
**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): **May 10, 2005**

Cal Dive International, Inc.

(Exact name of registrant as specified in its charter)

Minnesota

(State or other jurisdiction
of incorporation)

000-22739

(Commission File Number)

95-3409686

(IRS Employer Identification No.)

400 N. Sam Houston Parkway E., Suite 400

Houston, Texas

(Address of principal executive offices)

77060

(Zip Code)

281-618-0400

(Registrant's telephone
number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On May 10, 2005, the Company's shareholders approved the Cal Dive International, Inc. 2005 Long Term Incentive Plan (the "2005 Plan"). Previously, on March 10, 2005, the Company's Board of Directors adopted the 2005 Plan and reserved 3,000,000 shares of the Company's common stock, no par value ("Common Stock") for issuance thereunder, subject to shareholder approval. The maximum amount of Common Stock which may be issued under the 2005 Plan may not exceed 3,000,000 shares in the aggregate. The aggregate number of shares of Common Stock with respect to which options may be granted under the Plan is 1,000,000. The aggregate number of shares of Common Stock with respect to which restricted stock awards or restricted stock unit awards may be granted under the Plan is 2,000,000. The maximum number of shares of Common Stock with respect to which options may be granted to an employee or Director during a fiscal year is 88,000. The maximum number of shares of Common Stock with respect to which restricted stock awards may be granted to an employee or Director during a fiscal year is 44,000. The maximum number of shares of Common Stock with respect to which restricted stock awards may be granted to an employee or Director during a fiscal year may not exceed in value the fair market value of 50,000 shares of Common Stock, determined as of the date of the grant. Such limitations are subject to adjustment in accordance with the 2005 Plan.

Attached hereto as Exhibit 10.1 and incorporated herein by reference is a copy of the 2005 Plan, including the Form of Restricted Stock Award Agreement.

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

Effective as of May 10, 2005, the Company has adopted its Second Amended and Restated By-Laws, a copy of which is attached hereto as Exhibit 3.1 and incorporated by reference herein.

The By-Laws include certain amendments adopted by its shareholders at the Company's Annual Meeting of Shareholders held on May 10, 2005, as well additional amendments which delete references to a shareholder agreement between the Company and a former shareholder who owned almost 25% of the Company's then outstanding shares of Common Stock, conform provisions to the provisions of the 2005 Amended and Restated Articles of Incorporation by the shareholders at the Company's Annual Meeting and other substantive and ministerial modifications, including (i) an addition to Section 3.03 which provides that, in addition to the notice provisions set forth in the By-Laws, notice may be given to a shareholder in a manner permitted by the rules and regulations of the Securities Exchange Act of 1934, (ii) an addition to Section 4.04 providing for the delivery of notice by facsimile, electronic mail or other form of electronic communication, and (iii) a change to Section 4.16 allowing for written consent by a director to be consented to by authentic electronic communication (as defined in Minnesota Statutes Section 302A.011).

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Item 9.01 Financial Statements and Exhibits.

(c) *Exhibits*

<u>Number</u>	<u>Description</u>
3.1	Second Amended and Restated By-Laws of Cal Dive International, Inc.
10.1	Cal Dive International, Inc. 2005 Long Term Incentive Plan, including the Form of Restricted Stock Award Agreement

Index to Exhibits

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**SECOND
AMENDED AND RESTATED
BY-LAWS
OF
CAL DIVE INTERNATIONAL, INC.**

Article 1.

OFFICES

The registered office of the Corporation in Minnesota shall be as stated in the Articles of Incorporation, as from time to time amended. The Corporation may also have offices in Texas and at such other places as the Board of Directors shall from time to time determine.

Article 2.

CORPORATE SEAL

The Corporation shall have no corporate seal.

Article 3.

SHAREHOLDERS MEETINGS

Section 3.01. Regular Meetings

(1) Regular meetings of the Shareholders of the Corporation for the purpose of election of Directors and transaction of such other business as may properly come before the regular meetings may be held annually at the principal executive office of the Corporation or at such other place within or without the State of Minnesota or Texas as may be designated by the Board of Directors. Regular meetings of Shareholders, when held, shall be held on the second Tuesday in May of each year at 10:00 a.m., or at such date and time as the Board of Directors may from time to time designate. Regular meetings of the Shareholders (but not special meetings) may also be called by the Shareholders in accordance with the provisions of Minnesota Statutes Chapter 302A. Regular meetings of the Shareholders shall be known as “annual meetings.”

(2) At the annual meeting of the Shareholders, only such business shall be conducted as shall have been properly brought before the annual meeting. To be properly brought before the annual meeting of Shareholders, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise brought

before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a Shareholder of the Corporation who is a Shareholder of record at the time of giving of notice provided for in this Section 3.01 of Article 3, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 3.01 of Article 3. For business to be properly brought before an annual meeting by a Shareholder, the Shareholder, in addition to the requirements set forth above, must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a Shareholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of Shareholders of the Corporation. A Shareholder's notice to the Secretary shall set forth as to each matter the Shareholder proposes to bring before the annual meeting: (a) 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, (b) the name and address, as they appear on the Corporation's books, of the Shareholder proposing such business, (c) the class and number of shares of voting stock of the Corporation which are beneficially owned by the Shareholder, (d) a representation that the Shareholder intends to appear in person or by proxy at the meeting to bring the proposed business before the annual meeting, and (e) a description of any material interest of the Shareholder in such business. Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Article 3. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Article 3, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 3.02. Special Meetings. Special meetings of the Shareholders may be called for any purpose at any time by the Chief Executive Officer or a majority of the Board of Directors. The Board of Directors or the Chief Executive Officer shall within thirty (30) days of receipt of such written request cause a special meeting of Shareholders to be called, said meeting to be held no later than ninety (90) days after receipt of the written request.

Section 3.03. Notice of Shareholder Meetings. Written notice of Shareholders' meetings, whether regular or special, shall be mailed to all Shareholders entitled to vote at any such meeting at least ten (10) days, and not more than sixty (60) days, before the date of the meeting. Notice may also be given to a shareholder if the notice is addressed to such shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the Corporation has first received the affirmative written consent or implied consent required under such rules and regulations. The written notice shall contain the date, time and place of the meeting and, in the case of a special meeting, the purpose or purposes thereof.

Section 3.04. Waiver of Notice. Failure to receive notice of the time, place and purpose of any meeting of Shareholders may be waived by any Shareholder in writing or orally before, at, or after the meeting. Attendance by a Shareholder at a meeting is a waiver of notice of that meeting, except where the Shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 3.05. Record Date. The Board of Directors may fix in advance a date not more than sixty (60) days prior to the date of any meeting of Shareholders as the record date for the determination of Shareholders entitled to vote at the meeting.

Section 3.06. Quorum. The presence, in person or by proxy, of the holders of a majority of the outstanding shares entitled to vote thereat shall constitute a quorum for the transaction of business at all meetings of Shareholders. If, however, a quorum is not present or represented at any meeting of Shareholders, the Shareholders entitled to vote at the meeting, either present in person or represented by proxy, shall have the power to adjourn the meeting to a future date. The time and place to which an adjournment is taken shall be publicly announced at the meeting, and no further notice thereof shall be necessary.

Provided that a quorum is present or represented at an adjourned meeting, any business may be transacted which might have been transacted at the original meeting. If a quorum is present when a duly called or held meeting of Shareholders is convened, the Shareholders

present may continue to transact business until adjournment, even though the withdrawal of a number of Shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

Section 3.07. Voting. A Shareholder entitled to vote at a meeting of Shareholders may vote in person or by proxy. Except as otherwise provided by law or the Articles of Incorporation, every Shareholder shall be entitled to one vote for each share outstanding in his name on the record of Shareholders of the Corporation. The votes of a corporate Shareholder may be cast in person or by proxy, and shall be executed by any duly elected officer of a corporate Shareholder.

Section 3.08. Proxies. Every appointment of a proxy must be in writing and must be dated and signed by the Shareholder and filed with an officer of the Corporation at or before the Shareholders' meeting at which the appointment is to be effective. No appointment of a proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless a longer period is expressly provided in the appointment.

Section 3.09. Nominations for Election as a Director. Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible for election as, and to serve as, directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of Shareholders (a) by or at the direction of the Board of Directors or (b) by any Shareholder of the Corporation who is a Shareholder of record at the time of giving of notice provided for in this Section 3.09, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 3.09. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a Shareholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (i) with respect to an election to be held at the annual meeting of the Shareholders of the Corporation, not less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of Shareholders of the Corporation; and (ii) with respect to an election to be held at a special meeting of Shareholders of the Corporation, not later than the close of business on the tenth (10th) day following the date on which notice of the date of the special meeting (whether or not such notice of the date of the

special meeting constitutes the “notice of special meeting” required by Section 3.02 of Article 3 of these By-Laws) was mailed to Shareholders or public disclosure of the date of the special meeting was made, whichever first occurs. Such Shareholder’s notice to the Secretary shall set forth (i) as to each person whom the Shareholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person’s written consent to being named in the proxy statement as a nominee and to serve as a director if elected); and (ii) as to the Shareholder giving the notice (a) the name and address, as they appear on the Corporation’s books, of such Shareholder and (b) the class and number of shares of voting stock of the Corporation which are beneficially owned by such Shareholder. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a Shareholder’s notice of nomination which pertains to the nominee. In the event that a person is validly designated as a nominee to the Board of Directors in accordance with the procedures set forth in this Section 3.09 and shall thereafter become unable or unwilling to stand for election to the Board of Directors, the Board of Directors or the Shareholder who proposed such nominee, as the case may be, may designate a substitute nominee. The presiding officer of the meeting of Shareholders shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these By-Laws, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 3.09, a Shareholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section 3.09.

Section 3.10. No Shareholder Action by Written Consent. Action shall not be taken by written consent of the Shareholders but, in all cases, shall be taken at a meeting of the Shareholders as described in this Article 3.

