

Premier, Inc.
Form 4
January 29, 2015

FORM 4

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

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
DAVIDS JODY R

(Last) (First) (Middle)

13034 BALLANTYNE CORPORATE PLACE

(Street)

CHARLOTTE, NC 28277

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
Premier, Inc. [PINC]

3. Date of Earliest Transaction (Month/Day/Year)
01/29/2015

4. If Amendment, Date Original Filed (Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing (Check Applicable Line)

Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price
Class A Common Stock	01/29/2015		A		3,049	A	\$ 0 3,049
						D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

—
\$
—

The Company had Federal and state net operating loss carryforwards of approximately \$12,024 and \$3,229, respectively, available to offset future taxable income, expiring at various times from December 31, 2018 through December 31, 2037. In accordance with Section 382 of the Internal Revenue Code, the future utilization of the Company's net operating loss to offset future taxable income may be subject to an annual limitation as a result of ownership changes that may have occurred previously or that could occur in the future. Management believes that such an ownership change may have occurred during the fourth quarter of 2017. The Company will be completing a Section 382 analysis of the Company's net operating loss and the amount of the net operating loss could be significantly less. The Company has not yet determined whether such an ownership change has occurred; however, the Company will be completing a Section 382 analysis regarding the limitation of the net operating loss.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences representing net future deductible amounts become deductible. Management considers the scheduled reversal of deferred tax assets, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available and due to the last five years significant losses there is substantial doubt related to the Company's ability to utilize its deferred tax assets, the Company recorded a full valuation allowance of the deferred tax asset. For the year ended December 31, 2017, the valuation allowance has increased by \$1,161.

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DPW HOLDINGS, INC. AND SUBSIDIARIES
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
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The 2014 through 2017 tax years remain open to examination by the Internal Revenue Service (“IRS”) and the 2013 through 2017 tax years remain open to examination by the California Franchise Tax Board (“FTB”). The IRS and FTB have the authority to examine those tax years until the applicable statute of limitations expires.

As of December 31, 2017, the Company’s foreign subsidiary had accumulated losses for income tax purposes in the amount of approximately \$1,403. All of the Company’s international accumulated losses were generated in the United Kingdom, which has a statutory tax rate of 20%. These net operating losses may be carried forward and offset against taxable income in the future for an indefinite period. The Company has not recognized a U.S. deferred income tax asset on non-U.S. losses because the Company plans to indefinitely reinvest such earnings outside the U.S. Remittances of non-U.S. earnings, if any, are based on estimates and judgments of projected cash flow needs, as well as the working capital and investment requirements of the Company’s non-U.S. and U.S. operations. Material changes in the Company’s estimates of cash, working capital, and investment needs could require repatriation of indefinitely reinvested non-U.S. earnings, which would be subject to U.S. income taxes and applicable non-U.S. income and withholding taxes.

The net income tax benefit consists of the following:

	2017	2016
Current		
Foreign	\$ —	\$ 20
Federal	78	—
State	—	—
Income tax (benefit)	\$ 78	\$ 20

The Company’s effective tax rates were (0.8%) and (1.7%) for the years ended December 31, 2017 and 2016, respectively. During the year ended December 31, 2017, the effective tax rate differed from the U.S. federal statutory rate primarily due to the change in the valuation allowance and the effect of changes in tax rates in future periods. The reconciliation of income tax attributable to operations computed at the U.S. Federal statutory income tax rate of 34% to income tax expense is as follows:

	2017	2016
Tax benefit at U.S. Federal statutory tax rate	(34.0%)	(34.0%)
Increase (decrease) in tax rate resulting from:		
Effect of change in tax rates	12.0 %	—
Stock compensation expense	1.9 %	12.1 %
Taxes in respect of prior years	—	9.1 %
Increase in valuation allowance	17.0 %	8.3 %
Nondeductible meals & entertainment expense and other	6.1 %	4.4 %
State taxes, net of federal benefit	(4.5 %)	0.3 %
Foreign rate differential	0.7 %	(0.2 %)
Foreign R&D credit	—	(1.7 %)
Effective tax rate	0.8 %	(1.7 %)

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Explanation of Responses:

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The Company accounts for uncertain tax positions in accordance with ASC No. 740-10-25. ASC No. 740-10-25 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC No. 740-10-25, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. To the extent that the final tax outcome of these matters is different than the amount recorded, such differences impact income tax expense in the period in which such determination is made. Interest and penalties, if any, related to accrued liabilities for potential tax assessments are included in income tax expense. ASC No. 740-10-25 also requires management to evaluate tax positions taken by the Company and recognize a liability if the Company has taken uncertain tax positions that more likely than not would not be sustained upon examination by applicable taxing authorities. Management of the Company has evaluated tax positions taken by the Company and has concluded that as of December 31, 2017 and 2016, there are no uncertain tax positions taken, or expected to be taken, that would require recognition of a liability that would require disclosure in the financial statements.

