

**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: October 6, 2010
(Date of earliest event reported)**

APOGEE ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Commission File Number: 0-6365

Minnesota
(State or other jurisdiction
of incorporation)

41-0919654
(IRS Employer
Identification No.)

4400 West 78th Street – Suite 520
Minneapolis, Minnesota 55435
(Address of principal executive offices, including zip code)

(952) 835-1874
(Registrant's telephone number, including area code)

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

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

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

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

(e) Apogee Enterprises, Inc. 2011 Deferred Compensation Plan

On October 6, 2010, Apogee Enterprises, Inc. (the “Company”) adopted the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan (the “2011 Deferred Compensation Plan”). The 2011 Deferred Compensation Plan, which becomes effective on January 1, 2011, is a non-qualified deferred compensation plan for a select group of management and other highly compensated employees of the Company and its subsidiaries. Approximately 160 of the Company’s employees, including all of the Company’s named executive officers, will be eligible to participate in the 2011 Deferred Compensation Plan for the 2011 calendar year.

The 2011 Deferred Compensation Plan allows for deferrals by participants of up to 75% of base salary and sales commissions and up to 100% of bonuses and other cash or equity-based compensation approved by the Company’s Compensation Committee. The 2011 Deferred Compensation Plan also provides that the Company may establish rules permitting a participant to defer performance-based compensation up to six months prior to the end of a performance period. For the 2011 calendar year, participants in the 2011 Deferred Compensation Plan may elect to defer base salary, sales commissions, bonuses and other cash compensation. There is no maximum dollar limit on the amount that may be deferred by a participant each year. Participants in the 2011 Deferred Compensation Plan will elect to have the participant’s account credited with earnings and investment gains and losses by assuming that deferred amounts were invested in one or more hypothetical investment options selected by the participant. An Apogee common stock fund will not be one of the investment options available under the 2011 Deferred Compensation Plan. Participants are permitted to change their investment elections at any time. The Company may also make discretionary contributions to a participant’s account under the 2011 Deferred Compensation Plan, and the Company will designate a vesting schedule for each such contribution. The participants are always 100% vested in the amount they defer and the earnings, gains and losses credited to their accounts.

Participants are entitled to receive a distribution from their account upon: a separation from service, a specified date, death, disability, retirement (as defined in the 2011 Deferred Compensation Plan), or unforeseeable emergency that results in “severe financial hardship” that is consistent with the meaning of such term under section 409A of the Internal Revenue Code of 1986. Distributions are in a lump sum, installments or a combination of lump sum with installments based upon the participant’s election as allowed under the 2011 Deferred Compensation Plan.

The 2011 Deferred Compensation Plan is an unfunded obligation of the Company, and participants are unsecured creditors of the Company.

Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement)

On October 6, 2010, the Company adopted the Third Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) (the “DICP Amendment”), with provisions effective as of January 1, 2011, which:

- prohibit future participant deferral elections under the Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement); and
- provide that the participants may choose to have their accounts credited with (1) the applicable fixed interest rate set forth in the Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) or (2) earnings and investment gains and losses by assuming that deferred amounts were invested in one or more hypothetical investment options selected by the participants. If a participant elects to have some or all of the participant’s account credited with one or more hypothetical investment options, the participant will not be permitted to subsequently reelect the fixed interest rate investment option set forth in the Apogee Enterprises, Inc. Deferred Compensation Plan (2005 Restatement) with respect to that portion of the participant’s account.

Termination of Change-in-Control Severance Agreements

In 2008, the Company entered into change-in-control severance agreements with each of its executive officers. The agreements continue through December 31 of each year and provide that they are to be automatically extended in one-year increments unless the Company gives prior notice of termination. As part of its annual review of the severance agreements, the Compensation Committee of the Company's Board of Directors determined to terminate the agreements, effective as of December 31, 2010, and instructed that notice of termination be provided to the Company's executive officers by September 30, 2010 in accordance with the terms of the agreements. The Company expects to offer to certain of the Company's executive officers new change-in-control severance agreements containing different terms to be effective on January 1, 2011. A Current Report on Form 8-K describing the new change-in-control agreements will be filed with the SEC in accordance with the SEC's rules.

Copies of the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan and the Third Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) are attached to this Current Report on Form 8-K and incorporated herein by reference. The descriptions in this Current Report on Form 8-K of the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan and the Third Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) are qualified in their entirety by reference to the attached copies of such documents.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 10.1 Apogee Enterprises, Inc. 2011 Deferred Compensation Plan, effective January 1, 2011.*
- 10.2 Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) (incorporated by reference to Exhibit 10.3 to Apogee's Current Report on Form 8-K filed on October 17, 2006).
- 10.3 First Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) (incorporated by reference to Exhibit 10.4 to Apogee's Current Report on Form 8-K filed on October 15, 2008).
- 10.4 Second Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement) (incorporated by reference to Exhibit 10.3 to Apogee's Current Report on Form 8-K filed on March 4, 2009).
- 10.5 Third Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement).*

* Filed herewith

SIGNATURE

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.

APOGEE ENTERPRISES, INC.

By: /s/ Patricia A. Beithon
Patricia A. Beithon
General Counsel and Secretary

Date: October 12, 2010

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
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10.5	Third Amendment of Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement).*

* Filed herewith

APOGEE ENTERPRISES, INC.
2011 DEFERRED COMPENSATION PLAN
FIRST EFFECTIVE JANUARY 1, 2011
Effective January 1, 2011

Apogee Enterprises, Inc. Deferred Compensation Plan

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ARTICLE I

Establishment and Purpose

Apogee Enterprises, Inc. (the "Company") hereby establishes the Apogee Enterprises, Inc. Deferred Compensation Plan (the "Plan"), effective January 1, 2011. The purpose of the Plan is to attract and retain key employees by providing Participants with an opportunity to defer receipt of a portion of their salary, bonus, and other specified compensation. The Plan is not intended to meet the qualification requirements of Code Section 401(a), but is intended to meet the requirements of Code Section 409A, and shall be operated and interpreted consistent with that intent.

The Plan constitutes an unsecured promise by a Participating Employer to pay benefits in the future. Participants in the Plan shall have the status of general unsecured creditors of the Company or the Adopting Employer, as applicable. Each Participating Employer shall be solely responsible for payment of the benefits of its employees and their beneficiaries. The Plan is unfunded for federal tax purposes and is intended to be an unfunded arrangement for eligible employees who are part of a select group of management or highly compensated employees of the Employer within the meaning of Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA. Any amounts set aside to defray the liabilities assumed by the Company or an Adopting Employer will remain the general assets of the Company or the Adopting Employer and shall remain subject to the claims of the Company's or the Adopting Employer's creditors until such amounts are distributed to the Participants.

ARTICLE II

Definitions

- 2.1 Account. Account means a bookkeeping account maintained by the Committee to record the payment obligation of a Participating Employer to a Participant as determined under the terms of the Plan. The Committee may maintain an Account to record the total obligation to a Participant and component Accounts to reflect amounts payable at different times and in different forms. Reference to an Account means any such Account established by the Committee, as the context requires. Accounts are intended to constitute unfunded obligations within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA.
- 2.2 Account Balance. Account Balance means, with respect to any Account, the total payment obligation owed to a Participant from such Account as of the most recent Valuation Date.
- 2.3 Adopting Employer. Adopting Employer means an Affiliate who, with the consent of the Company, has adopted the Plan for the benefit of its eligible employees.
- 2.4 Affiliate. Affiliate means a corporation, trade or business that, together with the Company, is treated as a single employer under Code Section 414(b) or (c).

