

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

BUILD-A-BEAR WORKSHOP, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State of incorporation)

43-1883836
I.R.S. Employer Identification No.

1954 Innerbelt Business Center Drive
St. Louis, Missouri
(Address of Principal Executive Offices)

63114
(Zip Code)

BUILD-A-BEAR WORKSHOP, INC.
Second Amended and Restated 2004 Stock Incentive Plan

(Full title of the plan)

Eric Fencil
Chief Bearrister—General Counsel
Build-A-Bear Workshop®
1954 Innerbelt Business Center Dr.
St. Louis, Missouri 63114
(Name and address of agent for service)

(314) 423-8000 Ext. 5458
(Telephone number, including area code, of agent for service)

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per unit(1)	Proposed maximum aggregate offering price(1)	Amount of registration fee(2)
Common stock, par value \$0.01 per share	2,236,977 shares	\$ 4.16	\$ 9,305,824.32	\$ 519.27

- (1) Average of the high and low trading prices on the New York Stock Exchange on May 15, 2009, a date within five business days prior to the date of filing of this registration statement.
- (2) Because the exercise price of the stock options issuable under the plan is not currently known, the registration fee is calculated pursuant to Rules 457(c) and 457(h).

In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.

EXPLANATORY NOTE

On October 27, 2004, Build-A-Bear Workshop, Inc. (the "Registrant") filed a Registration Statement on Form S-8 (File No. 333-120012) (the "Initial Registration Statement") which registered 2,074,383 shares of the Registrant's common stock, \$0.01 par value (the "Common Stock") reserved for issuance under the 2004 Stock Incentive Plan (the "Plan"). On October 29, 2004, the Registrant filed a post-effective amendment to the Initial Registration Statement (File No. 333-120021) (the "Post-Effective Amendment") to incorporate additional documents by reference in connection with the Registrant's initial public offering. At the Registrant's 2009 Annual Meeting of Stockholders on May 14, 2009, the Registrant's shareholders approved and adopted an amendment to the Plan to increase the number of shares authorized for issuance under the Plan. By this Registration Statement, the Registrant hereby registers an additional 2,236,977 shares of the Registrant's Common Stock, authorized for issuance under the Plan as amended. In accordance with General Instruction E of Form S-8, the contents of the Initial Registration Statement and the Post-Effective Amendment are hereby incorporated by reference into this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by the Registrant with the Securities and Exchange Commission ("Commission") are hereby incorporated by reference into this Registration Statement and made a part hereof:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 3, 2009, and the portions of Registrant's Definitive Proxy Statement on Schedule 14A filed with the Commission on April 14, 2009 incorporated by reference into such Annual Report.
- (b) The Registrant's Quarterly Report on Form 10-Q for the quarter ended April 4, 2009.
- (c) The Registrant's Current Reports on Form 8-K, filed on March 23, 2009 and April 30, 2009.
- (d) All other reports filed by the Registrant or the Plan pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 since the end of the fiscal year covered by the Registrant document referred to in (a) above.
- (e) The description of the Registrant's Common Stock, which is contained in the Registration Statement on Form 8-A (File No. 001-32320) filed with the Commission on October 13, 2004.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effective date of this Registration Statement, prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

<u>/s/ JAMES M. GOULD</u> James M. Gould	Director	May 18, 2009
<u>/s/ LOUIS M. MUCCI</u> Louis M. Mucci	Director	May 18, 2009
<u>/s/ WILLIAM REISLER</u> William Reisler	Director	May 18, 2009
<u>/s/ COLEMAN PETERSON</u> Coleman Peterson	Director	May 18, 2009
<u>/s/ JOAN RYAN</u> Joan Ryan	Director	May 18, 2009
<u>/s/ KATHERINE SAVITT</u> Katherine Savitt	Director	May 18, 2009

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
5.1	Opinion of Armstrong Teasdale LLP
23.1	Consent of Armstrong Teasdale LLP (incorporated in Exhibit 5.1)
23.2	Consent of KPMG LLP
24.1	Power of Attorney (see Signature Page)
99.1	Build-A-Bear Workshop, Inc. Second Amended and Restated 2004 Stock Incentive Plan



May 18, 2009

Build-A-Bear Workshop, Inc.
1954 Innerbelt Business Center Drive
St. Louis, Missouri 63114

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

In our capacity as counsel for Build-A-Bear Workshop, Inc., a Delaware corporation (the "Company"), we have examined the Registration Statement on Form S-8 (the "Registration Statement") in the form as proposed to be filed by the Company with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, as amended, on or about May 18, 2009 relating to 2,236,977 additional shares of the Company's common stock, par value \$0.01 per share (the "Shares"), reserved for issuance pursuant to the Company's Second Amended and Restated 2004 Stock Incentive Plan (the "Plan").

In this connection, we have examined the Third Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company, each as amended to date, and originals, or copies certified to our satisfaction, of all pertinent records of the meetings of the directors and stockholders of the Company, the Registration Statement and such other documents relating to the Company as we have deemed material for the purposes of this opinion.