Article 4.

DIRECTORS

Section 4.01. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors (hereinafter, the “Board of Directors” or “Board”). The Board shall take action by the affirmative vote of a majority of the Directors present at a meeting, except as otherwise provided by law or the Articles of Incorporation; provided a quorum is present. The Board may adopt such rules and regulations for the conduct of its meetings and the management of the Corporation as it deems appropriate, consistent with law, these By-Laws and the Articles of Incorporation.

Section 4.02. Election of Directors. Directors need not be U.S. citizens or Shareholders of the Corporation. The number of directors of the Corporation shall be fixed from time to time by the Directors or Shareholders pursuant to these By-Laws. The Directors shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as shall be provided in the manner specified in these By-Laws, with the members of each class to hold office until their successors are elected and qualified. At each annual meeting of Shareholders of the Corporation, the successors of the class of directors whose term expires at the meeting shall be elected to hold office for a term expiring at the annual meeting of Shareholders held in the third year following the year of their election.

Section 4.03. Term of Office. Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any Director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director’s successor shall have been elected and qualified. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of any incumbent Director.

Section 4.04. Regular Meetings. The Board of Directors may, pursuant to a standing resolution of the Board, provide for Board meetings to be held at regular intervals. Such meetings shall be known as “regular meetings” and may be held at such place or places, within or without the State of Texas or Minnesota, as the Board shall designate from time to time. No notice of the purpose of regular meetings of the Board shall be required.

Section 4.05. Special Meetings. Special meetings of the Board of Directors of the Corporation may be called by any two (2) Directors by giving ten (10) days notice to all Directors of the date, time, place and purpose of the meeting. Such notice shall be given to each Director by registered mail, by a notice in writing delivered to the Director personally or to his usual place of business, or by facsimile, electronic mail or other form of electronic communication by which the Director has consented to receive notice.

Section 4.06. Previously Scheduled Meetings. If the day or date, time and place of a Board meeting have been provided in these By-Laws or announced at a previous meeting of the Board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Section 4.07. Waiver of Notice and Assent to Action. Failure to receive notice of any meeting of the Board may be waived by any Director before, at or after the meeting in writing or orally. Attendance by a Director at a meeting is a waiver of notice of that meeting, except where the Director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

Section 4.08. Quorum. The presence of a majority of the Directors shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the Directors present may adjourn a meeting of the Board from time to time until a quorum is present. If a quorum is present when a duly called or held Board meeting is convened, the Directors present may continue to transact business until adjournment, even though the withdrawal of a number of Directors originally present leaves less than the proportion or number otherwise required for a quorum.

Section 4.09. Absent Directors. A Director may give advance written consent or opposition to a proposal to be acted on at a Board meeting. If the Director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as the vote of a director present at the meeting in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the Director has consented or objected.

Section 4.10. Voting. At all meetings of the Board of Directors, each Director shall have one (1) vote irrespective of the number of shares that he may hold. The Board of Directors shall take action by the affirmative vote of a majority of Directors present at a duly held meeting at which a quorum is present or voting pursuant to Section 4.08 of these By-Laws, except where the affirmative vote of a larger proportion or number is required by law or the Articles of Incorporation.

Section 4.11. Compensation. The compensation of Directors shall be as fixed from time to time by the Board of Directors.

Section 4.12. Vacancies. Vacancies on the Board of Directors resulting from the death, resignation, removal, or disqualification of a Director may be filled by the affirmative vote of a majority of the remaining Directors, even though less than a quorum. Each Director elected under this section to fill a vacancy shall hold office until a qualified successor is elected by the Shareholders.

Section 4.13. Removal. A Director may be removed only by the Shareholders as provided in the Corporation's Articles of Incorporation.

Section 4.14. Resignation. A Director may resign at any time by giving written notice to the Corporation. The resignation is effective without acceptance when the notice is given to the Corporation, unless a later effective time is specified in the notice.

Section 4.15. Remote Communications. A conference among Directors by any means of communication through which the Directors may simultaneously hear each other during the conference constitutes a Board meeting, if the same notice is given of the conference as would be required under these By-Laws for a Board meeting, and if the number of Directors participating in the conference would be sufficient to constitute a quorum at a meeting. A Director may participate in a Board meeting at which he is not personally present by any means of communication through which the Director, other Directors so participating, and all Directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a Board meeting by any of the foregoing means constitutes presence in person at the meeting.

Section 4.16. Written Actions. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting by a written action signed collectively, or individually in counterparts, or consented to by an authentic electronic communication (as defined in Minnesota Statutes Section 302A.011), by all of the Directors then in office. Any such written action shall be effective when signed by all the Directors, unless a different effective time is provided in the written action.

Section 4.17. Committees. The Board of Directors may from time to time, by resolution, adopted by the affirmative vote of a majority of the Directors present at a duly called Board Meeting, establish one or more committees having the authority of the Board in the management of the business of the Corporation to the extent provided in the resolution. Any committee so established shall consist of one (1) or more natural persons and shall be subject at all times to the direction and control of the Board of Directors. At any meeting of any such committee the presence of a majority of the members of the committee shall be necessary to constitute a quorum for the transaction of business. Unless a larger or smaller proportion or number is provided for in the resolution establishing a committee, such committee shall take action by the affirmative vote of a majority of committee members present at a duly held meeting.

Section 4.18. Power to Amend By-Laws. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal from time to time the By-Laws of the Corporation in any manner not inconsistent with the laws of the State of Minnesota or the Articles of Incorporation of the Corporation.

Article 5.

OFFICERS

Section 5.01. Officers and Qualifications. The officers of the Corporation may consist of positions and titles as the Board of Directors may from time to time designate. Any corporate officer may hold more than one office or any number of offices.

Section 5.02. Election. The officers of the Corporation shall be elected or appointed periodically by the Board of Directors.

Section 5.03. Term of Office. Each officer of the Corporation shall hold office until his or her respective successor is elected and has qualified, or until his or her earlier death, resignation, or removal.

Section 5.04. Removal. Any officer of the Corporation may be removed at any time, with or without cause, by the affirmative vote of a majority of the Directors present at a duly called Board meeting. All officers, agents and employees, other than those elected or appointed by the Board of Directors, may be removed by the officer appointing them.

Section 5.05. Vacancies. All vacancies in any office of the Corporation may be filled by the Board of Directors.

Section 5.06. Duties. The officers of the Corporation including, without limitation, the Chairman, Vice Chairman, Chief Executive Officer, President, Chief Operating Officer, Executive and Senior Vice Presidents, Vice Presidents, the Secretary, Treasurer and Assistant Secretary and Treasurer, if any, shall perform such duties as are from time to time prescribed by the Board of Directors or the Chief Executive Officer (excepting the Chairman or Vice Chairman who shall report directly to the Board of Directors).

Section 5.07. Compensation. The Compensation of all officers of the Corporation shall be fixed by the Board of Directors or by such committee or person as the Board may from time to time designate.

Article 6.

SHARES

Section 6.01. Certificates. The shares of the Corporation shall be represented by certificates approved by the Board of Directors and signed by any two (2) of the Chairman, President or Chief Financial Officer. Each certificate shall state the name of the Corporation, that the Corporation is incorporated in Minnesota, the name of the person to whom it is issued, the number and class or series of shares represented thereby, the date of issue, the par value of such shares, if any, and may contain such other provisions as the Board may designate.

Section 6.02. Signature. For the purpose of facilitating the execution of stock certificates, the Board of Directors may appoint one or more additional persons, having power to sign stock certificates, or to execute any instrument on behalf of the Corporation which shall have been approved by the Board of Directors.

Section 6.03. Transfer of Shares. The shares of the Corporation shall be assignable and transferable only on the books and records of the Corporation on behalf of the registered owner, or his duly authorized attorney, upon surrender of the certificate duly and properly endorsed together with proper evidence of authority to transfer. The Corporation shall issue a new certificate for the shares surrendered to the person or persons entitled thereto.

Section 6.04. Lost or Destroyed Certificates. If a certificate is lost or destroyed, another may be issued in its stead upon proof of such loss or destruction and upon giving such security as is deemed necessary by the Board of Directors to indemnify the Corporation against loss therefrom.

Article 7.

INDEMNIFICATION

Section 7.01. Definitions. For purposes of this Article 7, the terms defined in this Section 7.01 have the meanings given them herein.

Section 7.1.1 Official Capacity. “Official capacity” means (a) with respect to a director, the position of director in the Corporation, (b) with respect to a person other than a director, the elective or appointive office or position held by an officer or member of a committee of the Board of Directors and (c) with respect to a director or officer of the Corporation who, while a director or officer of the Corporation, is or was serving at the request of the Corporation or whose duties in that position involve or involved service as a director, officer or trustee of another organization, the position of that person as a director, officer or trustee, as the case may be, of the other organization.

Section 7.1.2. Proceeding. “Proceeding” means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the Corporation.

Section 7.02. Indemnification Required. The Corporation shall defend and indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person with the Corporation against judgments, penalties, fines (including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan), settlements, and reasonable expenses (including, without limitation, attorneys’ fees and disbursements), incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- (a) Has not, pursuant to the provisions of Section 7.1.1 (c) of these By-Laws, been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines (including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan), settlements, and reasonable expenses (including attorneys’ fees and disbursements), incurred by

the person in connection with the proceeding with respect to the same acts or omissions;

- (b) Acted in good faith;
- (c) Received no improper personal benefit and the provisions of Minnesota Statutes Chapter 302A relating to director conflicts of interest, if applicable, have been satisfied;
- (d) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
- (e) In the case of acts or omissions undertaken while acting in the official capacity described in Section 7.1.1, clause (a) or (b), reasonably believed that the conduct was in the best interests of the Corporation, or in the case of acts or omissions undertaken while acting in the official capacity described in Section 7.1.1, clause (c), reasonably believed that the conduct was not opposed to the best interests of the Corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer or trustee, the conduct is not considered to be opposed to the best interests of the Corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

Nothing in this Section 7.02 shall be interpreted to prohibit the Board, in its discretion, from extending indemnification hereunder to other persons.