25. RELATED PARTY TRANSACTION

In anticipation of the acquisition of MTIX Ltd., an advanced materials and processing technology company located in Huddersfield, West Yorkshire, UK (“MTIX”) by AVL P and the expectation of future business generated by the Company from a strategic investment into AVL P, on October 5, 2016, November 30, 2016, and February 22, 2017, the Company entered into three 12% Convertible Promissory Notes with AVL P (the “AVL P Notes”) in the principal amount of \$525 each. The AVL P Notes included a 5% original issue discount, resulting in net loans to AVL P of \$1,500 and an original issue discount of \$75. The AVL P notes accrued interest at 12% per annum and were due on a. or before two years from the origination dates of each note. The Company had the right, at its option, to convert all or any portion of the principal and accrued interest into shares of common stock of AVL P at approximately \$0.74536 per share. Subject to adjustment, the AVL P Notes, inclusive of the original issue discount, were convertible into 2,113,086 shares of the Company’s common stock. During the period from March 29, 2017 to August 16, 2017, the Company funded \$1,809 in excess of the \$1,500 net loan amount required pursuant to the terms of the AVL P Notes

On September 6, 2017, the Company and AVL P entered into a Loan and Security Agreement (“AVL P Loan Agreement”) with an effective date of August 21, 2017 pursuant to which the Company will provide Avalanche a non-revolving credit facility of up to \$5,000, inclusive of prior amounts loaned to AVL P, for a period ending on August 21, 2019, subject to the terms and conditions stated in the Loan Agreement, including that the Company having available funds to grant such credit.

In consideration of entering into the AVL P Loan Agreement, the Company and AVL P cancelled the AVL P Notes and consolidated the AVL P Notes and prior advances totaling \$3,309 plus original issue discount of \$165 and issued a new Convertible Promissory Note in the aggregate principal amount of \$3,474 (the “New Note”) that is convertible into shares of AVL P at a conversion price of \$0.50 per share. The New Note is due in two years and accrues interest at 12% per annum on the principal amount. Prior interest accrued under the AVL P Notes and advances will continue to be an obligation of AVL P. The New Note contains standard events of defaults. In addition, concurrent to issuing the New Note, AVL P issued to the Company a five-year Warrant to purchase 6,948,800 shares of AVL P Common Stock

at \$0.50 per share. Further, the Company made additional advances under the AVLPL Loan Agreement in the aggregate amount of \$649,820. At December 31, 2017, in aggregate, the Company has provided loans to AVLPL in the principal amount \$4,124,220 and AVLPL has issued to the Company warrants to purchase 8,248,440 shares of AVLPL common stock. Future advances under the AVLPL Loan Agreement, if any, will be evidenced by a convertible promissory containing a conversion price feature at \$0.50 per share and warrant with an exercise price of \$0.50 per share. Further, under the terms of the AVLPL Loan Agreement, any notes issued by AVLPL are secured by the assets of AVLPL.

During the years ended December 31, 2017 and 2016, the Company also acquired in the open market 221,333 shares of AVLPL common stock for \$192 and 250,900 shares of AVLPL common stock for \$85, respectively. At December 31, 2017, the closing market price of AVLPL's common stock was \$1.75. The Company has determined that its investment in AVLPL marketable equity securities are accounted for pursuant to the fair value method and based upon the closing market price of common stock at December 31, 2017, the Company has recognized an unrealized gain of \$550.

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Philou is AVL P's controlling shareholder. Mr. Ault is Chairman of AVL P's Board of Directors and the Executive Chairman of the Company's Board of Directors. Mr. William B. Horne is the Chief Financial Officer of AVL P and also the audit committee chairman of the Company.