In our examination of the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, photostatic or other copies, the authenticity of the originals of any such documents and the legal competence of all signatories to such documents. It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is in effect. Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

Upon the basis of the foregoing, we are of the opinion that: (i) the Shares that may be issued in accordance with the Plan are duly and validly authorized, and (ii) when the Shares are issued, sold and paid for in accordance with the Plan, they will be duly and validly issued, fully paid and non-assessable. This opinion is limited to matters governed by the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Armstrong Teasdale LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
Build-A-Bear Workshop, Inc.:

We consent to the use of our reports dated March 19, 2009, with respect to the consolidated balance sheets of Build-A-Bear Workshop, Inc. and subsidiaries as of January 3, 2009 and December 29, 2007, and the related consolidated statements of income, stockholders' equity, and cash flows, for each of the years in the three-year period ended January 3, 2009, and the effectiveness of internal control over financial reporting as of January 3, 2009, incorporated herein by reference.

/s/ KPMG LLP
St. Louis, Missouri
May 18, 2009

**BUILD-A-BEAR WORKSHOP, INC.
SECOND AMENDED AND RESTATED
2004 STOCK INCENTIVE PLAN
as amended and restated effective March 17, 2009**

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BUILD-A-BEAR WORKSHOP, INC.
2004 STOCK INCENTIVE PLAN

WHEREAS, the Company previously adopted the Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan and subsequently amended and restated the Plan, effective July 26, 2006 (the "Plan"); and

WHEREAS, in accordance with Section 13 of the Plan, the Board of Directors of the Company, or any duly appointed Committee thereof (the "Board"), may at any time make such amendments or modifications to the Plan as it shall deem advisable; provided, however, that if and solely if such approval is required by applicable law, then to the extent such approval is so required, such amendment or modification shall be made subject to approval by the holders of Stock; and

WHEREAS, the Board deems it advisable to amend the Plan in certain respects and to completely restate the Plan effective March 17, 2009;

NOW, THEREFORE, the Plan is hereby amended and restated as follows:

1. Purpose of the Plan.

The purpose of the Plan is to provide the Company with a means to assist in recruiting, retaining and rewarding certain employees, directors and consultants and to motivate such individuals to exert their best efforts on behalf of the Employer by providing incentives through the granting of Awards. By granting Awards to such individuals, the Company expects that the interests of the recipients will be better aligned with those of the Employer.

2. Definitions.

Unless the context clearly indicates otherwise, the following capitalized terms shall have the meanings set forth below:

- A. "Act" means the Securities Exchange Act of 1934, as amended, or any successor thereto.
- B. "Award" means a grant under the Plan of an Option, Stock Appreciation Right, Cash-Based Award or Other Stock-Based Award.
- C. "Award Agreement" means an agreement entered into between the Employer and a Participant, or a certificate issued by the Employer as determined by the Committee, as such agreement or certificate may be amended from time to time, setting forth the terms and provisions applicable to Awards granted under the Plan.
- D. "Board" means the Board of Directors of the Company or any duly appointed Committee thereof.
- E. "Cash-Based Award" means an Award described in Section 8 as a Cash-Based Award.
- F. "Change in Control" means (i) the purchase or other acquisition (other than from the Company) by any person, entity or group of persons, within the meaning of Section 13(d) or 14(d) of the Act (excluding, for this purpose, the Company or its subsidiaries or any employee benefit plan of the Company or its subsidiaries), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of 20% or more of either the then-outstanding shares of common stock of the Company or the combined voting power of the Company's then-outstanding voting securities entitled to vote generally in the election of directors; or (ii) individuals who, as of the date hereof, constitute the Board (and, as of the date hereof, the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any person who becomes a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Act) shall be, for purposes of this Section, considered as though such person were a member of the Incumbent Board; (iii) a reorganization, merger or consolidation involving the Company, in each case with respect to which persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of, respectively, the common stock and the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated corporation's then-outstanding voting securities; or (iv) a liquidation or dissolution of the Company, or the sale of all or substantially all of the assets of the Company.
- G. "Code" means the Internal Revenue Code of 1986, as amended, or any successor thereto.
- H. "Committee" means the committee described in Section 5 or, in the absence of any such Committee, the Board.
- I. "Company" means Build-A-Bear Workshop, Inc., a Delaware corporation.
- J. "Employer" means the Company and any other entity directly or indirectly controlling, controlled by, or under common control with, the Company or any other entity designated by the Board in which the Company has an interest.

- K. "Fair Market Value" means (i) if the Stock is listed on any established stock exchange its Fair Market Value shall be the closing sales price for such stock on such exchange for the Trading Day applicable to the date of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable; or (ii) in the absence of an established market for the Stock, the Fair Market Value thereof shall be determined in good faith by the Board.

For these purposes, the determination date shall mean for employees receiving an Award in connection with an initial hire or a promotion within the Company, the determination date shall mean the Trading Date which is the first date of hire or promotion. For all other Awards, the determination date shall mean the Trading Date on which the Committee (or its delegate) approves the Award.