Section 7.03. Advances. If a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the Corporation, to payment or reimbursement by the Corporation of reasonable expenses (including, without limitation, attorneys' fees and disbursements), incurred by the person in advance of the final disposition of the proceeding, (a) upon receipt by the Corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in Section 7.02 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the Corporation, if it is ultimately determined that the criteria for indemnification set forth in Section

7.02 have not been satisfied, and (b) after a determination that the facts then known to those making the determination pursuant to Section 7.05 would not preclude indemnification under this Article 7. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Section 7.04. Reimbursement To Witnesses. This Article 7 does not require, or limit the ability of, the Corporation to reimburse expenses (including attorneys' fees and disbursements), incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Section 7.05. Determination of Eligibility.

Section 7.5.1. Procedure Generally. All determinations whether indemnification of a person is required because the criteria set forth in Section 7.02 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in Section 7.03 shall be made:

- (a) By a majority of the Board of Directors who are not at the time parties to the proceeding (Board members who are part of the proceeding shall not be counted for determining either a majority or the presence of a quorum); or
- (b) If a quorum under Clause (a) cannot be obtained, in accordance with Minnesota Statutes Chapter 302A; or
- (c) If an adverse determination is made or if no determination is made within 60 (sixty) days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding concerning the person's liability took place, upon application of the person and any notice the court requires.

Section 7.5.2. Alternative Procedure for Non-Management. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the

proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the Corporation, the determination whether indemnification of this person is required because the criteria set forth in Section 7.02 have been satisfied and whether this person is entitled to payment or reimbursement or expenses in advance of the final disposition of a proceeding as provided in Section 7.03 may be made by an annually appointed committee of the Board, having at least one member who is a director. The committee shall report at least annually to the Board concerning its actions.

Section 7.06. Disclosure. If the Corporation indemnifies or advances expenses to a person in accordance with this Article 7 in connection with a proceeding by or on behalf of the Corporation, it shall report the amount of the indemnification or advance and to whom and on whose behalf it was made as part of the annual financial statements furnished to Shareholders pursuant to Minnesota Statutes Chapter 302A covering the period when the indemnification or advance was paid or accrued under the accounting method of the Corporation reflected in the financial statements.

Section 7.07. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, senior management employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, senior management, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise or employee benefit plan against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Minnesota Business Corporation Act.

Section 7.08. Savings Clause. If this Article 7 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each director and officer of the Corporation, as to costs, charges and expenses (including, without limitation, attorney's fees and disbursements), judgments, fines, and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable

portion of this Article 7 that shall not have been invalidated and to the fullest extent permitted by applicable law.

Article 8.

AMENDMENTS

Except as provided in the Articles of Incorporation, the power to adopt, amend, or repeal the By-Laws of the Corporation is vested in the Board of Directors. The power of the Board is subject to the power of the Shareholders, exercisable in the manner provided by statute, to adopt, amend, or repeal By-Laws adopted, amended or repealed by the Board. The Board shall not amend or repeal a By-Law fixing a quorum for meetings of Shareholders, prohibiting the taking of less than unanimous Shareholder action without a meeting, prohibiting Shareholders from calling a special meeting, fixing the number, election and term of Directors, or the procedures for the removal of Directors or filling vacancies on the Board, or removing the provisions relating to the Corporation electing not to be governed by the provisions of Minnesota Statutes Section 302A.671 (Control Share Acquisition Act).

Article 9.

DISTRIBUTIONS

The Board of Directors may declare or authorize and the Corporation may make distributions to the extent provided by law. Such distributions may, but need not, be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption or other acquisition of shares of the Corporation. The Board may at any time set apart out of any funds of the Corporation available for distribution any reserve or reserves for any proper purpose and may alter or abolish any reserve or reserves so established.

Article 10.

FISCAL YEAR

The last day of the Corporation's fiscal year shall be December 31 or such other day as is designated by the Board of Directors from time to time.

CERTIFICATION

The undersigned, the General Counsel of the Corporation, hereby certifies that the foregoing Second Amended and Restated By-Laws were adopted pursuant to a vote of the Shareholders, effective as of May 10, 2005.

James Lewis Connor, III
Senior Vice President, General Counsel
and Corporate Secretary

**CAL DIVE INTERNATIONAL, INC.
2005 LONG TERM INCENTIVE PLAN**

ARTICLE I

ESTABLISHMENT, PURPOSE AND DURATION

1.1 **Establishment.** The Company hereby establishes an incentive compensation plan, to be known as “Cal Dive International, Inc. 2005 Long Term Incentive Plan,” as set forth in this document. The Plan permits the grant of Options, Restricted Stock and Restricted Stock Units. The Plan shall become effective on the latest of (a) the date the Plan is approved by the Board (b) the date the Plan is approved by the holders of at least a majority of the outstanding shares of voting stock of the Company and (c) if the provisions of the corporate charter, by-laws or applicable state law prescribes a greater degree of stockholder approval for this action, the approval by the holders of that percentage, at a meeting of stockholders, and shall remain in effect as provided in Section 1.3.

1.2 **Purpose of the Plan.** The purpose of the Plan is to provide incentives to directors, corporate officers and other employees of the Company and its Affiliates by enabling them to acquire shares of common stock of the Company and to receive other compensation based on the increase in value of the common stock of the Company or certain other performance measures. The Plan is intended to advance the best interests of the Company, its Affiliates and its stockholders by providing those persons who have substantial responsibility for the management and growth of the Company and its Affiliates with additional performance incentives and an opportunity to obtain or increase their proprietary interest in the Company, thereby encouraging them to continue in their employment with the Company and its Affiliates.

1.3 **Duration of Authority to Make Grants Under the Plan.** No Awards may be granted under the Plan on or after May 1, 2015. The applicable provisions of the Plan will continue in effect with respect to an Award granted under the Plan for as long as such Award remains outstanding.

ARTICLE II

DEFINITIONS

The words and phrases defined in this Article shall have the meaning set out below throughout the Plan, unless the context in which any such word or phrase appears reasonably requires a broader, narrower or different meaning.

2.1 **“Affiliate”** means any corporation, partnership, limited liability company or association, trust or other entity or organization which, directly or indirectly, controls, is controlled by, or is under common control with, the Company. For purposes of the preceding sentence, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity or organization, shall mean the possession, directly or indirectly, of the power (a) to vote more than 50 percent (50%) of the securities having ordinary voting power for the election of directors of the controlled entity or

organization, or (ii) to direct or cause the direction of the management and policies of the controlled entity or organization, whether through the ownership of voting securities or by contract or otherwise.

2.2 “**Award**” means, individually or collectively, a grant under the Plan of Options, Restricted Stock and Restricted Stock Units in each case subject to the terms and provisions of the Plan.

2.3 “**Award Agreement**” means an agreement that sets forth the terms and conditions applicable to an Award granted under the Plan.

2.4 “**Board**” means the board of directors of the Company.

2.5 “**Change in Control**” means the occurrence of any of the following events: (a) there shall be consummated (i) 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 Stock would be converted into cash, securities or other property, other than a merger of the Company where a majority of the Board of the surviving corporation is, and for a two-year period after the merger continues to be, persons who were directors of the Company immediately prior to the merger or were elected as directors, or nominated for election as director, by a vote of at least two-thirds of the directors then still in office who were directors of the Company immediately prior to the merger, or (ii) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company; (b) the shareholders of the Company shall approve any plan or proposal for the liquidation or dissolution of the Company; or (c) (i) any “person” (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act, other than the Company or a subsidiary thereof or any employee benefit plan sponsored by the Company or a subsidiary thereof, shall become the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company representing 20 percent or more of the combined voting power of the Company’s then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, and (ii) at any time during a period of two years after such “person” becomes such a beneficial owner, individuals who immediately prior to the beginning of such period constituted the Board shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination by the Board for election by the Company’s shareholders of each new director during such period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period.

2.6 “**Code**” means the United States Internal Revenue Code of 1986, as amended from time to time.

2.7 “**Committee**” means a committee of at least two persons, who are members of the Compensation Committee of the Board and are appointed by the Compensation Committee of the Board, or, to the extent it chooses to operate as the Committee, the Compensation Committee of the Board. Each member of the Committee in respect of his or her participation in any decision with respect to an Award intended to satisfy the requirements of section 162(m)

of the Code must satisfy the requirements of “outside director” status within the meaning of section 162(m) of the Code; provided, however, that the failure to satisfy such requirement shall not affect the validity of the action of any committee otherwise duly authorized and acting in the matter. As to Awards, grants or other transactions that are authorized by the Committee and that are intended to be exempt under Rule 16b-3 under the Exchange Act, the requirements of Rule 16b-3(d)(1) under the Exchange Act with respect to committee action must also be satisfied. For all purposes under the Plan, the Chief Executive Officer of the Company shall be deemed to be the “Committee” with respect to Options granted by him pursuant to Section 4.1.

2.8 “**Company**” means Cal Dive International, Inc., a Minnesota corporation, or any successor (by reincorporation, merger or otherwise).

2.9 “**Corporate Change**” shall have the meaning ascribed to that term in Section 4.5(c).

2.10 “**Disability**” means as determined by the Committee in its discretion exercised in good faith, a physical or mental condition of the Holder that would entitle him to payment of disability income payments under the Company’s long term disability insurance policy or plan for employees as then in effect; or in the event that the Holder is not covered, for whatever reason under the Company’s long term disability insurance policy or plan for employees or in the event the Company does not maintain such a long term disability insurance policy, “Disability” means a permanent and total disability as defined in section 22(e)(3) of the Code. A determination of Disability may be made by a physician selected or approved by the Committee and, in this respect, the Holder shall submit to an examination by such physician upon request by the Committee.