Apogee Enterprises, Inc. Deferred Compensation Plan

- 2.5 Beneficiary. A Beneficiary means a person designated by a Participant (or automatically by operation of this Plan Statement) to receive all or a part of the Participant's Account Balance in the event of the Participant's death prior to full distribution thereof. A person so designated shall not be considered a Beneficiary until the death of the Participant.
- 2.6 Business Day. Business Day means each day on which the New York Stock Exchange is open for business.
- 2.7 Change in Control. A "Change in Control" shall mean:
- (a) a change in control of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or successor provision thereto, whether or not the Company is then subject to such reporting requirement including, without limitation, any of the following events:
 - (i) the consummation of any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of the Company's Common Stock would be converted into cash, securities or other property, other than a merger of the Company in which the holders of the Company's Common Stock immediately prior to the consolidation or merger have the same proportionate ownership of Common Stock of the surviving corporation immediately after the merger; or
 - (ii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Company;
 - (b) any "person" (as such term is used in sections 13(d) and 14(d) of the Exchange Act) is or becomes the "Beneficial Owner" (as defined in Rule 13d 3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 35% or more of the combined voting power of the Company's then outstanding securities;
 - (c) the Continuing Directors (as defined in Section 2.16 hereof) cease to constitute a majority of the Company's Board; or
 - (d) the majority of the Continuing Directors determine in their sole and absolute discretion that there has been a change in control of the Company.
- Notwithstanding the foregoing, none of the foregoing event(s) shall constitute a Change of Control unless such event(s) constitute a Change of Control as defined in section 409A of the Code, any regulations and other guidance in effect from time to time thereunder.
- 2.8 Claimant. Claimant means a Participant or Beneficiary filing a claim under Article XII of this Plan.
- 2.9 Code. Code means the Internal Revenue Code of 1986, as amended from time to time.

- 2.10 Code Section 409A. Code Section 409A means section 409A of the Code, and regulations and other guidance issued by the Treasury Department and Internal Revenue Service thereunder.
- 2.11 Committee. Committee means the Compensation Committee of the Board of Directors of the Company.
- 2.12 Company. Company means Apogee Enterprises, Inc.
- 2.13 Company Contribution. Company Contribution means a credit by a Participating Employer to a Participant's Account(s) in accordance with the provisions of Article V of the Plan. Company Contributions are credited at the sole discretion of the Participating Employer and the fact that a Company Contribution is credited in one year shall not obligate the Participating Employer to continue to make such Company Contribution in subsequent years. Unless the context clearly indicates otherwise, a reference to Company Contribution shall include Earnings attributable to such contribution.
- 2.14 Compensation. Compensation means a Participant's base salary, bonus, commission, and such other cash or equity-based compensation (if any) approved by the Committee as Compensation that may be deferred under this Plan. Compensation shall not include any compensation that has been previously deferred under this Plan or any other arrangement subject to Code Section 409A.
- 2.15 Compensation Deferral Agreement. Compensation Deferral Agreement means an agreement between a Participant and a Participating Employer that specifies: (i) the amount of each component of Compensation that the Participant has elected to defer to the Plan in accordance with the provisions of Article IV, and (ii) the Payment Schedule applicable to one or more Accounts. No deferrals will be permitted for a component of Compensation until the Committee specifies that deferral of that component of Compensation is permitted. The Committee may permit different deferral amounts for each component of Compensation and may establish a minimum or maximum deferral amount for each such component. Unless otherwise specified by the Committee in the Compensation Deferral Agreement, Participants may defer up to 75% of their base salary and commissions and up to 100% of other types of Compensation for a Plan Year. A Compensation Deferral Agreement may also specify the investment allocation described in Section 8.4.
- 2.16 Continuing Director. Continuing Director shall mean any person who is a member of the Board of the Company, who is not an Acquiring Person (as hereinafter defined) or an Affiliate or Associate (as hereinafter defined) of an Acquiring Person, or a representative of an Acquiring Person or of any such Affiliate or Associate, and who (a) was a member of the Board on the date, as of which this Plan first became effective or (b) subsequently becomes a member of the Board, if such person's initial nomination for election or initial election to the Board is recommended or approved by a majority of the Continuing Directors. For purposes of this Section 2.16: "Acquiring Person" shall mean any "person" (as such term is used in sections 13(d) and 14(d) of the Exchange Act) who or

which, together with all Affiliates and Associates of such person, is the Beneficial Owner of 10% or more of the shares of Common Stock of the Company then outstanding, but shall not include the Company, any subsidiary of the Company or any executive benefit plan of the Company or of any subsidiary of the Company or any entity holding shares of Common Stock organized, appointed or established for, or pursuant to the terms of, any such plan; and "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act.

- 2.17 Death Benefit. Death Benefit means the benefit payable under the Plan to a Participant's Beneficiary(ies) upon the Participant's death as provided in Section 6.1 of the Plan.
- 2.18 Deferral. Deferral means a credit to a Participant's Account(s) that records that portion of the Participant's Compensation that the Participant has elected to defer to the Plan in accordance with the provisions of Article IV. Unless the context of the Plan clearly indicates otherwise, a reference to Deferrals includes Earnings attributable to such Deferrals.
- Deferrals shall be calculated with respect to the gross cash Compensation payable to the Participant prior to any deductions or withholdings, but shall be reduced by the Committee as necessary so that it does not exceed 100% of the cash Compensation of the Participant remaining after deduction of all required income and employment taxes, 401(k) and other employee benefit deductions, and other deductions required by law. Changes to payroll withholdings that affect the amount of Compensation being deferred to the Plan shall be allowed only to the extent permissible under Code Section 409A.
- 2.19 Earnings. Earnings means a positive or negative adjustment to the value of an Account, based upon the allocation of the Account by the Participant among deemed investment options in accordance with Article VIII.
- 2.20 Effective Date. Effective Date means January 1, 2011.
- 2.21 Eligible Employee. Eligible Employee means a member of a "select group of management or highly compensated employees" of a Participating Employer within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, as determined by the Committee from time to time in its sole discretion.
- 2.22 Employee. Employee means a common-law employee of an Employer.
- 2.23 Employer. Employer means, with respect to Employees it employs, the Company and each Affiliate.
- 2.24 ERISA. ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

Apogee Enterprises, Inc. Deferred Compensation Plan

- 2.25 Fiscal Year Compensation. Fiscal Year Compensation means Compensation earned during one or more consecutive fiscal years of a Participating Employer, all of which is paid after the last day of such fiscal year or years.
- 2.26 Participant. Participant means an Eligible Employee who has received notification of his or her eligibility to defer Compensation under the Plan under Section 3.1 and any other person with an Account Balance greater than zero, regardless of whether such individual continues to be an Eligible Employee. A Participant's continued participation in the Plan shall be governed by Section 3.2 of the Plan.
- 2.27 Participating Employer. Participating Employer means the Company and each Adopting Employer.
- 2.28 Payment Schedule. Payment Schedule means the date as of which payment of an Account under the Plan will commence and the form in which payment of such Account will be made.
- 2.29 Performance-Based Compensation. Performance-Based Compensation means Compensation where the amount of, or entitlement to, the Compensation is contingent on the satisfaction of pre-established organizational or individual performance criteria relating to a performance period of at least 12 consecutive months. Organizational or individual performance criteria are considered pre-established if established in writing by not later than 90 days after the commencement of the period of service to which the criteria relate, provided that the outcome is substantially uncertain at the time the criteria are established. The determination of whether Compensation qualifies as "Performance-Based Compensation" will be made in accordance with Treas. Reg. Section 1.409A-1(e) and subsequent guidance.
- 2.30 Plan. Generally, the term Plan means the "Apogee Enterprises, Inc. Deferred Compensation Plan" as documented herein and as may be amended from time to time hereafter. However, to the extent permitted or required under Code Section 409A, the term Plan may in the appropriate context also mean a portion of the Plan that is treated as a single plan under Treas. Reg. Section 1.409A-1(c), or the Plan or portion of the Plan and any other nonqualified deferred compensation plan or portion thereof that is treated as a single plan under such section.
- 2.31 Plan Year. Plan Year means January 1 through December 31.
- 2.32 Retirement. Retirement means a Participant's Separation from Service after the earlier of attainment of age 65 or attainment of age 50 and completion of 15 Years of Service.
- 2.33 Retirement Benefit. Retirement Benefit means the benefit payable to a Participant under the Plan following the Retirement of the Participant.
- 2.34 Retirement/Termination Account. Retirement/Termination Account means an Account established by the Committee to record the amounts payable to a Participant upon

Separation from Service. Unless the Participant has established a Specified Date Account, all Deferrals and Company Contributions shall be allocated to a Retirement/Termination Account on behalf of the Participant.