- L. "Incentive Stock Option" means a stock option which is an incentive stock option within the meaning of Code Section 422.
- M. "Non-qualified Stock Option" means a stock option which is not an Incentive Stock Option.
- N. "Officer" means an officer of the Company as defined in Rule 16a-1(f) of the Act.
- O. "Option" means both an Incentive Stock Option and a Non-qualified Stock Option.
- P. "Other Stock-Based Award" means an Award granted pursuant to Section 8 and described as an Other Stock-Based Award.
- Q. "Parent" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of the granting of the Option, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain, or such other meaning as may be hereafter ascribed to it in Code Section 424.
- R. "Participant" means an employee, director or consultant of the Employer who is selected by the Committee to receive an Award.
- S. "Performance Based Award" means an Award issued pursuant to the terms of Section 9.
- T. "Plan" means the Second Amended and Restated Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan.
- U. "Public Offering" means the creation of an active trading market in common Stock by the sale of common Stock to the public pursuant to a registration statement under the Securities Act of 1933.
- V. "Statutory Option Stock" means any stock acquired through the exercise of an Incentive Stock Option or an option granted under an employee stock purchase plan as defined in Code Section 423.
- W. "Stock" means the common stock, par value of \$0.01 per share, of the Company.
- X. "Stock Appreciation Right" means a stock appreciation right described in Section 7.
- Y. "Subsidiary" means any corporation or other legal entity (other than the Company) in an unbroken chain of corporations or other legal entities beginning with the Company if, at the time of granting an Award, each of the corporations or other legal entities other than the last corporation or other legal entity in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock or other equity in one of the other corporations or other legal entities in such chain, or such other meaning as may be hereafter ascribed to it in Code Section 424.
- Z. "Trading Date" means a day on which national stock exchanges and the Nasdaq System are open for trading.

3. Stock Subject to the Plan.

The number of shares of Stock allocated to the Plan and reserved to satisfy Awards under the Plan as of January 3, 2009 (the "Share Reserve") shall be an aggregate of Three Million Two Hundred Thirty Thousand (3,230,000) shares of Stock in addition to shares of Stock subject to awards outstanding under (i) this Plan; (ii) the Build-A-Bear Workshop, Inc. 2000 Stock Option Plan; and (iii) the Build-A-Bear Workshop, Inc. 2002 Stock Incentive Plan that may lapse, terminate, be forfeited or otherwise expire. Each share of Stock awarded pursuant to an Option shall reduce the Share Reserve by one (1) share. Each share of Stock subject to the exercised portion of a Stock Appreciation Right (whether the distribution upon exercise is made in cash, shares, or a combination of the two) shall reduce the Share Reserve by one (1) share. Each share of Stock awarded pursuant to Other Stock-Based Awards shall reduce the Share Reserve by 1.27 shares.

The maximum number of shares of Stock subject to Awards which are Options and Stock Appreciation Rights which may be granted during a calendar year to a Participant shall be Three Hundred Thousand (300,000). Notwithstanding the preceding, in no event shall the number of shares of Stock awarded to Participants under the Plan, when taken in combination with the number of outstanding shares of Stock previously issued by the Company, a Parent or Subsidiary to employees of the Company, a Parent or Subsidiary, exceed the limit specified in the Company Charter. The Company may, in its discretion, use shares held in the treasury or shares acquired on the public market, if applicable, in lieu of authorized but unissued shares. Any shares of Stock

which are used by a Participant as full or partial payment to the Company to satisfy a purchase price related to an Award shall not again be available for the purposes of the Plan. To the extent any shares subject to an Award are not delivered to a Participant because such shares are used to satisfy an applicable tax-withholding obligation, such withheld shares shall not again be available for the purposes of the Plan.

4. Administration.

The Plan shall be administered by the Committee. Subject to the express provisions of the Plan, the Committee shall have plenary authority, in its discretion, to determine the individuals to whom, and the time or times at which, Awards shall be granted and the number of shares, if applicable, to be subject to each Award. In making such determinations, the Committee may take into account the nature of services rendered by the respective individuals, their present and potential contributions to the Employer's success and such other factors as the Committee, in its discretion, shall deem relevant.

Subject to the express provisions of the Plan, the Committee shall also have plenary discretionary authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of the respective Award Agreements (which need not be identical), to waive or amend any provision hereof in any manner not adversely affecting the rights granted to the Participant by the express terms hereof and to make all other determinations necessary or advisable for the administration of the Plan; provided, however, that no Award granted hereunder may be repriced without approval by the stockholders of the Company. The Committee's determinations on the matters referred to in this Section 4 shall be conclusive, subject to the restrictions noted herein. Notwithstanding anything herein to the contrary, Chief Executive Bear and Chief Operating Officer Bear are specifically designated under the Plan to have plenary authority, in their discretion, as applicable, to also determine individuals, other than themselves or other Officers, to whom, and the time or times at which, Awards shall be granted and the number of shares, if applicable, subject to such Award.