On October 24, 2016, AVL P entered into a letter of intent to acquire MTIX and made an initial payment of \$50 towards the purchase. On August 22, 2017, pursuant to the terms of a Share Exchange Agreement dated as of March 3, 2017, and as amended on July 13, 2017 and August 21, 2017 (the "Exchange Agreement") with MTIX Limited, a company formed under the laws of England and Wales ("MTIX") and the three (3) shareholders of MTIX (the "Sellers"), AVL P completed its acquisition of MTIX. Upon the terms and subject to the conditions set forth in the Exchange Agreement, AVL P acquired MTIX from the Sellers through the transfer of all issued and outstanding ordinary shares of MTIX (the "MTIX Shares") by the Sellers to AVL P in exchange (the "Exchange") for the issuance by AVL P of: (a) 7% secured convertible promissory notes (individually, a "Note" and collectively, the "Notes") in the aggregate principal face amount of \$9,500 to the Sellers in pro rata amounts commensurate with their current respective ownership percentages of MTIX's ordinary shares, (b) (i) \$500 in cash, \$50, of which was paid on October 26, 2016, and (ii) 100,000 shares of AVL P's newly designated shares of Class B Convertible Preferred Stock (the "Class B Shares") to the principal shareholder of MTIX (the "Majority Shareholder").

On the closing date, the fully-diluted AVL P shares shall be approximately 52 million shares of common stock, assuming that (i) the MTIX promissory notes are convertible into shares of AVL P common stock at a conversion price of \$0.50 per share, (ii) the shares of AVL P Class B Convertible Preferred Stock are convertible into shares of AVL P common stock at a conversion rate of \$0.50 per share and (iii) the issuance of stock options to purchase an aggregate of 531,919 shares of AVL P common stock to the members of the MTIX management group.

During March 2017, the Company was awarded a 3-year, \$50 million purchase order by MTIX to manufacture, install and service the MLSE plasma-laser system.

During the year ended December 31, 2017, we recognized \$174 in revenues resulting from our relationship with MTIX Limited, a company formed under the laws of England and Wales ("MTIX"). MTIX was acquired by Avalanche on August 22, 2017 and is therefore deemed to be a related party. In March 2017, the Company was awarded a 3-year, \$50 million purchase order by MTIX to manufacture, install and service the Multiplex Laser Surface Enhancement ("MLSE") plasma-laser system. Management believes that the MLSE purchase order will be a source of revenue and generate significant cash flows for the Company. However, at December 31, 2017, the \$924 in revenues had not yet been received and was reflected on the financial statements as accounts receivable, related party.

On December 5, 2017, the Company entered into an exchange agreement with WT Johnson pursuant to which the Company issued to WT Johnson two convertible promissory notes in the principal amount of \$600 ("Note A") and b. \$1,668 ("Note B"), in exchange for cancellation of amounts due to WT Johnson by MTIX Ltd., a related party of the Company.

During December 2017, the Company issued 600,000 shares of its common stock to WT Johnson & Sons upon the conversion of Note A and WT Johnson subsequently sold the 600,000 shares. The proceeds from the sale of Note A were sufficient to satisfy the entire \$2,268 obligation as well as an additional \$400 of value added tax due to WT Johnson. Concurrent with entering into the exchange agreement, the Company received a promissory note in the

amount of \$2,668 from MTIX. At December 31, 2017, the Company has valued the note receivable at \$600, the carrying amount of Note A. The Company will recognize the remainder of the amount due from MTIX upon payment of the promissory note by MTIX.

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c. On September 22, 2016, the Company entered into consulting agreement with Mr. Ault to assist the Company in developing a business strategy, identifying new business opportunities, developing a capital raising program and implementing of a capital deployment program. For his services, Mr. Ault was paid \$208 during the year ended December 31, 2017 and \$30 for the year ended December 31, 2016.

d. On October 21, 2016, the Company entered into a 12% convertible secured note in the principal amount of \$530 and warrants with the Barry Blank Living Trust, an existing stockholder of the Company, for \$500 due on October 20, 2019. The principal amount of the 12% convertible secured note may be convertible into shares of the Company's common stock at \$0.55 per share. Subject to certain beneficial ownership limitations, the Barry Blank Living Trust may convert the principal amount of the convertible note at any time into common stock. During the year ended December 31, 2017 and 2016, the Company recorded interest expenses of \$59 and \$12, respectively, on the convertible note obligation. During the period from November 27, 2017 to December 6, 2017, the entire \$530 of principal was satisfied through the issuance of 963,636 shares of the Company's common.