2.35 Separation from Service. Separation from Service means a severance of an employee's employment relationship with the Employers and Participating Employers for any reason other than the employee's death.

- (a) A transfer from employment with an Employer to employment with an Affiliate, or vice versa, shall not constitute a Separation from Service.
- (b) Whether a Separation from Service has occurred is determined based on whether the facts and circumstances indicate that the Employer and employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the employee would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than twenty percent (20%) of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding thirty-six (36) month period (or the full period of services to the employer if the employee has been providing services to the employer for less than thirty-six months).
- (c) Separation from Service shall not be deemed to occur while the employee is on military leave, sick leave or other bona fide leave of absence if the period does not exceed six (6) months or, if longer, so long as the employee retains a right to reemployment with the Employer or a Participating Employer under an applicable statute or by contract. For this purpose, a leave is bona fide only if, and so long as, there is a reasonable expectation that the employee will return to perform services for the Employer or an Affiliate. Notwithstanding the foregoing, a 29 month period of absence will be substituted for such 6 month period if the leave is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of no less than 6 months and that causes the employee to be unable to perform the duties of his or her position of employment.
- (d) Where as part of a sale or other disposition of assets by the Employer to an employer that is not a Participating Employer, an employee providing services to the Employer immediately before the transaction and to the buyer immediately after the transaction ("Affected Employee") would otherwise experience a Separation from Service from the Employer as a result of the transaction, the Employer and the buyer shall have the discretion to specify that the Affected Employee has not experienced a Separation from Service if (i) the transaction results from bona fide, arm's length negotiations, (ii) all Affected Employees are treated consistently, and (iii) such treatment is specified in writing no later than the closing date of the transaction.

- 2.36 Specified Date Account. Specified Date Account means an Account established by the Committee to record the amounts payable at a future date as specified in the Participant's Compensation Deferral Agreement. Unless otherwise determined by the Committee, a Participant may maintain no more than five Specified Date Accounts. A Specified Date Account may be identified in enrollment materials as an "In-Service Account" or such other name as established by the Committee without affecting the meaning thereof.
- 2.37 Specified Date Benefit. Specified Date Benefit means the benefit payable to a Participant under the Plan in accordance with Section 6.1(c).
- 2.38 Specified Employee. Specified Employee means an Employee who, as of the date of his or her Separation from Service, is Specified Employee as defined in the Company's Specified Employees Policy.
- 2.39 Substantial Risk of Forfeiture. Substantial Risk of Forfeiture means the description specified in Treas. Reg. Section 1.409A-1(d).
- 2.40 Termination Benefit. Termination Benefit means the benefit payable to a Participant under the Plan following the Participant's Separation from Service prior to Retirement.
- 2.41 Unforeseeable Emergency. Unforeseeable Emergency means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Code section 152, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)), or a Beneficiary; loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The types of events which may qualify as an Unforeseeable Emergency may be limited by the Committee.
- 2.42 Valuation Date. Valuation Date means each Business Day.
- 2.43 Year of Service. Year of Service means each 12-month period of continuous service with the Employer.

ARTICLE III

Eligibility and Participation

- 3.1 Eligibility and Participation. An Eligible Employee becomes a Participant upon the earlier to occur of: (i) a credit of Company Contributions under Article V, or (ii) receipt of notification of eligibility to participate.
- 3.2 Duration. A Participant shall be eligible to defer Compensation and receive allocations of Company Contributions, subject to the terms of the Plan, for as long as such Participant remains an Eligible Employee. A Participant who is no longer an Eligible Employee but

has not Separated from Service may not defer Compensation under the Plan beyond the Plan Year in which he or she became ineligible but may otherwise exercise all of the rights of a Participant under the Plan with respect to his or her Account(s). On and after a Separation from Service, a Participant shall remain a Participant as long as his or her Account Balance is greater than zero (0), and during such time may continue to make allocation elections as provided in Section 8.4. An individual shall cease being a Participant in the Plan when all benefits under the Plan to which he or she is entitled have been paid.

ARTICLE IV

Deferrals

4.1 Deferral Elections, Generally.

- (a) A Participant may elect to defer Compensation by submitting a Compensation Deferral Agreement during the enrollment periods established by the Committee and in the manner specified by the Committee, but in any event, in accordance with Section 4.2. A Compensation Deferral Agreement that is not timely filed with respect to a service period or component of Compensation shall be considered void and shall have no effect with respect to such service period or Compensation. The Committee may modify any Compensation Deferral Agreement prior to the date the election becomes irrevocable under the rules of Section 4.2.
- (b) The Participant shall specify on his or her Compensation Deferral Agreement the amount of Deferrals and whether to allocate Deferrals to a Retirement/Termination Account or to a Specified Date Account. If no designation is made, Deferrals shall be allocated to the Retirement/Termination Account. A Participant may also specify in his or her Compensation Deferral Agreement the Payment Schedule applicable to his or her Plan Accounts. If the Payment Schedule is not specified in a Compensation Deferral Agreement, the Payment Schedule shall be the Payment Schedule specified in Section 6.2.

4.2 Timing Requirements for Compensation Deferral Agreements.

- (a) *First Year of Eligibility.* In the case of the first year in which an Eligible Employee becomes eligible to participate in the Plan, he or she has up to 30 days following his or her initial eligibility to submit a Compensation Deferral Agreement with respect to Compensation to be earned during such year. The Compensation Deferral Agreement described in this paragraph becomes irrevocable upon the end of such 30-day period. The determination of whether an Eligible Employee may file a Compensation Deferral Agreement under this paragraph shall be determined in accordance with the rules of Code Section 409A, including the provisions of Treas. Reg. Section 1.409A-2(a)(7).

A Compensation Deferral Agreement filed under this paragraph applies to Compensation earned on and after the date the Compensation Deferral Agreement becomes irrevocable.

Notwithstanding the foregoing, if a Eligible Employee is a participant in any plan that would be aggregated with this Plan in accordance with Treas. Reg. Section 1.409-1(c)(2) the Eligible Employee will not be eligible to make an election for the first partial year.

- (b) *Prior Year Election.* Except as otherwise provided in this Section 4.2, Participants may defer Compensation by filing a Compensation Deferral Agreement no later than December 31 of the year prior to the year in which the Compensation to be deferred is earned. A Compensation Deferral Agreement described in this paragraph shall become irrevocable with respect to such Compensation as of January 1 of the year in which such Compensation is earned.
- (c) *Performance-Based Compensation.* Participants may file a Compensation Deferral Agreement with respect to Performance-Based Compensation no later than the date that is six months before the end of the performance period, provided that:
 - (i) the Participant performs services continuously from the later of the beginning of the performance period or the date the criteria are established through the date the Compensation Deferral Agreement is submitted; and
 - (ii) the Compensation is not readily ascertainable as of the date the Compensation Deferral Agreement is filed.