5. Committee.

The Committee shall be comprised of directors appointed by the Board, which may from time to time appoint members of the Committee in substitution for members previously appointed and may fill vacancies, however caused, in the Committee. The Board shall select one of the Committee members as its Chairman, and shall hold its meetings at such times and places as it may determine. A majority of its members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members present at any meeting at which there is a quorum. Any decision or determination reduced to writing and signed by all of the members shall be fully as effective as if it had been made by a majority vote at a meeting duly called and held. The Committee may appoint a secretary, shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable. The Committee may, to the extent permitted by law, delegate its responsibilities and authority hereunder to an executive officer of the Company. All decisions by the Committee shall be made in the Committee's sole discretion and shall be final and binding on all persons having or claiming any interest in the Plan or in any Award. No person acting pursuant to the authority delegated by the Committee shall be liable for any action or determination relating to or under the Plan made in good faith.

6. Options.

The Committee, in its discretion, may grant Options which are Incentive Stock Options or Non-qualified Stock Options, as evidenced by the Award Agreement, and shall be subject to the foregoing and the following terms and conditions and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine:

- A. **Type of Option.** Incentive Stock Options may be granted to any individual classified by the Committee as an employee of the Company, a Parent or a Subsidiary. A Non-Qualified Stock Option may be granted to any individual selected by the Committee.
- B. **Option Prices.** The purchase price of the Stock under each Option shall not be less than 100% of the Fair Market Value of the Stock at the time of the granting of the Option; provided that, in the case of a Participant who owns more than 10% of the total combined voting power of all classes of stock of the Company, a Parent or a Subsidiary, the purchase price of the Stock under each Incentive Stock Option shall not be less than 110% of the Fair Market Value of the Stock on the date such Option is granted.
- C. **Exercise—Elections and Restrictions.** Options may be exercised by delivery to the Company of a written notice of exercise signed by the proper persons or by any other form of notice (including electronic notice) approval by the Committee together with payment in full as described in this Section 6(c).

The purchase price for an Option is to be paid in full upon the exercise of the Option, either (i) in cash, (ii) in the discretion of the Committee, by the tender to the Company (either actual or by attestation) of shares of Stock already owned by the Participant for a period of at least six months as of the date of tender and registered in his or her name, having a Fair Market Value equal to the cash exercise price of the Option being exercised, or (iii) in the discretion of the Committee, by any combination of the payment methods specified in clauses (i) and (ii) hereof; provided that, no shares of Statutory Option Stock may be tendered in exercise of an Incentive Stock Option unless (a) such shares have been held by the Participant for at least one year and (b) at least two years have elapsed since such Statutory Option Stock was granted; and provided further that, unless otherwise specifically provided in an Award Agreement, until such time as a Public Offering shall occur, the only method of payment of the purchase price for an Option shall be cash. The Committee may, after consideration of any potential accounting consequences, cause the Company to loan the option price to the Participant or to guaranty that any shares to be issued will be delivered to a broker or lender in order to allow the Participant to borrow the option price. Unless otherwise provided in the Award Agreement, at the request of a Participant, the Committee may, to the extent permissible under applicable state law, in its sole discretion, allow the Participant to defer payment in full of the option price at the time the Participant provides written notice of exercise provided that the notice of exercise directs that the certificate or certificates for the shares of Stock for which the Option is exercised be delivered to a licensed broker acceptable to the Company as the agent for the individual exercising the Option and, at the time such certificate or certificates are delivered, the broker tenders to the Company cash (or cash equivalents acceptable to the Company) equal to the option price for the shares of Stock purchased pursuant to the exercise of the Option plus the amount (if any) of any withholding obligations on the part of the Company. The proceeds of sale of Stock subject to the Option are to be added to the general funds of the Company or to the shares of the Stock held in its Treasury, and used for its corporate purposes as the Board shall determine, subject to the provisions of this Plan.

- D. **Option Terms.** The term of each Option shall not be more than ten (10) years from the date of granting thereof or such shorter period as is prescribed in the Award Agreement; provided that, in the case of a Participant who owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, a Parent or a Subsidiary, the term of any Incentive Stock Option shall not be more than five (5) years from the date of granting thereof or such shorter period as prescribed in the Award Agreement. Within such limit, Options will be exercisable at such time or times, and subject to such terms, restrictions and conditions, as the Committee shall, in each instance, approve, which need not be uniform for all Participants. To the extent Options are subject to restrictions, Options shall vest in whole shares only, and the holder of an Option shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement. The holder of an Option shall have none of the rights of a stockholder with respect to the shares subject to Option until such shares shall be issued to him or her upon the exercise of his or her Option. Upon exercise of an Option, the Committee shall withhold a sufficient number of shares to satisfy the Company's minimum required statutory withholding obligations for any taxes incurred as a result of such exercise (based on the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes); provided that, in lieu of all or part of such withholding, the Participant may pay an equivalent amount of cash to the Company.
- E. **Successive Option Grants.** As determined by the Committee, successive option grants may be made to any Participant under the Plan.
- F. **Additional Incentive Stock Option Requirements.**
- (1) **Grant Limits.** The maximum aggregate Fair Market Value (determined at the time an Option is granted) of the Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company, a Parent and a Subsidiary) shall not exceed \$100,000.
 - (2) **Notice of Disposal.** A Participant who disposes of Stock acquired upon the exercise of an Incentive Stock Option either (i) within two years after the date of grant of such Incentive Stock Option or (ii) within one year after the transfer of such shares to the Participant upon exercise, shall notify the Company of such disposition and of the amount realized upon such disposition.
 - (3) **Termination of Participant's Employment.** The holder of any Option issued hereunder must exercise the Option prior to his or her termination of employment, except that if the employment of a Participant terminates with the consent and approval of his or her Employer, the Committee may, in its absolute discretion, permit the Participant to exercise his or her Option, to the extent that he or she was entitled to exercise it at the date of such termination of employment, at any time within three (3) months as approved by the Committee after such termination, but not after ten (10) years (or five (5) years, if applicable) from the date of the granting thereof. Notwithstanding the preceding, the Committee may, in a Participant's Award Agreement, afford a Participant who terminates employment other than for cause, the right to exercise his or her Option, to the extent that he or she was entitled to exercise it at such date of termination of employment, at any time within three (3) months as approved by the Committee after such termination, but not after ten (10) years (or five (5) years, if applicable) from the date of granting thereof.