e. On December 29, 2016, the Company received a \$250 short term loan from MCKEA. Kristine Ault, a director of the Company and the wife of Mr. Ault, is the managing member of MCKEA which, in turn, is the Manager of Philou, the majority stockholder of the Company. On March 24, 2017, the \$250 loan was cancelled in consideration for the issuance of 25,000 shares of Series B preferred stock of the Company to Philou. During the year ended December 31, 2017 the Company recorded interest expenses of \$3 on the short-term loan from MCKEA.

f. In February 2017, the Company issued to eight accredited investors \$400 in demand promissory notes bearing interest at a rate of 6% per annum. Of the eight accredited investors, one investor was deemed a related party.

g. On March 9, 2017, the Company entered into a Preferred Stock Purchase Agreement with Philou. Pursuant to the terms of the Preferred Stock Purchase Agreement, Philou may invest up to \$5,000 in the Company through the purchase of Series B Preferred Stock over 36 months. Between April 1, 2017 and June 2, 2017, Philou purchased 75,000 shares of Series B Preferred Stock pursuant to the terms of the Preferred Stock Purchase Agreement. Further, at December 31, 2017, Philou had made a \$200 payment in the form of a short-term advance which will be converted into Series B Preferred Stock during the second quarter of 2018.

h. On March 15, 2017, Company entered into a subscription agreement with a related party for the sale of 500,000 shares of common stock at \$0.60 per share for the aggregate purchase price of \$300.

i. On March 20, 2017, the Company received a \$250 short term loan from JLA Realty, an entity which owns 666,667 shares of the Company's common stock, on behalf of Philou. The proceeds from this short-term loan comprised a portion of Philou's purchase of Series B Preferred Stock.

j. Between May 5, 2017 and June 30, 2017, the Company received additional short-term loans of \$140 from four accredited investors of which \$75 was from the Company's corporate counsel, a related party. As additional consideration, the investors received five-year warrants to purchase 224,371 shares of common stock at a weighted average exercise price of \$0.77 per share. On June 28, 2017, \$52 in short-term loans that was received from the related party was converted into one of the Series C Units (See Note 18h) and on July 24, 2017, the remaining \$23 in short-term loans was converted in 41,818 shares of the

Company's common stock in conjunction with the subscription agreements that the Company entered into with six investors (See Note 23).

Between July 6, 2017 and December 31, 2017, Milton C. Ault, III, the Company's Executive Chairman, personally guaranteed the repayment of (i) \$2,585 to TVT Capital (ii) and \$1,280 from the sale of the convertible promissory notes. These personal guarantees were necessary to facilitate the consummation of these financing transactions. Mr. Ault's payment obligations would be triggered if the Company failed to perform under these financing obligations. Our board of directors has agreed to compensate Mr. Ault for his personal guarantees. The amount of annual compensation for each of these guarantees, which will be in the form of non-cash compensation, is approximately 2% of the amount of the obligation.

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During the year ended December 31, 2017, our President, Amos Kohn, purchased certain real property that will serve as a facility for the Company's business operations in Israel. The Company made \$300 of payments to the seller of the property and received a 28% undivided interest in the real property ("Property"). The Company's subsidiary, Coolisys, entered into a Trust Agreement and Tenancy In Common Agreement with Roni Kohn, who owns a 72% interest in the Property, is the daughter of Mr. Kohn and is an Israeli citizen. The Property was purchased to serve as a residence/office facility for the Company in order to oversee its European operations and to expand its business in the hi-tech industry located in Israel. Pursuant to the Trust Agreement, the Ms. Kohn will hold and manage Coolisys' undivided 28% interest in the Property. The trust will be in effect until it is terminated by mutual agreement of the parties. During the term of the trust, the Ms. Kohn will not sell, lease, sublease, transfer, grant, encumber, change or effect any other disposition with respect to the Property or the Coolisys' interest without the Company's approval.

Under the Tenancy In Common Agreement, Coolisys and its executive officers shall have the exclusive rights to use the Property for the Company and its affiliates' business operations. The Property shall be managed by the Ms. Kohn. Further, pursuant to the Tenancy In Common Agreement, for each completed calendar month of employment of Mr. Kohn by the Company, Ms. Kohn shall have the right to purchase a portion of the Company's interest in the Property. Such right shall fully vest at the end of five years of continuous employment and the Trustee shall have the right to purchase the Company's 28% interest in the Property for a nominal value. The Company will amortize its \$300 investment over ten years, subject to a cliff vesting after five years. In the event that Mr. Kohn is not employed by the Company, the Company shall have the right to demand that Ms. Kohn purchase the Company's remaining interest in the Property that was not subject to vesting for the fair value market value of such unvested Property interest.