A Compensation Deferral Agreement becomes irrevocable with respect to Performance-Based Compensation as of the day immediately following the latest date for filing such election. Any election to defer Performance-Based Compensation that is made in accordance with this paragraph and that becomes payable as a result of the Participant's death or disability (as defined in Treas. Reg. Section 1.409A-1(e)) or upon a Change in Control (as defined in Treas. Reg. Section 1.409A-3(i)(5)) prior to the satisfaction of the performance criteria, will be void.

Notwithstanding the foregoing, unless and until the Committee establishes rules regarding the election to defer Performance-Based Compensation under this section, all deferrals of Performance-Based Compensation must meet the requirements of 4.2(b) for any Performance-Based Compensation earned for the fiscal year beginning within the calendar year.

- (d) *Sales Commissions.* Sales commissions (as defined in Treas. Reg. Section 1.409A-2(a)(12)(i)) are considered to be earned by the Participant in the taxable year of the Participant in which the sale occurs. The Compensation Deferral Agreement must be filed before the last day of the year preceding the year in which the sales commissions are earned, and becomes irrevocable after that date.

- (e) *Fiscal Year Compensation.* A Participant may defer Fiscal Year Compensation by filing a Compensation Deferral Agreement prior to the first day of the fiscal year or years in which such Fiscal Year Compensation is earned. The Compensation Deferral Agreement described in this paragraph becomes irrevocable on the first day of the fiscal year or years to which it applies.
 - (f) *Certain Forfeitable Rights.* With respect to a legally binding right to a payment in a subsequent year that is subject to a forfeiture condition requiring the Participant's continued services for a period of at least 12 months from the date the Participant obtains the legally binding right, an election to defer such Compensation may be made on or before the 30th day after the Participant obtains the legally binding right to the Compensation, provided that the election is made at least 12 months in advance of the earliest date at which the forfeiture condition could lapse. The Compensation Deferral Agreement described in this paragraph becomes irrevocable after such 30th day. If the forfeiture condition applicable to the payment lapses before the end of the required service period as a result of the Participant's death or disability (as defined in Treas. Reg. Section 1.409A-3(i)(4)) or upon a Change in Control (as defined in Treas. Reg. Section 1.409A-3(i)(5)), the Compensation Deferral Agreement will be void unless it would be considered timely under another rule described in this Section.
 - (g) *Company Awards.* Participating Employers may unilaterally provide for deferrals of Company awards prior to the date of such awards. Deferrals of Company awards (such as sign-on, retention, or severance pay) may be negotiated with a Participant prior to the date the Participant has a legally binding right to such Compensation.
 - (h) *"Evergreen" Deferral Elections.* The Committee, in its discretion, may provide in the Compensation Deferral Agreement that such Compensation Deferral Agreement will continue in effect for each subsequent year or performance period. Such "evergreen" Compensation Deferral Agreements will become effective with respect to an item of Compensation on the date such election becomes irrevocable under this Section 4.2. An evergreen Compensation Deferral Agreement may be terminated or modified prospectively with respect to Compensation for which such election remains revocable under this Section 4.2. A Participant whose Compensation Deferral Agreement is cancelled in accordance with Section 4.6 will be required to file a new Compensation Deferral Agreement under this Article IV in order to recommence Deferrals under the Plan.
- 4.3 Allocation of Deferrals. A Compensation Deferral Agreement may allocate Deferrals to one or more Specified Date Accounts and/or to the Retirement/Termination Account. The Committee may, in its discretion, establish a minimum deferral period for the establishment of a Specified Date Account (for example, the third Plan Year following the year Compensation is first allocated to such accounts).

- 4.4 Deductions from Pay. The Committee has the authority to determine the payroll practices under which any component of Compensation subject to a Compensation Deferral Agreement will be deducted from a Participant's Compensation.
- 4.5 Vesting. Participant Deferrals shall be 100% vested at all times.
- 4.6 Cancellation of Deferrals. The Committee may cancel a Participant's Deferrals: (i) for the balance of the Plan Year in which an Unforeseeable Emergency occurs, (ii) if the Participant receives a hardship distribution under the Employer's qualified 401(k) plan, through the end of the Plan Year in which the six month anniversary of the hardship distribution falls, and (iii) during periods in which the Participant is unable to perform the duties of his or her position or any substantially similar position due to a mental or physical impairment that can be expected to result in death or last for a continuous period of at least six months, provided cancellation occurs by the later of the end of the taxable year of the Participant or the 15th day of the third month following the date the Participant incurs the disability (as defined in this paragraph).

ARTICLE V

Company Contributions

- 5.1 Discretionary Company Contributions. The Participating Employer may, from time to time in its sole and absolute discretion, credit Company Contributions to any Participant in any amount determined by the Participating Employer. Such contributions will be credited to a Participant's Retirement/Termination Account.
- 5.2 Vesting. Company Contributions described in Section 5.1 above, and the Earnings thereon, shall vest in accordance with the vesting schedule(s) established by the Committee at the time that the Company Contribution is made. All Company Contributions shall become 100% vested upon the death or disability (as defined by the Company) of the Participant while actively employed. The Participating Employer may, at any time, in its sole discretion, increase a Participant's vested interest in a Company Contribution. The portion of a Participant's Accounts that remains unvested upon his or her Separation from Service after the application of the terms of this Section 5.2 shall be forfeited.

ARTICLE VI

Benefits

6.1 Benefits, Generally. A Participant shall be entitled to the following benefits under the Plan:

- (a) *Retirement Benefit.* Upon the Participant's Separation from Service due to Retirement, he or she shall be entitled to a Retirement Benefit equal to the vested portion of the Retirement/Termination Account. The Retirement Benefit shall be based on the value of that Account as of the end of the month in which Separation from Service occurs or such later date as the Committee, in its sole discretion, shall determine. Payment of the Retirement Benefit will be made or begin in the month following the month in which Separation from Service occurs, provided, however, that with respect to a Participant who is a Specified Employee as of the date such Participant incurs a Separation from Service, payment will be made or begin in the seventh month following the month in which such Separation from Service occurs. If the Retirement Benefit is to be paid in the form of installments, any subsequent installment payments to a Specified Employee will be paid on the anniversary of the date the initial installment was made.
- (b) *Termination Benefit.* Upon the Participant's Separation from Service for reasons other than death or Retirement, he or she shall be entitled to a Termination Benefit equal to the vested portion of the Retirement/Termination Account. The Termination Benefit shall be based on the value of that Account as of the end of the month in which Separation from Service occurs or such later date as the Committee, in its sole discretion, shall determine. Payment of the Termination Benefit will be made or begin in the month following the month in which Separation from Service occurs, provided, however, that with respect to a Participant who is a Specified Employee as of the date such Participant incurs a Separation from Service, payment will be made or begin in the seventh month following the month in which such Separation from Service occurs.
- (c) *Specified Date Benefit.* If the Participant has established one or more Specified Date Accounts, he or she shall be entitled to a Specified Date Benefit with respect to each such Specified Date Account. The Specified Date Benefit shall be equal to the vested portion of the Specified Date Account, based on the value of that Account as of the end of the month designated by the Participant at the time the Account was established. Payment of the Specified Date Benefit will be made or begin in the month following the designated month.
- (d) *Death Benefit.* In the event of the Participant's death, his or her designated Beneficiary(ies) shall be entitled to a Death Benefit. The Death Benefit shall be equal to the vested portion of the Retirement/Termination Account and the unpaid balances of any Specified Date Accounts. The Death Benefit shall be based on the value of the Accounts as of the end of the month in which death occurred, with payment made in the following month.