2.11 “**Employee**” means (a) a person employed by the Company or any Affiliate as a common law employee or (b) a person who has agreed to become a common law employee of the Company or any Affiliate and is expected to become such within six (6) months from the date of a determination made for purposes of the Plan.

2.12 “**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended from time to time.

2.13 “**Fair Market Value**” of the Stock as of any particular date means (1) if the Stock is traded on a stock exchange, the closing sale price of the Stock on that date as reported on the principal securities exchange on which the Stock is traded, or (2) if the Stock is traded in the over-the-counter market, the average between the high bid and low asked price on that date as reported in such over-the-counter market; provided that (a) if the Stock is not so traded, (b) if no closing price or bid and asked prices for the stock was so reported on that date or (c) if, in the discretion of the Committee, another means of determining the fair market value of a share of Stock at such date shall be necessary or advisable, the Committee may provide for another means for determining such fair market value.

2.14 “**Fiscal Year**” means the Company’s fiscal year.

2.15 “**Holder**” means a person who has been granted an Award or any person who is entitled to receive Shares under an Award.

2.16 “**Mature Shares**” means shares of Stock that the Holder has held for at least six months.

2.17 “**Minimum Statutory Tax Withholding Obligation**” means the amount the Company or an Affiliate is required to withhold for federal, state and local taxes based upon the applicable minimum statutory withholding rates required by the relevant tax authorities.

2.18 “**Option**” means an option to purchase Stock granted pursuant to Article V.

2.19 “**Option Price**” shall have the meaning ascribed to that term in Section 5.4.

2.20 “**Optionee**” means a person who is granted an Option under the Plan.

2.21 “**Option Agreement**” means a written contract setting forth the terms and conditions of an Option.

2.22 “**Period of Restriction**” means the period during which Restricted Stock is subject to a substantial risk of forfeiture (based on the passage of time, the achievement of performance goals, or upon the occurrence of other events as determined by the Committee, in its discretion), as provided in Article VI.

2.23 “**Plan**” means Cal Dive International, Inc. 2005 Long Term Incentive Plan, as set forth in this document and as it may be amended from time to time.

2.24 “**Restricted Stock**” means shares of restricted Stock issued or granted under the Plan pursuant to Article VI.

2.25 “**Restricted Stock Award**” means an authorization by the Committee to issue or transfer Restricted Stock to a Holder.

2.26 “**Restricted Stock Unit**” means a unit credited to a Holder’s ledger account maintained by the Company pursuant to Article VIII.

2.27 “**Restricted Stock Unit Award**” means an Award granted pursuant to Article VII.

2.28 “**Retirement**” means retirement in accordance with the terms of a retirement plan that is qualified under section 401(a) of the Code and maintained by the Company or an Affiliate in which the Holder is a participant.

2.29 “**Section 409A**” means section 409A of the Code and Department of Treasury rules and regulations issued thereunder.

2.30 “**Stock**” means the common stock of the Company, no par value per share (or such other par value as may be designated by act of the Company’s stockholders).

2.31 “**Substantial Risk of Forfeiture**” shall have the meaning ascribed to that term in section 409A of the Code and Department of Treasury guidance issued thereunder.

2.32 “**Termination of Employment**” means the termination of the Award recipient’s employment relationship with the Company and all Affiliates.

ARTICLE III

ELIGIBILITY AND PARTICIPATION

3.1 **Eligibility.** The persons who are eligible to receive Awards under the Plan are Employees and directors of the Company.

3.2 **Participation.** Subject to the terms and provisions of the Plan, the Committee may, from time to time, select the Employees to whom Awards shall be granted and shall determine the nature and amount of each Award.

ARTICLE IV

GENERAL PROVISIONS RELATING TO AWARDS

4.1 **Authority to Grant Awards.** The Committee may grant Awards to those Employees as the Committee shall from time to time determine, under the terms and conditions of the Plan. Subject only to any applicable limitations set out in the Plan, the number of shares of Stock or other value to be covered by any Award to be granted under the Plan shall be as determined by the Committee in its sole discretion. However, the Chief Executive Officer of the Company is authorized to grant Options, with respect to no more than 100,000 shares of Stock per Fiscal Year, as inducements to hire prospective Employees who will not be officers of the Company subject to the provisions of Section 16 of the Exchange Act.

4.2 **Dedicated Shares; Maximum Awards.** The aggregate number of shares of Stock with respect to which Awards may be granted under the Plan is 3,000,000. The aggregate number of shares of Stock with respect to which Options may be granted under the Plan is 1,000,000. The aggregate number of shares of Stock with respect to which Restricted Stock Awards or Restricted Stock Unit Awards may be granted under the Plan is 2,000,000. The maximum number of shares of Stock with respect to which Options may be granted to an Employee during a Fiscal Year is 88,000. The maximum number of shares of Stock with respect to which Restricted Stock Awards may be granted to an Employee during a Fiscal Year is 44,000. The maximum number of shares of Stock with respect to which Restricted Stock Unit Awards may be granted to an Employee during a Fiscal Year may not exceed in value the Fair Market Value of 50,000 shares of Stock determined as of the date of grant. Each of the foregoing numerical limits stated in this Section 4.2 shall be subject to adjustment in accordance with the provisions of Section 4.5. If shares of Stock are withheld from payment of an Award to satisfy tax obligations with respect to the Award, such shares of Stock will count against the aggregate number of shares of Stock with respect to which Awards may be granted under the Plan. If Shares are tendered in payment of an Option Price of an Option, such shares of Stock will not be added to the aggregate number of shares of Stock with respect to which Awards may be granted under the Plan. To the extent that any outstanding Award is forfeited or cancelled for any reason or is settled in cash in lieu of shares of Stock, the shares of Stock allocable to such portion of the Award may again be subject to an Award granted under the Plan.

4.3 Non-Transferability. Except as specified in the applicable Award Agreements or in domestic relations court orders, Awards shall not be transferable by the Holder other than by will or under the laws of descent and distribution, and shall be exercisable, during the Holder's lifetime, only by him or her. In the discretion of the Committee, any attempt to transfer an Award other than under the terms of the Plan and the applicable Award Agreement may terminate the Award.

4.4 Requirements of Law. The Company shall not be required to sell or issue any shares of Stock under any Award if issuing those shares of Stock would constitute or result in a violation by the Holder or the Company of any provision of any law, statute or regulation of any governmental authority. Specifically, in connection with any applicable statute or regulation relating to the registration of securities, upon exercise of any Option or pursuant to any other Award, the Company shall not be required to issue any shares of Stock unless the Committee has received evidence satisfactory to it to the effect that the Holder will not transfer the shares of Stock except in accordance with applicable law, including receipt of an opinion of counsel satisfactory to the Company to the effect that any proposed transfer complies with applicable law. The determination by the Committee on this matter shall be final, binding and conclusive. The Company may, but shall in no event be obligated to, register any shares of Stock covered by the Plan pursuant to applicable securities laws of any country or any political subdivision. In the event the shares of Stock issuable on exercise of an Option or pursuant to any other Award are not registered, the Company may imprint on the certificate evidencing the shares of Stock any legend that counsel for the Company considers necessary or advisable to comply with applicable law, or, should the shares of Stock be represented by book or electronic entry rather than a certificate, the Company may take such steps to restrict transfer of the shares of Stock as counsel for the Company considers necessary or advisable to comply with applicable law. The Company shall not be obligated to take any other affirmative action in order to cause or enable the exercise of an Option or any other Award, or the issuance of shares of Stock pursuant thereto, to comply with any law or regulation of any governmental authority.

4.5 Changes in the Company's Capital Structure.

(a) The existence of outstanding Awards shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of bonds, debentures, preferred or prior preference shares ahead of or affecting the Stock or Stock rights, the dissolution or liquidation of the Company, any sale or transfer of all or any part of its assets or business or any other corporate act or proceeding, whether of a similar character or otherwise.

(b) If the Company shall effect a subdivision or consolidation of Stock or other capital readjustment, the payment of a Stock dividend, or other increase or reduction of the number of shares of Stock outstanding, without receiving compensation therefor in money, services or property, then (1) the number, class or series and per share price of Stock subject to outstanding Options or other Awards under the Plan shall be appropriately adjusted in such a manner as to entitle a Holder to receive upon exercise of an Option or other Award, for the same aggregate cash consideration, the equivalent total number and class or series of Stock the Holder would have received had the Holder exercised his or her Option or other Award in full

immediately prior to the event requiring the adjustment, and (2) the number and class or series of Stock then reserved to be issued under the Plan shall be adjusted by substituting for the total number and class or series of Stock then reserved, that number and class or series of Stock that would have been received by the owner of an equal number of outstanding shares of Stock of each class or series of Stock as the result of the event requiring the adjustment.