During the year ended December 31, 2017, DP Lending made loans to Alzamend Neuro, Inc. ("Alzamend"), in the amount of \$44. AVLP is a party to a management services agreement pursuant to which Avalanche provides management, consulting and financial services to Alzamend. At December 31, 2017, the outstanding principal under these loans was \$13. As additional consideration, the Company received a warrant to purchase 22,000 shares of Alzamend's common stock at an exercise price of \$0.30 per share of common stock.

26. SEGMENT, CUSTOMERS AND GEOGRAPHICAL INFORMATION

The Company has two reportable geographic segments; see Note 1 for a brief description of the Company's business.

The following data presents the revenues, expenditures and other operating data of the Company's geographic operating segments and presented in accordance with ASC No. 280.

	Year ended December 31, 2017			
	DPC	DPL	Eliminations	Total
Revenues	\$7,890	\$2,111	\$ —	\$10,001
Revenue, related party	\$174	\$—	\$ —	\$174
Inter-segment revenues	\$53	\$—	\$ (53)	\$—
Total revenues	\$8,117	\$2,111	\$ (53)	\$10,175
Depreciation and amortization expense	\$184	\$71	\$ —	\$255

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Loss from operations	\$ (5,558)	\$ (425)	\$ —	\$ (5,983)
Interest expense, net				\$ (4,990)
Income tax benefit				\$ 78
Net loss attributable to non-controlling interest				\$ 279
Net loss attributable to Digital Power Corp				\$ (10,616)
Capital expenditures for segment assets, as of December 31, 2017	\$ 382	\$ 21	\$ —	\$ 403
Identifiable assets as of December 31, 2017	\$ 28,781	\$ 1,729	\$ —	\$ 30,510

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	Year ended December 31, 2016			
	DPC	DPL	Eliminations	Total
Revenues	\$4,552	\$3,044	\$ —	\$7,596
Inter-segment revenues	\$145	\$—	\$ (145)	\$—
Total revenues	\$4,697	\$3,044	\$ (145)	\$7,596
Depreciation and amortization expense	\$75	\$86	\$ —	\$161
Loss from operations	\$(1,110)	\$(109)	\$ —	\$(1,219)
Interest income, net				\$77
Income tax benefit				\$20
Net loss				\$(1,122)
Capital expenditures for segment assets, as of December 31, 2016	\$32	\$53	\$ —	\$85
Identifiable assets as of December 31, 2016	\$3,152	\$2,320	\$ —	\$5,472

Concentration Risk:

The following table provides the percentage of total revenues attributable to a single customer from which 10% or more of total revenues are derived:

For the year ended December 31, 2017

Total Revenues by Major Customers (in thousands)	Percentage of Total Company Revenues	
Customer A \$ 1,341	13	%

For the year ended December 31, 2016

Total Revenues by Major Customers (in thousands)	Percentage of Total Company Revenues	
Customer A \$ 1,328	17	%
Customer B \$ 750	10	%

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Explanation of Responses:

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Revenue from Customer A was attributable to Coolisys and revenue from Customer B attributable to DP Limited.

For the years ended December 31, 2017 and 2016, total revenues from external customers divided on the basis of the Company's product lines are as follows:

	2017	2016
Revenues:		
Commercial products	\$5,489	\$5,307
Defense products	4,686	2,289
Total revenues	\$10,175	\$7,596

Financial data relating to geographic areas:

The Company's total revenues are attributed to geographic areas based on the location. The following table presents total revenues for the years ended December 31, 2017 and 2016. Other than as shown, no foreign country contributed materially to revenues or long-lived assets for these periods:

	2017	2016
Revenues:		
North America	\$6,638	\$4,541
Europe	2,634	1,845
South Korea	231	751
Other	672	459
Total revenues	\$10,175	\$7,596

27. SUBSEQUENT EVENTS

In accordance with FASB ASC 855-10, the Company has analyzed its operations subsequent to December 31, 2017 and has determined that it does not have any material subsequent events to disclose in these financial statements except for the following.