- (e) *Unforeseeable Emergency Payments.* A Participant who experiences an Unforeseeable Emergency may submit a written request to the Committee to receive payment of all or any portion of his or her vested Accounts. Whether a Participant or Beneficiary is faced with an Unforeseeable Emergency permitting an emergency payment shall be determined by the Committee based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be reimbursed through insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not cause severe financial hardship, or by cessation of Deferrals under this Plan. If an emergency payment is approved by the Committee, the amount of the payment shall not exceed the amount reasonably necessary to satisfy the need, taking into account the additional compensation that is available to the Participant as the result of cancellation of deferrals to the Plan, including amounts necessary to pay any taxes or penalties that the Participant reasonably anticipates will result from the payment. The amount of the emergency payment shall be subtracted first from the vested portion of the Participant's Retirement/Termination Account until depleted and then from the vested Specified Date Accounts, beginning with the Specified Date Account with the latest payment commencement date. Emergency payments shall be paid in a single lump sum within the 90-day period following the date the payment is approved by the Committee.

6.2 Form of Payment.

- (a) *Retirement Benefit.* A Participant who is entitled to receive a Retirement Benefit shall receive payment of such benefit in a single lump sum, unless the Participant elects on his or her initial Compensation Deferral Agreement to have such benefit paid in one of the following alternative forms of payment (i) substantially equal annual installments over a period of two to ten years, as elected by the Participant, or (ii) a lump sum payment of a percentage of the balance in the Retirement/Termination Account, with the balance paid in substantially equal annual installments over a period of two to ten years, as elected by the Participant.
- (b) *Termination Benefit.* A Participant who is entitled to receive a Termination Benefit shall receive payment of such benefit in a single lump sum.
- (c) *Specified Date Benefit.* The Specified Date Benefit shall be paid in a single lump sum, unless the Participant elects on the Compensation Deferral Agreement with which the account was established to have the Specified Date Account paid in substantially equal annual installments over a period of two to five years, as elected by the Participant.

Notwithstanding any election of a form of payment by the Participant, upon a Separation from Service the unpaid balance of any Specified Date Accounts with respect to which payments have not commenced shall be paid in a single lump sum.

- (d) *Death Benefit.* A designated Beneficiary who is entitled to receive a Death Benefit shall receive payment of such benefit in a single lump sum.
- (e) *Change in Control.* A Participant will receive his or her Retirement or Termination Benefit in a single lump sum payment equal to the unpaid balance of all of his or her Accounts if Separation from Service occurs within 24 months following a Change in Control.

A Participant or Beneficiary receiving installment payments when a Change in Control occurs will receive the remaining account balance in a single lump sum within 90 days following the Change in Control.

- (f) *Small Account Balances.* The Committee shall pay the value of the Participant's Accounts upon a Separation from Service in a single lump sum if the balance of such Accounts is not greater than the applicable dollar amount under Code Section 402(g)(1)(B), provided the payment represents the complete liquidation of the Participant's interest in the Plan.
- (g) *Rules Applicable to Installment Payments.* If a Payment Schedule specifies installment payments, annual payments will be made beginning as of the payment commencement date for such installments and shall continue on each anniversary thereof until the number of installment payments specified in the Payment Schedule has been paid. The amount of each installment payment shall be determined by dividing (a) by (b), where (a) equals the Account Balance as of the Valuation Date and (b) equals the remaining number of installment payments.

For purposes of Article VII, installment payments will be treated as a single form of payment. If a lump sum equal to less than 100% of the Retirement/Termination Account is paid, the payment commencement date for the installment form of payment will be the first anniversary of the payment of the lump sum.

- 6.3 Acceleration of or Delay in Payments. The Committee, in its sole and absolute discretion, may elect to accelerate the time or form of payment of a benefit owed to the Participant hereunder, provided such acceleration is permitted under Treas. Reg. Section 1.409A-3(j)(4). The Committee may also, in its sole and absolute discretion, delay the time for payment of a benefit owed to the Participant hereunder, to the extent permitted under Treas. Reg. Section 1.409A-2(b)(7).

ARTICLE VII

Modifications to Payment Schedules

- 7.1 Participant's Right to Modify. A Participant may modify any or all of the alternative Payment Schedules with respect to an Account, consistent with the permissible Payment Schedules available under the Plan, provided such modification complies with the requirements of this Article VII.
- 7.2 Time of Election. The date on which a modification election is submitted to the Committee must be at least 12 months prior to the date on which payment is scheduled to commence under the Payment Schedule in effect prior to the modification.
- 7.3 Date of Payment under Modified Payment Schedule. Except with respect to modifications that relate to the payment of a Death Benefit, the date payments are to commence under the modified Payment Schedule must be no earlier than five years after the date payment would have commenced under the original Payment Schedule. Under no circumstances may a modification election result in an acceleration of payments in violation of Code Section 409A.
- 7.4 Effective Date. A modification election submitted in accordance with this Article VII is irrevocable upon receipt by the Committee and becomes effective 12 months after such date.
- 7.5 Effect on Accounts. An election to modify a Payment Schedule is specific to the Account or payment event to which it applies, and shall not be construed to affect the Payment Schedules of any other Accounts.

ARTICLE VIII

Valuation of Account Balances; Investments

- 8.1 Valuation. Deferrals shall be credited to appropriate Accounts on the date such Compensation would have been paid to the Participant absent the Compensation Deferral Agreement. Company Contributions shall be credited to the Retirement/Termination Account at the times determined by the Committee. Valuation of Accounts shall be performed under procedures approved by the Committee.
- 8.2 Adjustment for Earnings. Each Account will be adjusted to reflect Earnings on each Business Day. Adjustments shall reflect the net earnings, gains, losses, expenses, appreciation and depreciation associated with an investment option for each portion of the Account allocated to such option ("investment allocation").
- 8.3 Investment Options. Investment options will be determined by the Committee. The Committee, in its sole discretion, shall be permitted to add or remove investment options from the Plan menu from time to time, provided that any such additions or removals of investment options shall not be effective with respect to any period prior to the effective date of such change.

8.4 Investment Allocations. A Participant's investment allocation constitutes a deemed, not actual, investment among the investment options comprising the investment menu. At no time shall a Participant have any real or beneficial ownership in any investment option included in the investment menu, nor shall the Participating Employer or any trustee acting on its behalf have any obligation to purchase actual securities as a result of a Participant's investment allocation. A Participant's investment allocation shall be used solely for purposes of adjusting the value of a Participant's Account Balances.

A Participant shall specify an investment allocation for each of his or her Accounts in accordance with procedures established by the Committee. Allocation among the investment options must be designated in increments of 1%. The Participant's investment allocation will become effective on the same Business Day or, in the case of investment allocations received after a time specified by the Committee, the next Business Day.

A Participant may change an investment allocation on any Business Day, both with respect to future credits to the Plan and with respect to existing Account Balances, in accordance with procedures adopted by the Committee. Changes shall become effective on the same Business Day or, in the case of investment allocations received after a time specified by the Committee, the next Business Day, and shall be applied prospectively.

8.5 Unallocated Deferrals and Accounts. If the Participant fails to make an investment allocation with respect to an Account, such Account shall be invested in an investment option, the primary objective of which is the preservation of capital, as determined by the Committee.