(4) **Death of Participant.** In the event of the death of a Participant during the term of an Award Agreement and while he or she is employed by the Company (or its Parent or a Subsidiary), or within three (3) months after the termination of his or her employment other than for cause, any outstanding Option shall become fully vested (if not already fully vested) and may be exercised by a legatee or legatees of the Participant under his or her last will, or by his or her personal representatives or distributees, at any time within a period of one year after his or her death, but not after ten (10) years from the date of grant as specified in the Award Agreement; provided, however, that if such Option is subject to vesting conditions other than the passage of time, the provisions of this paragraph shall apply only if such other vesting conditions have been satisfied as of the date of the Participant's death. The Committee may, in any Award Agreement, provide additional provisions for the exercise of an Option after the death of a Participant.

G. **Deferral of Gain on a Non-qualified Stock Option.** In accordance with the terms of the applicable non-qualified deferred compensation plan, if any, in which a Participant is eligible to participate, a Participant may elect to defer any gain realized upon the exercise of a Non-qualified Stock Option. The election to defer the gain must be made in accordance with the applicable non-qualified deferred compensation plan.

7. Stock Appreciation Rights.

A. **Grant Terms.** The Committee may grant a Stock Appreciation Right independent of an Option or in connection with an Option or a portion thereof. A Stock Appreciation Right granted in connection with an Option or a portion thereof shall cover the same shares of Stock covered by the Option, or a lesser number as the Committee may determine. A Stock Appreciation Right shall be subject to the same terms and conditions as an Option, and any additional limitations, terms or conditions set forth in this Section 7 or the Award Agreement.

B. **Exercise Terms.** The exercise price per share of Stock of a Stock Appreciation Right granted independent of an Option shall not be less than 100% of the Fair Market Value of the Stock at the time of the granting of the Stock Appreciation Right. A Stock Appreciation Right granted independent of an Option shall entitle the Participant upon exercise to a payment from the Company in an amount equal to the excess of the Fair Market Value on the exercise date of a share of Stock over the exercise price per share of Stock, times the number of Stock Appreciation Rights exercised. A Stock Appreciation Right granted in connection with an Option shall entitle the Participant to surrender an unexercised Option (or portion thereof) and to receive in exchange an amount equal to the excess of the Fair Market Value on the exercise date of a share of Stock over the exercise price per share for the Option, times the number of shares covered by the Option (or portion thereof) which is surrendered. Payment may be made, in the discretion of the Committee, in (i) Stock, (ii) cash or (iii) any combination of Stock and cash. Cash shall be paid for fractional shares of Stock upon the exercise of a Stock Appreciation Right. The term of each Stock Appreciation Right shall not be more than ten (10) years from the date of granting thereof or such shorter period as is prescribed in the Award Agreement.

C. **Limitations.** The Committee may impose such conditions upon the exercisability or transferability of Stock Appreciation Rights as it determines in its sole discretion. To the extent Stock Appreciation Rights are subject to restrictions, Stock Appreciation Rights shall vest in whole shares only, and the holder of a Stock Appreciation Right shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement.

8. Other Stock-Based Awards and Cash-Based Awards.

The Committee may, in its sole discretion, grant Awards of Stock, restricted Stock and other Awards that are valued in whole or in part by reference to the Fair Market Value of Stock. These Awards shall collectively be referred to herein as Other Stock-Based Awards. The Committee may also, in its sole discretion, grant Cash-Based Awards, which shall have a value as may be determined by the Committee. Other Stock-Based Awards shall be in such form, and dependent on such conditions, as the Committee shall determine, including, but not limited to, the right to receive one or more shares of Stock (or the cash-equivalent thereof) upon the completion of a specified period of service, the occurrence of an event or the attainment of performance objectives. Other Stock-Based Awards and Cash-Based Awards may be granted with or in addition to other Awards. Subject to the other terms of the Plan, Other Stock-Based Awards and Cash-Based Awards may be granted to such Participants in such amounts and upon such terms, restrictions and conditions, and at any time and from time to time, as shall be determined by the Committee and set forth in an Award Agreement. To the extent Other Stock-Based Awards are subject to restrictions, Other Stock-Based Awards shall vest in whole shares only, and the holder of an Other Stock-Based Award shall not be deemed vested in any fractional share regardless of anything to the contrary in any Award Agreement.