Advances on Future Receipts

On January 10, 2018, the Company entered into two agreements for the purchase and sale of future receipts with TVT Capital LLC ("TVT"), pursuant to which the Company sold up to (i) \$476 in future receipts of the Company for a purchase price in the amount of \$350 ("Agreement No. 1") and (ii) \$1,700 in future receipts of the Company for a purchase price in the amount of \$1,250 ("Agreement No. 2"). The agreements have been personally guaranteed by Milton Ault, III, the Company's Chief Executive Officer and Chairman of the Board of Directors.

Under the terms of Agreement No. 1, the Company will be obligated to pay \$9 on a weekly basis until the purchase price of \$350 has been paid in full. In connection with entering into Agreement No. 1, the Company paid a \$10 origination fee. Under the terms of Agreement No. 2, the Company will be obligated to pay \$34 on a weekly basis until the purchase price of \$1,250 has been paid in full. In connection with entering into Agreement No. 2, the

Explanation of Responses:

Company paid a \$37 origination fee.

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On January 18, 2018, the Company and Libertas Funding LLC (“Libertas”), entered into a future receivables sale agreement pursuant to which the Company sold the rights of up to \$594 in future receivables of the Company for \$400. If the Company pays Libertas by March 18, 2018, the purchased amount will be discounted to \$472. Until that date, no specific payment schedules are required.

On January 25, 2018, the Company entered into two agreements for the purchase and sale of future receipts with TVT, pursuant to which the Company sold up to (i) \$562 in future receipts of the Company to TVT for a purchase price of \$375 (“Agreement No. 3”) and (ii) \$337 in future receipts of the Company for a purchase price of \$225 (“Agreement No. 4”). The agreements have been personally guaranteed by Milton Ault, III, the Company’s Chief Executive Officer and Chairman of the Board of Directors.

Under the terms of Agreement No. 3, the Company will be obligated to pay \$22 on a weekly basis until the purchase amount of \$562 has been paid in full. In connection with entering into Agreement No.3, the Company paid an origination fee in the amount of \$11. Agreement No. 3 also includes a warrant to purchase 56,250 shares of the Company’s common stock at an exercise price of \$2.25 per share and a warrant to purchase 35,000 shares of the Company’s common stock at an exercise price of \$2.50 per share. Under the terms of Agreement No. 4, the Company will be obligated to pay \$13 on a weekly basis until the purchase amount of \$337 has been paid in full. In connection with entering into Agreement No.4, the Company paid an origination fee in the amount of \$7. Agreement No. 4 also includes warrants to purchase 56,250 shares of the Company’s common stock at an exercise price of \$2.25 per share.

On January 25, 2018, the Company and Philou, as guarantor, entered into a future receivables sale agreement with Libertas, pursuant to which the Company sold up to \$148 in future receivables of the Company to Libertas for a purchase price of \$100. The Company will be obligated to pay \$9 on a weekly basis until the purchase amount of \$148 has been paid in full. In connection with entering into agreement, Libertas received an additional discount for due diligence in the amount of \$3. The agreement also includes warrants to purchase 125,000 shares of the Company’s common stock at an exercise price of \$2.50 per share.

On March 23, 2018, the Company entered into two agreements for the purchase and sale of future receipts with C6 Capital, LLC (“C6”), pursuant to which the Company sold up to (i) \$979 in future receipts of the Company to TVT for a purchase price of \$700 (“Agreement No. 3”) and (ii) \$420 in future receipts of the Company for a purchase price of \$300 (“Agreement No. 4”). The agreements have been personally guaranteed by Milton Ault, III, the Company’s Chief Executive Officer and Chairman of the Board of Directors. Under the terms of these two agreements, the Company will be obligated to pay \$37 on a weekly basis until the purchase amount of \$1,399 has been paid in full. In connection with entering into these two agreements, the Company paid an origination fee in the amount of \$20.

On March 27, 2018, the Company entered into a future receivables sale agreement with Libertas, pursuant to which the Company sold up to \$552 in future receivables of the Company to Libertas for a purchase price of \$400. In connection with entering into this agreement, the Company paid an origination fee in the amount of \$12. As additional consideration, the Company also issued to Libertas 150,000 shares of its common stock. This agreement has been personally guaranteed by Milton Ault, III, the Company’s Chief Executive Officer and Chairman of the Board of Directors.