ARTICLE IX

Designation of Beneficiaries

9.1 Right to Designate. Each Participant may designate, upon forms to be furnished by and filed with the Committee, one or more primary Beneficiaries or alternative Beneficiaries to receive all or a specified part of such Participant's Account in the event of such Participant's death. The Participant may change or revoke any such designation from time to time without notice to or consent from any Beneficiary. No such designation, change or revocation shall be effective unless executed by the Participant and received by the Committee during the Participant's lifetime.

9.2 Failure of Designation. If a Participant:

- (a) fails to designate a Beneficiary,
- (b) designates a Beneficiary and thereafter revokes such designation without naming another Beneficiary, or

(c) designates one or more Beneficiaries and all such Beneficiaries so designated fail to survive the Participant, such Participant's Account, or the part thereof as to which such Participant's designation fails, as the case may be, shall be payable to the first class of the following classes of automatic Beneficiaries with a member surviving the Participant and (except in the case of surviving issue) in equal shares if there is more than one member in such class surviving the Participant:

- Participant's surviving spouse
- Participant's surviving issue per stirpes and not per capita
- Participant's surviving parents
- Participant's surviving brothers and sisters
- Representative of Participant's estate.

9.3 Disclaimers by Beneficiaries. A Beneficiary entitled to a distribution of all or a portion of a deceased Participant's Account may disclaim an interest therein subject to the following requirements. To be eligible to disclaim, a Beneficiary must be a natural person, must not have received a distribution of all or any portion of the Account at the time such disclaimer is executed and delivered, and must have attained at least age twenty-one (21) years as of the date of the Participant's death. Any disclaimer must be in writing and must be executed personally by the Beneficiary before a notary public. A disclaimer shall state that the Beneficiary's entire interest in the undistributed Account is disclaimed or shall specify what portion thereof is disclaimed. To be effective, duplicate original executed copies of the disclaimer must be both executed and actually delivered to the Committee after the date of the Participant's death but not later than one hundred eighty (180) days after the date of the Participant's death. A disclaimer shall be irrevocable when delivered to the Committee. A disclaimer shall be considered to be delivered to the Committee only when actually received by the Committee. The Committee shall be the sole judge of the content, interpretation and validity of a purported disclaimer. Upon the filing of a valid disclaimer, the Beneficiary shall be considered not to have survived the Participant as to the interest disclaimed. A disclaimer by a Beneficiary shall not be considered to be a transfer of an interest in violation of the provisions of Section 14.1 and shall not be considered to be an assignment or alienation of benefits in violation of federal law prohibiting the assignment or alienation of benefits under this Plan. No other form of attempted disclaimer shall be recognized by the Committee.

9.4 Definitions. When used herein and, unless the Participant has otherwise specified in the Participant's Beneficiary designation, when used in a Beneficiary designation, "issue" means all persons who are lineal descendants of the person whose issue are referred to, including legally adopted descendants and their descendants but not including illegitimate descendants and their descendants; "child" means an issue of the first generation; "per stirpes" means in equal shares among living children of the person whose issue are referred to and the issue (taken collectively) of each deceased child of such person, with such issue taking by right of representation of such deceased child; and "survive" and "surviving" mean living after the death of the Participant.

9.5 Special Rules. Unless the Participant has otherwise specified in the Participant's Beneficiary designation, the following rules shall apply:

- (a) If there is not sufficient evidence that a Beneficiary was living at the time of the death of the Participant, it shall be deemed that the Beneficiary was not living at the time of the death of the Participant.
- (b) The automatic Beneficiaries specified in Section 9.2 and the Beneficiaries designated by the Participant shall become fixed at the time of the Participant's death so that, if a Beneficiary survives the Participant but dies before the receipt of all payments due such Beneficiary hereunder, such remaining payments shall be payable to the representative of such Beneficiary's estate.
- (c) If the Participant designates as a Beneficiary the person who is the Participant's spouse on the date of the designation, either by name or by relationship, or both, the dissolution, annulment or other legal termination of the marriage between the Participant and such person shall automatically revoke such designation. (The foregoing shall not prevent the Participant from designating a former spouse as a Beneficiary on a form executed by the Participant and received by the Committee after the date of the legal termination of the marriage between the Participant and such former spouse, and during the Participant's lifetime.)
- (d) Any designation of a nonspouse Beneficiary by name that is accompanied by a description of relationship to the Participant shall be given effect without regard to whether the relationship to the Participant exists either then or at the Participant's death.
- (e) Any designation of a Beneficiary only by statement of relationship to the Participant shall be effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.

A Beneficiary designation is permanently void if it either is executed or is filed by a Participant who, at the time of such execution or filing, is then a minor under the law of the state of the Participant's legal residence. The Committee shall be the sole judge of the content, interpretation and validity of a purported Beneficiary designation.

9.6 No Spousal Rights. Prior to the death of the Participant, no spouse or surviving spouse of a Participant and no person designated to be a Beneficiary shall have any rights or interest in the benefits credited under this Plan including, but not limited to, the right to be the sole Beneficiary or to consent to the designation of Beneficiaries (or the changing of designated Beneficiaries) by the Participant.

- 9.7 Death Prior to Full Distribution. If, at the death of the Participant, any payment to the Participant was due or otherwise pending but not actually paid, the amount of such payment shall be included in the Account which are payable to the Beneficiary (and shall not be paid to the Participant's estate).
- 9.8 Facility of Payment. In case of the legal disability, including minority, of a Participant or Beneficiary entitled to receive any distribution under this Plan, payment shall be made, if the Committee shall be advised of the existence of such condition:
- (a) to the duly appointed guardian, conservator or other legal representative of such Participant or Beneficiary, or
 - (b) to a person or institution entrusted with the care or maintenance of the incompetent or disabled Participant or Beneficiary, provided such person or institution has satisfied the Committee that the payment will be used for the best interest and assist in the care of such Participant or Beneficiary, and provided further, that no prior claim for said payment has been made by a duly appointed guardian, conservator or other legal representative of such Participant or Beneficiary.

Any payment made in accordance with the foregoing provisions of this section shall constitute a complete discharge of any liability or obligation of the Committee therefor.

ARTICLE X

Administration

- 10.1 Plan Administration. This Plan shall be administered by the Committee which shall have discretionary authority to make, amend, interpret and enforce all appropriate rules and regulations for the administration of this Plan and to utilize its discretion to decide or resolve any and all questions, including but not limited to eligibility for benefits and interpretations of this Plan and its terms, as may arise in connection with the Plan. Claims for benefits shall be filed with the Committee and resolved in accordance with the claims procedures in Article XII.
- 10.2 Administration Upon Change in Control. Upon a Change in Control, the Committee, as constituted immediately prior to such Change in Control, shall continue to act as the Committee. The individual who was the Chief Executive Officer of the Company (or if such person is unable or unwilling to act, the next highest ranking officer) prior to the Change in Control shall have the authority (but shall not be obligated) to appoint an independent third party to act as the Committee.

Upon such Change in Control, the Company may not remove the Committee, unless $\frac{2}{3}$ rds of the members of the Board of Directors of the Company and a majority of Participants and Beneficiaries with Account Balances consent to the removal and replacement of the Committee. Notwithstanding the foregoing, neither the Committee nor the officer described above shall have authority to direct investment of trust assets under any rabbi trust described in Section 12.2.

The Participating Employer shall, with respect to the Committee identified under this Section: (i) pay all reasonable expenses and fees of the Committee, (ii) indemnify the Committee (including individuals serving as Committee members) against any costs, expenses and liabilities including, without limitation, attorneys' fees and expenses arising in connection with the performance of the Committee's duties hereunder, except with respect to matters resulting from the Committee's gross negligence or willful misconduct, and (iii) supply full and timely information to the Committee on all matters related to the Plan, any rabbi trust, Participants, Beneficiaries and Accounts as the Committee may reasonably require.