9. Performance-Based Awards.

To the extent applicable, the Committee may, in its sole and absolute discretion, determine that certain Awards, including Other Stock-Based Awards and/or Cash-Based Awards, should be subject to such requirements so that they are deductible by the Employer under Code Section 162(m), or any successor thereto. If the Committee so determines, such Awards shall be considered Performance-Based Awards subject to the terms of this Section 9, as provided in the Award Agreement. A Performance-Based Award shall be granted by the Committee in a manner to satisfy the requirements of Code Section 162(m) and the regulations thereunder. The performance measures to be used for purposes of a Performance-Based Award shall be chosen by the Committee, in its sole and absolute discretion, from among the following: earnings per share of Stock; book value per share of Stock; net income (before or after taxes); operating income; operating income before depreciation and amortization; return on stockholders' equity; return on invested capital, assets or equity; cash flow return on investments which equals net cash flows divided by owners' equity; earnings before interest or taxes; gross revenues or revenue growth; sales; market share; expense management; improvements in capital structure; profit margins; Stock price; total stockholder return; free cash flow; or working capital. The performance measures may relate to the Company, a Parent, a Subsidiary, an Employer or one or more units of such an entity.

The Committee shall determine whether, with respect to a performance period, the applicable performance goals have been met with respect to an Award and, if they have, to so certify and ascertain the amount of the applicable Performance-Based Award. The Committee shall have the discretion to adjust Performance-Based Awards downward.

An Award shall be a Performance-Based Award only if the Committee described in Section 5 consists solely of two or more Outside Directors within the meaning of Treas. Reg. Section 1.162-27(e)(3) or any successor thereto.

10. Nontransferability of Awards.

Unless otherwise determined by the Committee and expressly set forth in an Award Agreement, an Award granted under the Plan and all rights thereunder shall, by its terms, be non-transferable, nonassignable and not subject to encumbrance in any manner otherwise than by will or the laws of descent and distribution and an Award may be exercised, if applicable, during the lifetime of the Participant thereof, only by the Participant or his or her guardian or legal representative. Notwithstanding the above, the Committee may not provide in an Award Agreement that an Incentive Stock Option is transferable. Any attempted assignment, transfer, mortgage, pledge or encumbrance except as herein authorized, shall be void and of no effect.

11. Investment Purpose.

If deemed advisable by the Committee, each Award under the Plan shall be awarded only on the condition that all purchases of Stock thereunder shall be for investment purposes, and not with a view to resale or distribution, except that the Committee may make such provision with respect to Awards granted under this Plan as it deems necessary or advisable for the release of such condition upon the registration with the Securities and Exchange Commission of Stock subject to the Award, or upon the happening of any other contingency warranting the release of such condition.

If deemed advisable by the Committee, the certificates evidencing the shares acquired by the Participant pursuant to this Plan may bear a restrictive legend, if appropriate, indicating that the shares have not been registered under said Act and are subject to restrictions on the transfer thereof, which legend may be in the following form (or such other form as the Company shall determine to be proper), to-wit:

"The shares represented by this certificate have not been registered under the Securities Act of 1933, but have been issued or transferred to the registered owner pursuant to the exemption afforded by Section 4(2) of said Act. No transfer or assignment of these shares by the registered owner shall be valid or effective, and the issuer of these shares shall not be required to give any effect to any transfer or attempted transfer of these shares, including without limitation, a transfer by operation of law, unless (a) the issuer shall have received an opinion of its counsel that the shares may be transferred without requirement of registration under said Act, or (b) there shall have been delivered to the issuer a 'no-action' letter from the staff of the Securities and Exchange Commission, or (c) the shares are registered under said Act."

In addition to the restrictions described above, the Participant may not sell, pledge, transfer, donate, assign or otherwise dispose of (collectively, "transfer"), whether voluntarily or by operation of law, any shares of Stock acquired pursuant to the Plan except as provided in this Section 11.

A. Right of First Refusal.

- (1) If the Participant intends to transfer any shares of Stock pursuant to a bona fide purchase offer of an offeror who has agreed to be bound by transfer and buy/sell restrictions identical to those to which the Participant is subject ("Offeror"), the Participant shall deliver to the Company a written notice ("Notice") of such intention to transfer such shares, setting forth in reasonable detail: (i) the proposed price, (ii) the number of shares proposed to be transferred, (iii) the other terms and conditions of the proposed transfer of such shares, (iv) an offer to sell the shares to

the Company as provided herein and (v) the identity of the Offeror. The shares proposed to be transferred are hereinafter referred to as the "Offered Shares."