(c) If while unexercised Options or other Awards remain outstanding under the Plan (1) the Company shall not be the surviving entity in any merger, consolidation or other reorganization (or survives only as a subsidiary of an entity other than an entity that was wholly-owned by the Company immediately prior to such merger, consolidation or other reorganization), (2) the Company sells, leases or exchanges or agrees to sell, lease or exchange all or substantially all of its assets to any other person or entity (other than an entity wholly-owned by the Company), (3) the Company is to be dissolved or (4) the Company is a party to any other corporate transaction (as defined under section 424(a) of the Code and applicable Department of Treasury regulations) that is not described in clauses (1), (2) or (3) of this sentence (each such event is referred to herein as a “*Corporate Change*”), then, except as otherwise provided in an Award Agreement (provided that such exceptions shall not apply in the case of a reincorporation merger), or as a result of the Committee’s effectuation of one or more of the alternatives described below, there shall be no acceleration of the time at which any Award then outstanding may be exercised, and no later than ten days after the approval by the stockholders of the Company of such Corporate Change, the Committee, acting in its sole and absolute discretion without the consent or approval of any Holder, shall act to effect one or more of the following alternatives, which may vary among individual Holders and which may vary among Awards held by any individual Holder (provided that, with respect to a reincorporation merger in which Holders of the Company’s ordinary shares will receive one ordinary share of the successor corporation for each ordinary share of the Company, none of such alternatives shall apply and, without Committee action, each Award shall automatically convert into a similar award of the successor corporation exercisable for the same number of ordinary shares of the successor as the Award was exercisable for ordinary shares of Stock of the Company):

- (1) accelerate the time at which some or all of the Awards then outstanding may be exercised so that such Awards may be exercised in full for a limited period of time on or before a specified date (before or after such Corporate Change) fixed by the Committee, after which specified date all such Awards that remain unexercised and all rights of Holders thereunder shall terminate;
- (2) require the mandatory surrender to the Company by all or selected Holders of some or all of the then outstanding Awards held by such Holders (irrespective of whether such Awards are then exercisable under the provisions of the Plan or the applicable Award Agreement evidencing such Award) as of a date, before or after such Corporate Change, specified by the Committee, in which event the Committee shall thereupon cancel such Award and the Company shall pay to each such Holder an amount of cash per share equal to the excess, if any, of the per share price offered to stockholders of the Company in connection with such Corporate Change over the exercise prices under such Award for such shares;

- (3) with respect to all or selected Holders, have some or all of their then outstanding Awards (whether vested or unvested) assumed or have a new award of a similar nature substituted for some or all of their then outstanding Awards under the Plan (whether vested or unvested) by an entity which is a party to the transaction resulting in such Corporate Change and which is then employing such Holder or which is affiliated or associated with such Holder in the same or a substantially similar manner as the Company prior to the Corporate Change, or a parent or subsidiary of such entity, provided that (A) such assumption or substitution is on a basis where the excess of the aggregate fair market value of the Stock subject to the Award immediately after the assumption or substitution over the aggregate exercise price of such Stock is equal to the excess of the aggregate fair market value of all Stock subject to the Award immediately before such assumption or substitution over the aggregate exercise price of such Stock, and (B) the assumed rights under such existing Award or the substituted rights under such new Award as the case may be will have the same terms and conditions as the rights under the existing Award assumed or substituted for, as the case may be;
- (4) provide that the number and class or series of Stock covered by an Award (whether vested or unvested) theretofore granted shall be adjusted so that such Award when exercised shall thereafter cover the number and class or series of Stock or other securities or property (including, without limitation, cash) to which the Holder would have been entitled pursuant to the terms of the agreement or plan relating to such Corporate Change if, immediately prior to such Corporate Change, the Holder had been the holder of record of the number of shares of Stock then covered by such Award; or
- (5) make such adjustments to Awards then outstanding as the Committee deems appropriate to reflect such Corporate Change (provided, however, that the Committee may determine in its sole and absolute discretion that no such adjustment is necessary).

In effecting one or more of alternatives in (3), (4) or (5) immediately above, and except as otherwise may be provided in an Award Agreement, the Committee, in its sole and absolute discretion and without the consent or approval of any Holder, may accelerate the time at which some or all Awards then outstanding may be exercised.

(d) In the event of changes in the outstanding Stock by reason of recapitalizations, reorganizations, mergers, consolidations, combinations, exchanges or other relevant changes in capitalization occurring after the date of the grant of any Award and not otherwise provided for by this Section 4.5, any outstanding Award and any Award Agreements evidencing such Award shall be subject to adjustment by the Committee in its sole and absolute discretion as to the number and price of Stock or other consideration subject to such Award. In the event of any such change in the outstanding Stock, the aggregate number of shares of Stock available under

the Plan may be appropriately adjusted by the Committee, whose determination shall be conclusive.

(e) After a merger of one or more corporations into the Company or after a consolidation of the Company and one or more corporations in which the Company shall be the surviving corporation, each Holder shall be entitled to have his Restricted Stock appropriately adjusted based on the manner in which the shares of Stock were adjusted under the terms of the agreement of merger or consolidation.

(f) The issuance by the Company of stock of any class or series, or securities convertible into, or exchangeable for, stock of any class or series, for cash or property, or for labor or services either upon direct sale or upon the exercise of rights or warrants to subscribe for them, or upon conversion or exchange of stock or obligations of the Company convertible into, or exchangeable for, stock or other securities, shall not affect, and no adjustment by reason of such issuance shall be made with respect to, the number, class or series, or price of shares of Stock then subject to outstanding Options or other Awards.

4.6 Election Under Section 83(b) of the Code. No Holder shall exercise the election permitted under section 83(b) of the Code with respect to any Award without the written approval of the Chief Financial Officer of the Company. Any Holder who makes an election under section 83(b) of the Code with respect to any Award without the written approval of the Chief Financial Officer of the Company may, in the discretion of the Committee, forfeit any or all Awards granted to him or her under the Plan.

4.7 Forfeiture for Cause. Notwithstanding any other provision of the Plan or an Award Agreement, if the Committee finds by a majority vote that a Holder, before or after his Termination of Employment (a) committed a fraud, embezzlement, theft, felony or an act of dishonesty in the course of his employment by the Company or an Affiliate which conduct damaged the Company or an Affiliate or (b) disclosed trade secrets of the Company or an Affiliate, then as of the date the Committee makes its finding, any Awards awarded to the Holder that have not been exercised by the Holder (including all Awards that have not yet vested) will be forfeited to the Company. The findings and decision of the Committee with respect to such matter, including those regarding the acts of the Holder and the damage done to the Company, will be final for all purposes. No decision of the Committee, however, will affect the finality of the discharge of the individual by the Company or an Affiliate.

4.8 Forfeiture Events. The Committee may specify in an Award Agreement that the Holder's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, Termination of Employment for cause, termination of the Holder's provision of services to the Company or its Affiliates, violation of material policies of the Company and its Affiliates, breach of noncompetition, confidentiality, or other restrictive covenants that may apply to the Holder, or other conduct by the Holder that is detrimental to the business or reputation of the Company and its Affiliates.

ARTICLE V

OPTIONS

5.1 **Authority to Grant Options.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Options under the Plan to eligible persons in such number and upon such terms as the Committee shall determine.

5.2 **Type of Options Available.** All options granted under the Plan shall be nonqualified stock options that are not intended to satisfy the requirements of section 422 of the Code.

5.3 **Option Agreement.** Each Option grant under the Plan shall be evidenced by an Option Agreement that shall specify (a) the Option Price, (b) the duration of the Option, (c) the number of shares of Stock to which the Option pertains, (d) the exercise restrictions applicable to the Option, and (e) such other provisions as the Committee shall determine that are not inconsistent with the terms and provisions of the Plan.

5.4 **Option Price.** The price at which shares of Stock may be purchased under an Option (the "*Option Price*") shall not be less than 100 percent (100%) of the Fair Market Value of the shares of Stock on the date the Option is granted. Subject to the limitation set forth in the preceding sentence of this Section 5.4, the Committee shall determine the Option Price for each grant of an Option under the Plan. Except as provided in Section 4.5, the Committee shall not directly or indirectly lower the Option Price of a previously granted Option.

5.5 **Duration of Options.** An Option shall not be exercisable after the earlier of (i) the general term of the Option specified in Section 5.5(a), or (ii) the period of time specified herein that follows the Optionee's death, Disability, Retirement or other Termination of Employment. Unless the Optionee's applicable Option Agreement specifies otherwise, an Option shall not continue to vest after the Optionee's Termination of Employment for any reason other than the death or Disability of the Optionee.

(a) *General Term of Option.* Unless the Option Agreement specifies a shorter general term, an Option shall expire on the tenth anniversary of the date the Option is granted.

(b) *Early Termination of Option Due to Termination of Employment Other Than for Death, Disability or Retirement.* Except as may be otherwise expressly provided by the Committee in an Option Agreement, an Option shall terminate on the earlier of (1) the date of the expiration of the general term of the Option or (2) the date that is 60 days after the date of the Optionee's Termination of Employment, whether with or without cause, for any reason other than the death, Disability or Retirement of the Optionee, during which period the Optionee shall be entitled to exercise the Option in respect of the number of shares of Stock that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of such Termination of Employment. The Committee shall determine whether an authorized leave of absence, absence on military or government service, or any other absence from service shall constitute a termination of the employment relationship between the Optionee and the Company and all Affiliates.

(c) *Early Termination of Option Due to Death.* Unless the Committee specifies otherwise in the applicable Option Agreement, in the event of the Optionee's Termination of Employment due to death before the date of expiration of the general term of the Option, the Optionee's Option shall terminate on the earlier of the date of expiration of the general term of the Option or the first anniversary of the date of the Optionee's death, during which period the Optionee's executors or administrators or such persons to whom such Options were transferred by will or by the laws of descent and distribution, shall be entitled to exercise the Option in respect of the number of shares of Stock that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of his death.

(d) *Early Termination of Option Due to Disability.* Unless the Committee specifies otherwise in the applicable Option Agreement, in the event of the Termination of Employment due to Disability before the date of the expiration of the general term of the Option, the Optionee's Option shall terminate on the earlier of the expiration of the general term of the Option or the first anniversary of the date of the Termination of Employment due to Disability, during which period the Optionee shall be entitled to exercise the Option in respect of the number of shares of Stock that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of such Termination of Employment.

(e) *Early Termination of Option Due to Retirement.* Unless the Committee specifies otherwise in the applicable Option Agreement, in the event of the Optionee's Termination of Employment due to Retirement before the date of the expiration of the general term of the Option, the Optionee's Option shall terminate on the earlier of the expiration of the general term of the Option or the first anniversary of the date of the Termination of Employment due to Retirement, during which period the Optionee shall be entitled to exercise the Option in respect of the number of shares of Stock that the Optionee would have been entitled to purchase had the Optionee exercised the Option on the date of such Termination of Employment.