- 10.3 Withholding. The Participating Employer shall have the right to withhold from any payment due under the Plan (or with respect to any amounts credited to the Plan) any taxes required by law to be withheld in respect of such payment (or credit). Withholdings with respect to amounts credited to the Plan shall be deducted from Compensation that has not been deferred to the Plan.
- 10.4 Indemnification. The Participating Employers shall indemnify and hold harmless each employee, officer, director, agent or organization, to whom or to which are delegated duties, responsibilities, and authority under the Plan or otherwise with respect to administration of the Plan, including, without limitation, the Committee and its agents, against all claims, liabilities, fines and penalties, and all expenses reasonably incurred by or imposed upon him or her or it (including but not limited to reasonable attorneys' fees) which arise as a result of his or her or its actions or failure to act in connection with the operation and administration of the Plan to the extent lawfully allowable and to the extent that such claim, liability, fine, penalty, or expense is not paid for by liability insurance purchased or paid for by the Participating Employer. Notwithstanding the foregoing, the Participating Employer shall not indemnify any person or organization if his or her or its actions or failure to act are due to gross negligence or willful misconduct or for any such amount incurred through any settlement or compromise of any action unless the Participating Employer consents in writing to such settlement or compromise.
- 10.5 Delegation of Authority. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit, and may from time to time consult with legal counsel who shall be legal counsel to the Company.
- 10.6 Binding Decisions or Actions. The decision or action of the Committee in respect of any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations thereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

ARTICLE XI

Amendment and Termination

- 11.1 Amendment and Termination. The Company may at any time and from time to time amend the Plan or may terminate the Plan as provided in this Article X. Each Participating Employer may also terminate its participation in the Plan.
- 11.2 Amendments. The Company, by action taken by its Board of Directors, may amend the Plan at any time and for any reason, provided that any such amendment shall not reduce the vested Account Balances of any Participant accrued as of the date of any such amendment or restatement (as if the Participant had incurred a voluntary Separation from Service on such date) or reduce any rights of a Participant under the Plan or other Plan features with respect to Deferrals made prior to the date of any such amendment or restatement without the consent of the Participant. The Board of Directors of the Company may delegate to the Committee the authority to amend the Plan without the consent of the Board of Directors for the purpose of: (i) conforming the Plan to the requirements of law; (ii) facilitating the administration of the Plan; (iii) clarifying provisions based on the Committee's interpretation of the document; and (iv) making such other amendments as the Board of Directors may authorize.
- 11.3 Termination. The Company, by action taken by its Board of Directors, may terminate the Plan and pay Participants and Beneficiaries their Account Balances in a single lump sum at any time, to the extent and in accordance with Treas. Reg. Section 1.409A-3(j)(4)(ix). If a Participating Employer terminates its participation in the Plan, the benefits of affected Employees shall be paid at the time provided in Article VI.
- 11.4 Accounts Taxable Under Code Section 409A. The Plan is intended to constitute a plan of deferred compensation that meets the requirements for deferral of income taxation under Code Section 409A. The Committee, pursuant to its authority to interpret the Plan, may sever from the Plan or any Compensation Deferral Agreement any provision or exercise of a right that otherwise would result in a violation of Code Section 409A.

ARTICLE XII

Informal Funding

- 12.1 General Assets. Obligations established under the terms of the Plan may be satisfied from the general funds of the Participating Employers, or a trust described in this Article XI. No Participant, spouse or Beneficiary shall have any right, title or interest whatever in assets of the Participating Employers. Nothing contained in this Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship, between the Participating Employers and any Employee, spouse, or Beneficiary. To the extent that any person acquires a right to receive payments hereunder, such rights are no greater than the right of an unsecured general creditor of the Participating Employer.

- 12.2 Rabbi Trust. A Participating Employer may, in its sole discretion, establish a grantor trust, commonly known as a rabbi trust, as a vehicle for accumulating assets to pay benefits under the Plan. Payments under the Plan may be paid from the general assets of the Participating Employer or from the assets of any such rabbi trust. Payment from any such source shall reduce the obligation owed to the Participant or Beneficiary under the Plan.

ARTICLE XIII

Claims

Without limiting the generality of the following, an application for benefits under Article 6 shall be processed as a claim for the purposes of this section.

- 13.1 Original Claim. Any person may file with the Committee a written claim for benefits under this Plan. Within ninety (90) days after the filing of such a claim, the Committee shall notify the claimant in writing whether his or her claim is upheld or denied in whole or in part or shall furnish the claimant a written notice describing specific special circumstances requiring a specified amount of additional time (but not more than one hundred eighty days from the date the claim was filed) to reach a decision on the claim. If the claim is denied in whole or in part, the Committee shall state in writing:
- (a) the specific reasons for the denial;
 - (b) the specific references to the pertinent provisions of the Plan Statement on which the denial is based;
 - (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - (d) an explanation of the claims review procedure set forth in this section.
- 13.2 Claims Review Procedure. Within sixty (60) days after receipt of notice that his or her claim has been denied in whole or in part, the claimant may file with the Committee a written request for a review and may, in conjunction therewith, submit written issues and comments. Within sixty (60) days after the filing of such a request for review, the Committee shall notify the claimant in writing whether, upon review, the claim was upheld or denied in whole or in part or shall furnish the claimant a written notice describing specific special circumstances requiring a specified amount of additional time (but not more than one hundred twenty days from the date the request for review was filed) to reach a decision on the request for review.

13.3 General Rules.

- (a) No inquiry or question shall be deemed to be a claim or a request for a review of a denied claim unless made in accordance with the claims procedure. The Committee may require that any claim for benefits and any request for a review of a denied claim be filed on forms to be furnished by the Committee upon request.
- (b) All decision on claims and on requests for a review of denied claims shall be made by the Committee.
- (c) The Committee may, in its discretion, hold one or more hearings on a claim or a request for a review of a denied claim.
- (d) Claimants may be represented by a lawyer or other representative (at their own expense), but the Committee reserves the right to require the claimant to furnish written authorization. A claimant's representative shall be entitled to receive copies of notices sent to the claimant.
- (e) The decision of the Committee on a claim and on a request for a review of a denied claim shall be served on the claimant in writing. If a decision or notice is not received by a claimant within the time specified, the claim or request for a review of a denied claim shall be deemed to have been denied.
- (f) Prior to filing a claim or a request for a review of a denied claim, the claimant or his or her representative shall have a reasonable opportunity to review a copy of the Plan Statement and all other pertinent documents in the possession of Apogee.
- (g) The Committee may permanently or temporarily delegate all or a portion of its authority and responsibility under this section to a another committee or to an individual.
- (h) The procedures and remedies herein are not exclusive. Subsequent to a Change in Control, a Participant or surviving spouse of a Participant shall not be required to exhaust these administrative remedies. If there is litigation regarding the benefits payable to or with respect to a Participant, then notwithstanding Section 10.1, determinations made by the Committee subsequent to a Change in Control (even if such determinations relate to events occurring wholly or partially before the Change in Control) shall not be afforded any deference and the matter shall be heard *de novo*.
- (i) If any Participant successfully litigates, in whole or in part, any claim for benefits under this Plan, the court shall award reasonable attorney's fees and costs of the action to the Participant.