- (2) The Company may elect to purchase all (but not less than all) of the Offered Shares at any time during the thirty (30) day period following its receipt of the Notice. The Company shall be entitled to purchase the Offered Shares from the Participant at the same price and on the same terms and conditions as those pursuant to which the Participant proposes to transfer the Offered Shares, as described in the Notice. If the Company fails to respond to such offer within the 30-day period, it shall be deemed to have rejected the offer.
 - (3) Unless the Participant and the Company otherwise agree, the closing of the purchase of the Offered Shares shall take place at the principal offices of the Company at 10:00 a.m. on the tenth day (or if such day is not a business day on the next business day) after the expiration of the 30-day period. At the closing, the Participant shall tender the Offered Shares, together with appropriate instruments of transfer endorsed to the Company, and the Company shall tender a certified check, cashier's check or a wire transfer of immediately available funds in the amount of the purchase price therefore.
 - (4) If the Offered Shares are not purchased by the Company pursuant to this Section 11, the Participant shall be entitled to sell all of the Offered Shares to the Offeror at the price and on the terms and conditions specified in the Notice, provided that such sale is consummated within one-hundred twenty (120) days from the date the Notice is delivered to the Company. For any sale of shares after such one-hundred twenty (120) day period, the Participant shall give a new notice which shall reinstate the rights of the Company set forth in this Section 11 to purchase the Offered Shares.
- B. **Take-Along Rights.** If an offeror desires to purchase all of the outstanding shares of Stock and if the owners of at least 50% of the outstanding shares desire to make such sale, the Participant agrees to sell all of his or her shares to such offeror on the terms and conditions approved by the owners of at least 50% of the outstanding shares.
- C. **Effect of Prohibited Transfer.** If any transfer of shares is made or attempted by a Participant other than in accordance with the terms of this Plan and the Award Agreement, the Company may refuse for any purpose to recognize any transferee who receives shares and any such transferee shall have no right to claim or retain any dividends on such shares which were paid or become payable subsequent to the date on which the prohibited transfer was made or attempted. In addition to any other legal or equitable rights that it may have, the Company may enforce its rights by specific performance to the extent permitted by law.
- D. **Buy-Back Rights.** If the Participant terminates employment for any reason, the Participant must, upon request by the Committee, sell his or her shares of Stock to the Company at a price equal to the Fair Market Value, as defined in the Plan, of such shares of Stock on the date of such sale. The Company shall exercise the buy-back right with respect to a Participant no later than twelve (12) months after the date the Participant terminates employment.
- E. **Exceptions to Transfer Restrictions.** Notwithstanding anything to the contrary in this Plan and Award Agreement, the restrictions upon transfer set forth in this Section 11 shall not apply to a transfer of shares of Stock by a Participant to any of (i) the Participant's heirs, executors, administrators or other personal representative upon death of the Participant or (ii) the Participant's spouse, children or grandchildren, or a trust for their or the Participant's benefit; provided that, the restrictions on transfer in this Section 11 shall continue to apply to the shares received by any such permitted transferee, including without limitation that such permitted transferee shall not again transfer such shares except in accordance with this Section 11.
- F. **Termination of Transfer Restrictions.** The restrictions described in Sections 11.A through 11.E shall apply except as provided otherwise in the Award Agreement and shall terminate on the earlier of a Public Offering of shares of Stock or mutual agreement of the parties to an Award Agreement.

12. Adjustments Upon Changes in Capitalization or Corporation Acquisitions.

Notwithstanding any other provisions of the Plan, unless otherwise provided in the Award Agreement, the number and class of shares subject to each outstanding Award and the exercise prices, if applicable, shall be adjusted, to the same pro rata number of shares and price as in the original Award Agreement, in the event of changes in the outstanding Stock by reason of stock dividends, stock splits, reverse stock splits, recapitalization, mergers, consolidations, statutory share exchange, sale of all or substantially all assets, split-ups, combinations or exchanges of shares and the like, and, in the event of any such change in the outstanding Stock, the aggregate number and class of shares available under the Plan and the maximum number of shares as to which Awards may be granted to an individual shall be appropriately adjusted by the Committee, whose determination shall be conclusive. In the event the Company, a Parent or a Subsidiary enters into a transaction described in Section 424(a) of the Code with any other corporation, the Committee shall, unless otherwise provided in the Award Agreement, grant options to employees

or former employees of such corporation in substitution of options previously granted to them upon such terms and conditions as shall be necessary to qualify such grant as a substitution described in Section 424(a) of the Code.

In the event of a Change in Control, notwithstanding any other provisions of the Plan or Award Agreement to the contrary, the Committee may, in its sole discretion, provide for:

- (1) Accelerated vesting of any outstanding Awards that are otherwise unexercisable or unvested as of a date selected by the Committee;
- (2) Termination of an Award upon the consummation of the Change in Control in exchange for the payment of a cash amount determined at the discretion of the Committee but intended to provide the Participant with the difference between the Stock subject to the vested portion of the Award and the exercise price; and/or
- (3) Issuance of substitute Awards to substantially preserve the terms of any Awards previously granted under the Plan, which may be with respect to securities of a successor issuer.

13. Amendment and Termination.

The Board may at any time terminate the Plan, or make such amendments or modifications to the Plan as it shall deem advisable; provided, however, that if and solely if such approval is required by applicable law, then to the extent such approval is so required, such amendment or modification shall be made subject to approval by the holders of Stock. No termination or amendment of the Plan may, without the consent of the Participant to whom any Award shall theretofore have been granted, adversely affect the rights of such Participant under such Award.