After the death of the Optionee, the Optionee's executors, administrators or any person or persons to whom the Optionee's Option may be transferred by will or by the laws of descent and distribution, shall have the right, at any time prior to the termination of the Option to exercise the Option, in respect to the number of all of the remaining unexercised and unexpired shares of Stock subject to the Option.

5.6 Amount Exercisable. Each Option may be exercised at the time, in the manner and subject to the conditions the Committee specifies in the Option Agreement in its sole discretion. Unless the Committee specifies otherwise in an applicable Option Agreement, an Option Agreement shall set forth the following terms regarding the exercise of the Option covered by the Option Agreement:

(a) No Option granted under the Plan may be exercised until an Optionee has completed one year of continuous employment with the Company or any subsidiary of the Company following the date of grant;

(b) Beginning on the day after the first anniversary of the date of grant, an Option may be exercised up to 20 percent of the shares subject to the Option;

(c) After the expiration of each succeeding anniversary date of the date of grant, the Option may be exercised up to an additional 20 percent of the shares initially subject to the Option, so that after the expiration of the fifth anniversary of the date of grant, the Option shall be exercisable in full;

(d) To the extent not exercised, installments shall be cumulative and may be exercised in whole or in part until the Option expires on the tenth anniversary of the date of grant.

However, the Committee, in its discretion, may change the terms of exercise so that any Option may be exercised so long as it is valid and outstanding from time to time in part or as a whole in such manner and subject to such conditions as the Committee may set. In addition, the Committee, in its discretion, may accelerate the time in which any outstanding Option may be exercised. However, in no event shall any Option be exercisable after the tenth anniversary of the date of the grant of the Option.

5.7 Exercise of Options.

(a) *General Method of Exercise.* Subject to the terms and provisions of the Plan and an Optionee's Option Agreement, Options may be exercised in whole or in part from time to time by the delivery of written notice in the manner designated by the Committee stating (1) that the Optionee wishes to exercise such option on the date such notice is so delivered, (2) the number of shares of Stock with respect to which the Option is to be exercised and (3) the address to which the certificate representing such shares of Stock should be mailed. Except in the case of exercise by a third party broker as provided below, in order for the notice to be effective the notice must be accompanied by payment of the Option Price by any combination of the following: (a) cash, certified check, bank draft or postal or express money order for an amount equal to the Option Price under the Option, (b) Mature Shares with a Fair Market Value on the date of exercise equal to the Option Price under the Option (if approved in advance by the Committee or an executive officer of the Company), (c) an election to make a cashless exercise through a registered broker-dealer (if approved in advance by the Committee or an executive officer of the Company) or (d) except as specified below, any other form of payment which is acceptable to the Committee. If Mature Shares are used for payment by the Optionee, the aggregate Fair Market Value of the shares of Stock tendered must be equal to or less than the aggregate Option Price of the shares of Stock being purchased upon exercise of the Option, and any difference must be paid by cash, certified check, bank draft or postal or express money order payable to the order of the Company.

Whenever an Option is exercised by exchanging shares of Stock owned by the Optionee, the Optionee shall deliver to the Company or its delegate certificates registered in the name of the Optionee representing a number of shares of Stock legally and beneficially owned by the Optionee, free of all liens, claims, and encumbrances of every kind, accompanied by stock powers duly endorsed in blank by the record holder of the shares represented by the certificates, (with signature guaranteed by a commercial bank or trust company or by a brokerage firm having a membership on a registered national stock exchange). The delivery of certificates upon the exercise of Option is subject to the condition that the person exercising the Option provide

the Company with the information the Company might reasonably request pertaining to exercise, sale or other disposition of an Option.

(b) *Issuance of Shares.* Subject to Section 4.4 and Section 5.7(c), as promptly as practicable after receipt of written notification and payment, in the form permitted under Section 10.3, of an amount of money necessary to satisfy any withholding tax liability that may result from the exercise of such Option, the Company shall deliver to the Optionee certificates for the number of shares with respect to which the Option has been exercised, issued in the Optionee's name. Delivery of the shares shall be deemed effected for all purposes when a stock transfer agent of the Company shall have deposited the certificates in the United States mail, addressed to the Optionee, at the address specified by the Optionee.

(c) *Limitations on Exercise Alternatives.* The Committee shall not permit an Optionee to pay such Optionee's Option Price upon the exercise of an Option by having the Company reduce the number of shares of Stock that will be delivered pursuant to the exercise of the Option. In addition, the Committee shall not permit an Optionee to pay such Optionee's Option Price upon the exercise of an Option by using shares of Stock other than Mature Shares. An Option may not be exercised for a fraction of a share of Stock.

5.8 Transferability of Options. No Option granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in an Optionee's Option Agreement, all Options granted to an Optionee under the Plan shall be exercisable during his or her lifetime only by such Optionee. Any attempted assignment of an Option in violation of this Section 5.8 shall be null and void.

5.9 No Rights as Stockholder. An Optionee shall not have any rights as a stockholder with respect to Stock covered by an Option until he exercises the Option; and, except as otherwise provided in Section 4.5, no adjustment for dividends, or otherwise, shall be made if the record date therefor is prior to the date of such exercise.

ARTICLE VI

RESTRICTED STOCK AWARDS

6.1 Restricted Stock Awards. The Committee may make Awards of Restricted Stock to eligible persons selected by it. The amount of, the vesting and the transferability restrictions applicable to any Restricted Stock Award shall be determined by the Committee in its sole discretion. If the Committee imposes vesting or transferability restrictions on a Holder's rights with respect to Restricted Stock, the Committee may issue such instructions to the Company's share transfer agent in connection therewith as it deems appropriate. The Committee may also cause the certificate for Shares issued pursuant to a Restricted Stock Award to be imprinted with any legend which counsel for the Company considers advisable with respect to the restrictions or, should the Shares be represented by book or electronic entry rather than a certificate, the Company may take such steps to restrict transfer of the Shares as counsel for the Company considers necessary or advisable to comply with applicable law.

6.2 **Restricted Stock Award Agreement.** Each Restricted Stock Award shall be evidenced by an Award Agreement that contains any vesting, transferability restrictions and other provisions not inconsistent with the Plan as the Committee may specify.

6.3 **Holder's Rights as Stockholder.** Subject to the terms and conditions of the Plan, each recipient of a Restricted Stock Award shall have all the rights of a stockholder with respect to the shares of Restricted Stock included in the Restricted Stock Award during the Period of Restriction established for the Restricted Stock Award. Dividends paid with respect to Restricted Stock in cash or property other than shares of Stock or rights to acquire shares of Stock shall be paid to the recipient of the Restricted Stock Award currently. Dividends paid in shares of Stock or rights to acquire shares of Stock shall be added to and become a part of the Restricted Stock. During the Period of Restriction, certificates representing the Restricted Stock shall be registered in the recipient's name and bear a restrictive legend to the effect that ownership of such Restricted Stock, and the enjoyment of all rights appurtenant thereto, are subject to the restrictions, terms, and conditions provided in the Plan and the applicable Restricted Stock Award Agreement. Such certificates shall be deposited by the recipient with the Secretary of the Company or such other officer of the Company as may be designated by the Committee, together with all stock powers or other instruments of assignment, each endorsed in blank, which will permit transfer to the Company of all or any portion of the Restricted Stock which shall be forfeited in accordance with the Plan and the applicable Restricted Stock Award Agreement.

ARTICLE VII

RESTRICTED STOCK UNIT AWARDS

7.1 **Authority to Grant Restricted Stock Unit Awards.** Subject to the terms and provisions of the Plan, the Committee, at any time, and from time to time, may grant Restricted Stock Unit Awards under the Plan to eligible persons in such amounts and upon such terms as the Committee shall determine. The amount of, the vesting and the transferability restrictions applicable to any Restricted Stock Unit Award shall be determined by the Committee in its sole discretion. The Committee shall maintain a bookkeeping ledger account which reflects the number of Restricted Stock Units credited under the Plan for the benefit of a Holder.

7.2 **Restricted Stock Unit Awards.** A Restricted Stock Unit Award shall be similar in nature to Restricted Stock Award except that no shares of Stock are actually transferred to the Holder until a later date specified in the applicable Award Agreement. Each Restricted Stock Unit shall have a value equal to the Fair Market Value of a share of Stock.

7.3 **Restricted Stock Unit Award Agreement.** Each Restricted Stock Unit Award shall be evidenced by an Award Agreement that contains any Substantial Risk of Forfeiture, transferability restrictions, form and time of payment provisions and other provisions not inconsistent with the Plan as the Committee may specify.

7.4 Form of Payment Under Restricted Stock Unit Award. Payment under a Restricted Stock Unit Award shall be made in either cash or shares of Stock as specified in the Holder's Award Agreement.

7.5 Time of Payment Under Restricted Stock Unit Award. A Holder's payment under a Restricted Stock Unit Award shall be made at such time as is specified in the Holder's Award Agreement. The Award Agreement shall specify that the payment will be made (1) by a date that is no later than the date that is two and one-half (2 1/2) months after the end of the Fiscal Year in which the Restricted Stock Unit Award payment is no longer subject to a Substantial Risk of Forfeiture or (2) at a time that is permissible under Section 409A.

7.6 Holder's Rights as Stockholder. A Holder of a Restricted Stock Unit Award shall have no rights of a stockholder with respect to the Restricted Stock Unit Award. A Holder shall have no voting rights with respect to any Restricted Stock Unit Award.

7.7 Compliance With Section 409A. Restricted Stock Unit Awards shall be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Section 409A.

ARTICLE VIII

ADMINISTRATION

8.1 Awards. The Plan shall be administered by the Committee or, in the absence of the Committee, the Plan shall be administered by the Board. The members of the Committee shall serve at the discretion of the Board. The Committee shall have full and exclusive power and authority to administer the Plan and to take all actions that the Plan expressly contemplates or are necessary or appropriate in connection with the administration of the Plan with respect to Awards granted under the Plan.