ARTICLE XIV

General Provisions

- 14.1 Assignment. No interest of any Participant, spouse or Beneficiary under this Plan and no benefit payable hereunder shall be assigned as security for a loan, and any such purported assignment shall be null, void and of no effect, nor shall any such interest or any such benefit be subject in any manner, either voluntarily or involuntarily, to anticipation, sale, transfer, assignment or encumbrance by or through any Participant, spouse or Beneficiary. The Company may assign any or all of its liabilities under this Plan in connection with any restructuring, recapitalization, sale of assets or other similar transactions affecting a Participating Employer without the consent of the Participant.
- 14.2 No Legal or Equitable Rights or Interest. No Participant or other person shall have any legal or equitable rights or interest in this Plan that are not expressly granted in this Plan. Participation in this Plan does not give any person any right to be retained in the service of the Participating Employer. The right and power of a Participating Employer to dismiss or discharge an Employee is expressly reserved. The Participating Employers make no representations or warranties as to the tax consequences to a Participant or a Participant's beneficiaries resulting from a deferral of income pursuant to the Plan.
- 14.3 No Employment Contract. Nothing contained herein shall be construed to constitute a contract of employment between an Employee and a Participating Employer.
- 14.4 Notice. Any notice or filing required or permitted to be delivered to the Committee under this Plan shall be delivered in writing, in person, or through such electronic means as is established by the Committee. Notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification. Written transmission shall be sent by certified mail to:

**APOGEE ENTERPRISES, INC.
ATTN: VICE PRESIDENT, HUMAN RESOURCES
4400 WEST 78TH STREET SUITE 520
MINNEAPOLIS, MN 55435**

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing or hand-delivered, or sent by mail to the last known address of the Participant.

- 14.5 Headings. The headings of Sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.
- 14.6 Invalid or Unenforceable Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions

hereof and the Committee may elect in its sole discretion to construe such invalid or unenforceable provisions in a manner that conforms to applicable law or as if such provisions, to the extent invalid or unenforceable, had not been included.

- 14.7 Lost Participants or Beneficiaries. Any Participant or Beneficiary who is entitled to a benefit from the Plan has the duty to keep the Committee advised of his or her current mailing address. If benefit payments are returned to the Plan or are not presented for payment after a reasonable amount of time, the Committee shall presume that the payee is missing. The Committee, after making such efforts as in its discretion it deems reasonable and appropriate to locate the payee, shall stop payment on any uncashed checks and may discontinue making future payments until contact with the payee is restored.
- 14.8 Facility of Payment to a Minor. If a distribution is to be made to a minor, or to a person who is otherwise incompetent, then the Committee may, in its discretion, make such distribution: (i) to the legal guardian, or if none, to a parent of a minor payee with whom the payee maintains his or her residence, or (ii) to the conservator or committee or, if none, to the person having custody of an incompetent payee. Any such distribution shall fully discharge the Committee, the Company, and the Plan from further liability on account thereof.
- 14.9 Governing Law. To the extent not preempted by ERISA, the laws of the State of Minnesota shall govern the construction and administration of the Plan.
- 14.10 Service of Process. In the absence of any designation to the contrary by Apogee, the Secretary of Apogee is designated as the appropriate and exclusive agent for the receipt of service of process directed to this Plan in any legal proceeding, including arbitration, involving this Plan.

IN WITNESS WHEREOF, the undersigned executed this Plan as of the seventh day of October, 2010, to be effective as of the Effective Date.

Apogee Enterprises, Inc.

By: Russell Huffer (Print Name)

Its: Chairman, President and Chief Executive Officer (Title)

/s/ Russell Huffer (Signature)

**THIRD AMENDMENT
OF
APOGEE ENTERPRISES, INC.
DEFERRED INCENTIVE COMPENSATION PLAN
(2005 Restatement)**

The "APOGEE ENTERPRISES, INC. DEFERRED INCENTIVE COMPENSATION PLAN" as adopted by APOGEE ENTERPRISES, INC., a Minnesota corporation, and first effective February 27, 1986, and as amended and restated in a document entitled "Apogee Enterprises, Inc. Deferred Incentive Compensation Plan (2005 Restatement)" effective January 1, 2005 is hereby further amended in the following respects:

1. VALUATION DATE. Effective January 1, 2011, Section 1 of the Plan Statement shall be amended by adding a new Section 1.3.14 to read in full as follows:

1.3.14. **Valuation Date** — any date the New York Stock Exchange and the Trustee are open and conducting business.

2. ADJUSTMENTS OF ACCOUNTS. Effective January 1, 2011, Section 3 of the Plan Statement shall be amended by adding a new Section 3.2 (and all subsequent sections shall be renumbered) to read in full as follows:

3.2. **Adjustment of Accounts.** Each Valuation Date, the Committee shall cause the value of each Deferred Compensation Account or portion of a Deferred Compensation Account to be increased (or decreased) from time to time for payments, withdrawals, credits, investment gains (or losses) and expenses charged to the Deferred Compensation Account.

3. INVESTMENT ADJUSTMENT. Effective January 1, 2011, Section 3.3 of the Plan Statement (previously Section 3.2) is amended to read in full as follows:

3.3. **Investment Adjustment.** The investment income, gains and losses shall be determined for the Accounts as follows:

- (a) In accordance with procedures to be established by the Committee, amounts deferred prior to January 1, 2010 shall be credited as a book entry with interest, compounded daily, on each Valuation Date. The applicable interest rate in any Fiscal Year shall be determined as of the beginning of each Fiscal Year and shall be the greater of the following rates:
 - (i) The sum of one and one-half percent (1-1/2%) plus the monthly average yield for the last calendar month of the prior Fiscal Year on United States Treasury securities adjusted to a constant maturity

of ten (10) years, as calculated and published by the Federal Reserve Board, or, if the Federal Reserve Board discontinues its publication of such yields, as calculated by such other source, based upon comparable information, as the Committee may select; or

- (ii) One-half ($1/2$) of the rate of Apogee's after-tax return on beginning shareholders' equity for the prior Fiscal Year, calculated by dividing Apogee's net earnings after deduction of taxes for the prior Fiscal Year by total shareholders' equity on the first day of the prior Fiscal Year, all as determined by the regularly engaged certified public accountants of Apogee from the audited, consolidated financial statements of Apogee.
- (b) In accordance with procedures to be established by the Committee, amounts deferred after January 1, 2010 shall be credited as a book entry with interest, compounded daily, on each Valuation Date. The applicable interest rate in any Fiscal Years shall be determined as of the beginning of each Fiscal Year and shall be the monthly average yield for the last calendar month of the prior Fiscal Year on United States Treasury securities adjusted to a constant maturity of ten (10) years, as calculated and published by the Federal Reserve Board, or, if the Federal Reserve Board discontinues its publication of such yields, as calculated by such other source, based upon comparable information, as the Committee may select.
 - (c) Each Participant may prospectively elect to change his/her investment election from the investment options in (a) and (b) above to one or more Indexing Funds that shall be used to measure income, gains and losses.
 - (i) As of each Valuation Date, the Deferred Compensation Accounts shall be adjusted for income, gains and losses as if the Accounts had in fact been invested in the Indexing Funds so selected.
 - (ii) Once a Participant elects to change his/her investment election from the investment options in (a) or (b) above the Participant will not be able to reelect either of those investment options.

4. FREEZING OF THE PLAN. Effective January 1, 2011, a Participant will not be permitted to elect to defer any additional compensation into this Plan. The last Participant elected contribution will be the amount a Participant elected to defer from his/her fiscal year 2011 bonus.

5. SAVINGS CLAUSE. Save and except as herein expressly amended, the Plan Statement shall continue in full force and effect.

October 7, 2010

APOGEE ENTERPRISES, INC.

By /s/ Russell Huffer
Its Chairman, President and Chief Executive Officer
