment that requires stockholder approval in order for the MICP to continue to comply with Section 162(m) of the Code shall be effective unless the same shall be approved by the requisite vote of the shareholders of the Company. Notwithstanding the foregoing, no amendment shall affect adversely any of the rights of any participant to receive any bonus following the date the participant is notified of his bonus opportunity, provided that the adjustment of EBITDA or the payment of a pro-rata bonus as contemplated herein are expressly permitted. Unless otherwise determined by the Committee or the Board, the Company shall seek stockholder re-approval of the material terms of the EBITDA goal hereunder no later than the first stockholder meeting of the Company occurring in 2006.
13. *Participant Rights.* No participant shall have any claim to be granted any bonus under the MICP, and there is no obligation for uniformity of treatment for participants.
14. *Governing Law.* The MICP and all determinations made and actions taken pursuant hereto shall be governed by the laws of the State of Delaware without giving effect to the conflict of laws principles thereof.
15. *Interpretation.* The MICP is designed and intended to comply, to the extent applicable, with Section 162(m) of the Code, and all provisions hereof shall be construed in a manner to so comply. Notwithstanding any provision of the MICP, to the extent that the Committee determines that the MICP or any bonus opportunity or right of a participant thereunder is subject to Section 409A of the Code and fails to comply with the requirements of Section 409A of the Code, the Committee, reserves the right to amend or terminate the Plan and/or amend, restructure, terminate or replace the participant's bonus opportunity or right in order to cause the right to either not be subject to Section 409A of the Code or to comply with the applicable provisions of such section.
16. *Unfunded Status of Awards.* The MICP is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a participant pursuant to a bonus opportunity, nothing contained in the MICP or any bonus shall give any such participant any rights that are greater than those of a general creditor of the Company.

QuickLinks

[Exhibit 10.1](#)

**AMENDMENT
TO THE MIDDLEBY CORPORATION
1998 STOCK INCENTIVE PLAN**

Pursuant to resolutions of the Board of Directors adopted on December 22, 2004, The Middleby Corporation 1998 Stock Incentive Plan (the "Plan") is hereby amended as set forth below, subject in its entirety to the approval of the stockholders of The Middleby Corporation at the 2005 Annual Meeting of Stockholders, which amendments shall be effective as of January 1, 2005 if approved:

1. Section 2.1 of the Plan is amended to replace the first sentence thereof in its entirety with the following sentence:

"1,750,000 shares of Stock are available for Grants under the Plan."

2. Section 3.1(a) of the Plan is amended to replace the second sentence thereof in its entirety with the following sentence:

"Effective as of January 1, 2005, the number of shares of Stock granted in a fiscal year to each executive officer whose compensation is subject to reporting in the Company's annual proxy statement (an "Executive Officer") shall not exceed 200,000 shares for any fiscal year in which he serves as an Executive Officer, except, with respect to periods prior to January 1, 2005, (i) a grant of 200,000 shares may be made to Selim A. Bassoul in 2002, (ii) a grant of 325,000 shares may be made to Selim A. Bassoul in 2003, and (iii) a grant of 170,000 shares may be made to William F. Whitman, Jr. in 2003. "

3. Section 4.1 of the Plan is amended by adding new clause (vi) immediately following the end thereof:

"(vi) The exercise price per share must be at least 100% of the Stock's Fair Market Value on the date the Option is granted."

IN WITNESS WHEREOF, The Middleby Corporation has adopted this amendment.

THE MIDDLEBY CORPORATION

By: _____

Chairman of the Board of Directors

ATTEST

QuickLinks

[Exhibit 10.2](#)