8.2 Authority of the Committee. The Committee shall have full and exclusive power to interpret and apply the terms and provisions of the Plan and Awards made under the Plan, and to adopt such rules, regulations and guidelines for implementing the Plan as the Committee may deem necessary or proper, all of which powers shall be exercised in the best interests of the Company and in keeping with the objectives of the Plan. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the vote of a majority of those members present at any meeting shall decide any question brought before that meeting. Any decision or determination reduced to writing and signed by a majority of the members shall be as effective as if it had been made by a majority vote at a meeting properly called and held. All questions of interpretation and application of the Plan, or as to award granted under the Plan, shall be subject to the determination, which shall be final and binding, of a majority of the whole Committee. No member of the Committee shall be liable for any act or omission of any other member of the Committee or for any act or omission on his own part, including but not limited to the exercise of any power or discretion given to him under the Plan, except those resulting from his own gross negligence or willful misconduct. In carrying out its authority under the Plan, the Committee shall have full and final authority and discretion, including but not limited to the following rights, powers and authorities, to:

- (a) determine the persons to whom and the time or times at which Awards will be made;
- (b) determine the number and exercise price of shares of Stock covered in each Award, subject to the terms and provisions of the Plan;
- (c) determine the terms, provisions and conditions of each Award, which need not be identical and need not match the default terms set forth in the Plan;
- (d) accelerate the time at which any outstanding Award will vest;
- (e) prescribe, amend and rescind rules and regulations relating to administration of the Plan; and
- (f) make all other determinations and take all other actions deemed necessary, appropriate or advisable for the proper administration of the Plan.

The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award to a Holder in the manner and to the extent the Committee deems necessary or desirable to further the Plan's objectives. Further, the Committee shall make all other determinations that may be necessary or advisable for the administration of the Plan. As permitted by law and the terms and provisions of the Plan, the Committee may delegate its authority as identified in Section 8.3.

The actions of the Committee in exercising all of the rights, powers, and authorities set out in this Article VIII and all other Articles of the Plan, when performed in good faith and in its sole judgment, shall be final, conclusive and binding on all persons. The Committee may employ attorneys, consultants, accountants, agents, and other persons, any of whom may be an Employee, and the Committee, the Company, and its officers and Board shall be entitled to rely upon the advice, opinions, or valuations of any such persons.

8.3 Decisions Binding. All determinations and decisions made by the Committee or the Board, as the case may be, pursuant to the provisions of the Plan and all related orders and resolutions of the Committee or the Board, as the case may be, shall be final, conclusive and binding on all persons, including the Company, its stockholders, Employees, Holders and the estates and beneficiaries of Employees and Holders.

8.4 No Liability. Under no circumstances shall the Company, the Board or the Committee incur liability for any indirect, incidental, consequential or special damages (including lost profits) of any form incurred by any person, whether or not foreseeable and regardless of the form of the act in which such a claim may be brought, with respect to the Plan or the Company's, the Committee's or the Board's roles in connection with the Plan.

ARTICLE IX

AMENDMENT OR TERMINATION OF PLAN

9.1 **Amendment, Modification, Suspension, and Termination.** Subject to Section 9.2 the Committee may, at any time and from time to time, alter, amend, modify, suspend, or terminate the Plan and any Award Agreement in whole or in part; provided, however, that, without the prior approval of the Company's stockholders and except as provided in Section 4.5, the Committee shall not directly or indirectly lower the Option Price of a previously granted Option, and no amendment of the Plan shall be made without stockholder approval if stockholder approval is required by applicable law or stock exchange rules.

9.2 **Awards Previously Granted.** Notwithstanding any other provision of the Plan to the contrary, no termination, amendment, suspension, or modification of the Plan or an Award Agreement shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Holder holding such Award.

ARTICLE X

MISCELLANEOUS

10.1 **Unfunded Plan/No Establishment of a Trust Fund.** Holders shall have no right, title, or interest whatsoever in or to any investments that the Company or any of its Affiliates may make to aid in meeting obligations under the Plan. Nothing contained in the 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 Company and any Holder, beneficiary, legal representative, or any other person. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts, except as expressly set forth in the Plan. No property shall be set aside nor shall a trust fund of any kind be established to secure the rights of any Holder under the Plan. All Holders shall at all times rely solely upon the general credit of the Company for the payment of any benefit which becomes payable under the Plan. The Plan is not intended to be subject to the Employee Retirement Income Security Act of 1974, as amended.

10.2 **No Employment Obligation.** The granting of any Award shall not constitute an employment contract, express or implied, nor impose upon the Company or any Affiliate any obligation to employ or continue to employ, or utilize the services of, any Holder. The right of the Company or any Affiliate to terminate the employment of any person shall not be diminished or affected by reason of the fact that an Award has been granted to him, and nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company or its Affiliates to terminate any Holder's employment at any time or for any reason not prohibited by law.

10.3 Tax Withholding. The Company or any Affiliate shall be entitled to deduct from other compensation payable to each Holder any sums required by federal, state or local tax law to be withheld with respect to the vesting or exercise of an Award or lapse of restrictions on an Award. In the alternative, the Company may require the Holder (or other person validly exercising the Award) to pay such sums for taxes directly to the Company or any Affiliate in cash or by check within one day after the date of vesting, exercise or lapse of restrictions. In the discretion of the Committee, and with the consent of the Holder, the Company may reduce the number of shares of Stock issued to the Holder upon such Holder's exercise of an Option to satisfy the tax withholding obligations of the Company or an Affiliate; provided that the Fair Market Value of the shares of Stock held back shall not exceed the Company's or the Affiliate's Minimum Statutory Tax Withholding Obligation. The Committee may, in its discretion, permit a Holder to satisfy any Minimum Statutory Tax Withholding Obligation arising upon the vesting of Restricted Stock by delivering to the Holder of the Restricted Stock Award a reduced number of shares of Stock in the manner specified herein. If permitted by the Committee and acceptable to the Holder, at the time of vesting of shares of Restricted Stock, the Company shall (a) calculate the amount of the Company's or an Affiliate's Minimum Statutory Tax Withholding Obligation on the assumption that all such shares of vested Restricted Stock are made available for delivery, (b) reduce the number of such shares of Stock made available for delivery so that the Fair Market Value of the shares of Stock withheld on the vesting date approximates the Company's or an Affiliate's Minimum Statutory Tax Withholding Obligation and (c) in lieu of the withheld shares of Stock, remit cash to the United States Treasury and other applicable governmental authorities, on behalf of the Holder, in the amount of the Minimum Statutory Tax Withholding Obligation. The Company shall withhold only whole shares of Stock to satisfy its Minimum Statutory Tax Withholding Obligation. Where the Fair Market Value of the withheld shares of Stock does not equal the amount of the Minimum Statutory Tax Withholding Obligation, the Company shall withhold shares of Stock with a Fair Market Value slightly less than the amount of then Minimum Statutory Tax Withholding Obligation and the Holder must satisfy the remaining minimum withholding obligation in some other manner permitted under this Section 10.3. The withheld shares of Stock not made available for delivery by the Company shall be retained as treasury shares or will be cancelled and, in either case, the Holder's right, title and interest in such shares of Stock shall terminate. The Company shall have no obligation upon vesting or exercise of any Award or lapse of restrictions on Restricted Stock until the Company or an Affiliate has received payment sufficient to cover the Minimum Statutory Tax Withholding Obligation with respect to that vesting, exercise or lapse of restrictions. Neither the Company nor any Affiliate shall be obligated to advise a Holder of the existence of the tax or the amount which it will be required to withhold.

10.4 Written Agreement. Each Award shall be embodied in a written agreement or statement which shall be subject to the terms and conditions of the Plan. The Award Agreement shall be signed by a member of the Committee on behalf of the Committee and the Company or by an executive officer of the Company, other than the Holder, on behalf of the Company, and may be signed by the Holder to the extent required by the Committee. The Award Agreement may specify the effect of a Change in Control on the Award. The Award Agreement may contain any other provisions that the Committee in its discretion shall deem advisable which are not inconsistent with the terms and provisions of the Plan.

10.5 Indemnification of the Committee. The Company shall indemnify each present and future member of the Committee against, and each member of the Committee shall be entitled without further action on his or her part to indemnity from the Company for, all expenses (including attorney's fees, the amount of judgments and the amount of approved settlements made with a view to the curtailment of costs of litigation, other than amounts paid to the Company itself) reasonably incurred by such member in connection with or arising out of any action, suit or proceeding in which such member may be involved by reason of such member being or having been a member of the Committee, whether or not he or she continues to be a member of the Committee at the time of incurring the expenses, including, without limitation, matters as to which such member shall be finally adjudged in any action, suit or proceeding to have been negligent in the performance of such member's duty as a member of the Committee. However, this indemnity shall not include any expenses incurred by any member of the Committee in respect of matters as to which such member shall be finally adjudged in any action, suit or proceeding to have been guilty of gross negligence or willful misconduct in the performance of his duty as a member of the Committee. In addition, no right of indemnification under the Plan shall be available to or enforceable by any member of the Committee unless, within 60 days after institution of any action, suit or proceeding, such member shall have offered the Company, in writing, the opportunity to handle and defend same at its own expense. This right of indemnification shall inure to the benefit of the heirs, executors or administrators of each member of the Committee and shall be in addition to all other rights to which a member of the Committee may be entitled as a matter of law, contract or otherwise.

10.6 Gender and Number. If the context requires, words of one gender when used in the Plan shall include the other and words used in the singular or plural shall include the other.

10.7 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

10.8 Headings. Headings of Articles and Sections are included for convenience of reference only and do not constitute part of the Plan and shall not be used in construing the terms and provisions of the Plan.

10.9 Other Compensation Plans. The adoption of the Plan shall not affect any other option, incentive or other compensation or benefit plans in effect for the Company or any Affiliate, nor shall the Plan preclude the Company from establishing any other forms of incentive compensation arrangements for Employees.