Without limiting the generality of the foregoing, to the extent applicable, notwithstanding anything herein to the contrary, this Plan and Awards issued hereunder shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the effective date of this Plan. Notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any amounts payable hereunder will be taxable to a Participant under Section 409A of the Code and related Department of Treasury guidance, prior to payment to such Participant of such amount, the Company may (i) adopt such amendments to the Plan and Awards and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Committee determines necessary or appropriate to preserve the intended tax treatment of the benefits provided by the Plan and Awards hereunder and/or (b) take such other actions as the Committee determines necessary or appropriate to avoid the imposition of and additional tax under Section 409A of the Code.

14. Effectiveness of the Plan.

The Plan became effective upon adoption by the Board, subject, however, to its further approval by the stockholders of the Company given within twelve (12) months of the date the Plan is adopted by the Board at a regular meeting of the stockholders or at a special meeting duly called and held for such purpose. Grants of Awards may be made prior to such stockholder approval but all Award grants made prior to stockholder approval shall be subject to the obtaining of such approval and if such approval is not obtained, such Awards shall not be effective for any purpose. This amendment and restatement shall become effective upon adoption by the Board.

15. Time of Granting of an Award.

An Award grant under the Plan shall be deemed to be made on the date on which the Committee, by formal action of its members duly recorded in the records thereof, makes an Award to a Participant (but in no event prior to the adoption of the Plan by the Board); provided that, such Award is evidenced by a written Award Agreement duly executed on behalf of the Company and on behalf of the Participant, if applicable, within a reasonable time after the date of the Committee action. Notwithstanding the foregoing, an Award granted under the Plan by Chief Executive Bear or Chief Operating Officer Bear shall be deemed to be the determination date described above in Section 2(k).

16. Term of Plan.

This amendment and restatement of the Plan shall terminate ten (10) years after the date on which it was first approved and adopted by the Board and no Award shall be granted hereunder after the expiration of such ten-year period. Awards outstanding at the termination of the Plan shall continue in accordance with their terms and shall not be affected by such termination.

17. Severability.

Any word, phrase, clause, sentence or other provision herein which violates or is prohibited by any applicable law, court decree or public policy shall be modified as necessary to avoid the violation or prohibition and so as to make this Plan and any Award Agreement enforceable as fully as possible under applicable law, and if such cannot be so modified, the same shall be ineffective to the extent of such violation or prohibition without invalidating or affecting the remaining provisions herein.

18. Non-Waiver of Rights.

The Company's failure to enforce at any time any of the provisions of this Plan or any Award Agreement or to require at any time performance by the Participant of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Plan, any Award Agreement, or any part hereof, or the right of the Company thereafter to enforce each and every provision in accordance with the terms of this Plan and any Award Agreement.

19. Assignment.

Any Award Agreement shall be freely assignable by the Company and shall inure to the benefit of, and be binding upon, the Company, its successors and assigns and/or any other entity which shall succeed to the business presently being conducted by the Company.

20. No Right To Continued Employment or Other Status.

Nothing in the Plan or in any Award granted pursuant to the Plan shall be considered or construed as creating a contract of employment or any other relationship for any specified period of time or shall confer on any individual any right to continue in the employ of the Employer or continue any other relationship with the Company. The Employer and the Company expressly reserve the right at any time to dismiss or otherwise terminate its relationship, whether employment or otherwise, with a Participant free from any liability or claim under the Plan, except as expressly provided in the applicable Award Agreement.

21. Choice of Law.

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law.

22. Awards to Employees of Non-United States Subsidiaries.

The terms of an Award granted to an employee of a non-United States subsidiary of the Company shall be governed by the otherwise applicable provisions of the Plan, unless such provisions are modified by sub-plans or special rules adopted by the Committee to modify the terms of the Plan as applied to employees of such non-United States subsidiary who are resident outside the United States. Such sub-plans or special rules shall be designed to achieve desired tax or other objectives in particular jurisdictions outside the United States or achieve other business objectives in the determination of the Committee. The Committee may, in its sole discretion, amend the terms of the Plan or Awards with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for a Participant, the Company or a Subsidiary.

23. Section 409A.

Notwithstanding other provisions of the Plan or any Award Agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under this Plan in a manner that would result in the imposition of an additional tax under Section 409A of the Code upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award Agreement, as the case may be, without causing the Participant holding such Award to be subject to taxation under Section 409A of the Code, the Company will make such payment on the first day that would not result in the Participant incurring any tax liability under Section 409A of the Code; which, if the Participant is a "specified employee" within the meaning of the Section 409A, shall be the first day following the six-month period beginning on the date of Participant's termination of employment. The Company shall use commercially reasonable efforts to implement the provisions of this Section 23 in good faith; provided that neither the Company, the Committee nor any of the Company's employees, directors or representatives shall have any liability to Participants with respect to this Section 23.

The foregoing Plan, as amended and restated, was approved and adopted by the Board on March 17, 2009.

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Maxine Clark