10.10 Other Awards. The grant of an Award shall not confer upon the Holder the right to receive any future or other Awards under the Plan, whether or not Awards may be granted to similarly situated Holders, or the right to receive future Awards upon the same terms or conditions as previously granted.

10.11 **Successors.** All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

10.12 **Law Limitations/Governmental Approvals.** The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

10.13 **Delivery of Title.** The Company shall have no obligation to issue or deliver evidence of title for shares of Stock issued under the Plan prior to:

(a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and

(b) completion of any registration or other qualification of the Stock under any applicable national or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable.

10.14 **Inability to Obtain Authority.** The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares of Stock hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such shares of Stock as to which such requisite authority shall not have been obtained.

10.15 **No Fractional Shares.** No fractional shares of Stock shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, additional Awards, or other property shall be issued or paid in lieu of fractional shares of Stock or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

10.16 **Waiver of Jury.** Each Award Agreement shall specify that the Award recipient and the Company shall both waive a trial by jury of any or all issues arising in any action or proceeding between the parties or their successors, heirs and assigns, under or connected with the Award, the Plan, or any of the provisions of the Award Agreement or the Plan.

10.17 **Governing Law.** The provisions of the Plan and the rights of all persons claiming thereunder shall be construed, administered and governed under the laws of the State of Texas, without regard to principles of conflicts of law.

FORM OF RESTRICTED STOCK AWARD AGREEMENT
Cal Dive International, Inc.
2005 Long Term Incentive Plan

This Restricted Stock Award Agreement (the "Agreement") is made by and between Cal Dive International, Inc. ("Company") and _____ ("Employee") effective as of the ____ day of _____, 20__ ("Grant Date"), pursuant to the *Cal Dive International, Inc. 2005 Long Term Incentive Plan*, as amended (the "Plan"), which is incorporated by reference herein in its entirety.

WHEREAS, the Company desires to grant to the Employee the shares of equity securities specified herein (the "Shares"), subject to the terms and conditions of this Agreement; and

WHEREAS, the Employee desires to have the opportunity to hold Shares subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings indicated:

- (a) "Forfeiture Restrictions" shall mean any prohibitions and restrictions set forth herein with respect to the sale or other disposition of Shares issued to the Employee hereunder and the obligation to forfeit and surrender such shares to the Company.
- (b) "Restricted Shares" shall mean the Shares that are subject to the Forfeiture Restrictions under this Agreement.

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to such terms in the Plan.

2. **Grant of Restricted Shares.** Effective as of the Grant Date, the Company shall cause to be issued in the Employee's name the following Shares as Restricted Shares: ___ shares of the Company's common stock, no par value. The Company shall cause the transfer agent to register in book-entry form, in the Employee's name, the Restricted Shares, and any shares of Stock or rights to acquire shares of Stock distributed by the Company in respect of Restricted Shares during any Period of Restriction (the "Retained Distributions"). During the Period of Restriction such direct registration shall include the restriction that ownership of such Restricted Shares (and any Retained Distributions), and the enjoyment of all rights appurtenant thereto, are subject to the restrictions, terms, and conditions provided in the Plan and this Agreement. The Employee shall have the right to vote the Restricted Shares awarded to the Employee and to receive and retain all regular dividends paid in cash or property (other than Retained Distributions), and to exercise all other rights, powers and privileges of a holder of Shares, with respect to such Restricted Shares, with the exception that (a) the

Employee shall not be entitled to delivery of the Restricted Shares until the Forfeiture Restrictions applicable thereto shall have expired, (b) the Company shall retain custody of all Retained Distributions made or declared with respect to the Restricted Shares (and such Retained Distributions shall be subject to the same restrictions, terms and conditions as are applicable to the Restricted Shares) until such time, if ever, as the Restricted Shares with respect to which such Retained Distributions shall have been made, paid, or declared shall have become vested, and such Retained Distributions shall not bear interest or be segregated in separate accounts and (c) the Employee may not sell, assign, transfer, pledge, exchange, encumber, or dispose of the Restricted Shares or any Retained Distributions during the Period of Restriction. Upon direct registration of the Restricted Shares with such depository as may be designated by the Committee as a depository for safekeeping until the forfeiture of such Restricted Shares occurs or the Forfeiture Restrictions lapse, together with stock powers or other instruments of assignment, each endorsed in blank, which will permit transfer to the Company of all or any portion of the Restricted Shares and any securities constituting Retained Distributions which shall be forfeited in accordance with the Plan and this Agreement. In accepting the award of Shares set forth in this Agreement the Employee accepts and agrees to be bound by all the terms and conditions of the Plan and this Agreement.

3. **Transfer Restrictions.** The Shares granted hereby may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of, to the extent then subject to the Forfeiture Restrictions. Any such attempted sale, assignment, pledge, exchange, hypothecation, transfer, encumbrance or disposition in violation of this Agreement shall be void and the Company shall not be bound thereby. Further, the Shares granted hereby that are no longer subject to Forfeiture Restrictions may not be sold or otherwise disposed of in any manner which would constitute a violation of any applicable federal or state securities laws. The Employee also agrees (i) that the Company may refuse to cause the transfer of the Shares to be registered on the applicable stock transfer records if such proposed transfer would, in the opinion of counsel satisfactory to the Company, constitute a violation of any applicable securities law and (ii) that the Company may give related instructions to the transfer agent, if any, to stop registration of the transfer of the Shares.

4. **Vesting.** [To be determined by the Committee.]

5. **Capital Adjustments and Reorganizations.** The existence of the Restricted Shares shall not affect in any way the right or power of the Company or any company the stock of which is awarded pursuant to this Agreement to make or authorize any adjustment, recapitalization, reorganization or other change in its capital structure or its business, engage in any merger or consolidation, issue any debt or equity securities, dissolve or liquidate, or sell, lease, exchange or otherwise dispose of all or any part of its assets or business, or engage in any other corporate act or proceeding.

6. **Tax Withholding.** To the extent that the receipt of the Restricted Shares or the lapse of any Forfeiture Restrictions results in income to the Employee for federal, state or local income or employment tax purposes with respect to which the Company has a withholding obligation, the Employee shall deliver to the Company at the time of such receipt or lapse, as the case may be, such amount of money as the Company may require to meet its obligation under applicable tax laws or regulations, and, if the Employee fails to do so, the Company is authorized to withhold from the Shares granted hereby or from any cash or stock remuneration then or

thereafter payable to the Employee in any capacity any tax required to be withheld by reason of such resulting income.

7. **Employment Relationship.** For purposes of this Agreement, the Employee shall be considered to be in the employment of the Company and its Affiliates as long as the Employee has an employment relationship with the Company and its Affiliates. The Committee shall determine any questions as to whether and when there has been a termination of such employment relationship, and the cause of such termination, under the Plan and the Committee's determination shall be final and binding on all persons.

8. **Section 83(b) Election.** The Employee shall not exercise the election permitted under section 83(b) of the Internal Revenue Code of 1986, as amended, with respect to the Restricted Shares without the written approval of the Chief Financial Officer of the Company. If the Chief Financial Officer of the Company permits the election, the Employee shall timely pay the Company the amount necessary to satisfy the Company's attendant tax withholding obligations, if any.

9. **No Fractional Shares.** All provisions of this Agreement concern whole Shares. If the application of any provision hereunder would yield a fractional share, such fractional share shall be rounded down to the next whole share if it is less than 0.5 and rounded up to the next whole share if it is 0.5 or more.

10. **Not an Employment Agreement.** This Agreement is not an employment agreement, and no provision of this Agreement shall be construed or interpreted to create an employment relationship between the Employee and the Company and its Affiliates or guarantee the right to remain employed by the Company and its Affiliates for any specified term.

11. **Legend.** If the Employee is an officer or affiliate of the Company under the Securities Act of 1933, the Employee consents to the restriction that resale or other transfer of the Shares must be in accordance with such Act and all applicable rules thereunder.

12. **Notices.** Any notice, instruction, authorization, request or demand required hereunder shall be in writing, and shall be delivered either by personal delivery, by telegram, telex, telecopy or similar facsimile means, by certified or registered mail, return receipt requested, or by courier or delivery service, addressed to the Company at the then current address of the Company's Principal Corporate Office, and to the Employee at the Employee's address indicated beneath the Employee's signature on the execution page of this Agreement, or at such other address and number as a party shall have previously designated by written notice given to the other party in the manner hereinabove set forth. Notices shall be deemed given when received, if sent by facsimile means (confirmation of such receipt by confirmed facsimile transmission being deemed receipt of communications sent by facsimile means); and when delivered (or upon the date of attempted delivery where delivery is refused), if hand-delivered, sent by express courier or delivery service, or sent by certified or registered mail, return receipt requested.

13. **Amendment and Waiver.** This Agreement may be amended, modified or superseded only by written instrument executed by the Company and the Employee. Only a written instrument executed and delivered by the party waiving compliance hereof shall make any waiver of the terms or conditions. Any waiver granted by the Company shall be effective

only if executed and delivered by a duly authorized executive officer of the Company other than the Employee. The failure of any party at any time or times to require performance of any provisions hereof shall in no manner effect the right to enforce the same. No waiver by any party of any term or condition, or the breach of any term or condition contained in this Agreement, in one or more instances, shall be construed as a continuing waiver of any such condition or breach, a waiver of any other condition, or the breach of any other term or condition.

14. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. The invalidity of any provision of this Agreement shall not affect any other provision of this Agreement, which shall remain in full force and effect.

15. **Successors and Assigns.** Subject to the limitations which this Agreement imposes upon the transferability of the Shares granted hereby, this Agreement shall bind, be enforceable by and inure to the benefit of the Company and its successors and assigns, and to the Employee, the Employee's permitted assigns, executors, administrators, agents, legal and personal representatives.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original for all purposes but all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by an officer thereunto duly authorized, and the Employee has executed this Agreement, all effective as of the date first above written.

CAL DIVE INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

EMPLOYEE:

Name: _____
Address: _____