Promissory Notes

Explanation of Responses:

On January 25, 2018, the Company issued two 5% promissory notes, each in the principal face amount of \$2,500 for an aggregate debt of \$5,000 to two institutional investors. The entire unpaid balance of the principal and accrued interest on each of the 5% Promissory Notes is due and payable on February 23, 2018, subject to a 30-day extension available to the Company. The proceeds from the promissory notes was used to purchase 1,000 Antminer S9s manufactured by Bitmain Technologies, Inc. in connection with the Company's mining operations. The Company received delivery of the Miners on February 1, 2018. On March 23, 2018, the Company paid \$750 to each investor under the 5% promissory notes. On March 27, 2018, the Company paid the balance of the principal and accrued interest on each of the 5% promissory notes.

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DPW HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
DECEMBER 31, 2017
U.S. dollars in thousands, except share and per share data

On February 20, 2018, the Company issued a promissory note in the principal face amount of \$900 to an accredited investor. This promissory note included an OID of \$150 resulting in net proceeds to the Company of \$750. The principal and OID on this note was due and payable on March 22, 2018. On March 23, 2018, the parties entered into a new promissory note in the principal amount of \$1,750 for a term of two months, subject to the Company's ability to prepay within one month. The interest rate payable on this new promissory note shall be twenty percent per thirty calendar days, payable in a lump sum on the maturity date. The Company also issued to the lender a warrant to purchase 1,250,000 shares of common stock at an exercise price of \$1.15 per share, pursuant to a consulting agreement. The principal amount of the new promissory note consisted of net proceeds of \$1,000 and the cancellation of the principal of \$750 from the February 20, 2018 promissory note. The interest on the February 20, 2018 note in the amount of \$150 was paid to the lender.

On February 26, 2018, the Company issued a 10% promissory note in the principal face amount of \$330 to an accredited investor. This promissory note included an OID of \$30 resulting in net proceeds to the Company of \$300. The principal and accrued interest on this note is due and payable on April 12, 2018, subject to a 30-day extension available to the Company.

On March 27, 2018, the Company issued a 10% promissory note in the principal face amount of \$200 to an accredited investor. The principal and accrued interest on this note is due and payable on March 29, 2018.

On March 23, 2018, the Company entered into a securities purchase agreement to sell and issue a 12% promissory note and a warrant to purchase shares 300,000 shares of common stock to an accredited investor. The promissory note has been issued at a 10% original issue discount. The promissory note is in the principal amount of \$1,000 and was sold for \$900, bears interest at 12% simple interest on the principal amount, and is due on June 22, 2018. Interest only payments are due, in arrears, on a monthly basis commencing on April 23, 2018. The exercise price of the warrant is \$1.15 per share. The promissory note is unsecured by any assets of the Company but is guaranteed by the Company's Chief Executive Officer pursuant to a Guaranty Agreement.

Convertible Promissory Notes

On January 23, 2018, the Company entered into a securities purchase agreement with an institutional investor to sell, for an aggregate purchase price of \$1,000, a 10% Senior Convertible Promissory Notes with an aggregate principal face amount of \$1,250, a warrant to purchase an aggregate of 625,000 shares, subject to adjustment, of the Company's common stock. The promissory note is convertible into shares of common stock at \$2.00 per share, subject to adjustment. The exercise price of the warrant is \$2.20 per share, subject to adjustment.

At The Market Offering

On February 27, 2018, the Company entered into a sales agreement with H.C. Wainwright & Co., LLC ("HCW") to sell shares of its common stock, having an aggregate offering price of up to \$50,000 from time to time, through an "at the market offering" program (the "ATM Offering") under which HCW will act as sales agent. As of April 16, 2018, we had received net proceeds of \$7,121 through the sale of 6,648,538 shares of our common stock through the ATM Offering.

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The offer and sale of the shares through the ATM Offering will be made pursuant to the Company's effective "shelf" registration statement on Form S-3 and an accompanying base prospectus contained therein (Registration Statement No. 333-222132) filed with the SEC on December 18, 2017, amended on January 8, 2018, and declared effective by the SEC on January 11, 2018, and a prospectus supplement related to the ATM Offering, dated February 27, 2018.

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DPW HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
DECEMBER 31, 2017
U.S. dollars in thousands, except share and per share data

The Company will pay to HCW a commission in an amount equal to 5.0% of the gross sales price per share of common stock sold through it as sales agent under the sales agreement. In addition, the Company has agreed to reimburse HCW for certain expenses it incurs in the performance of its obligations under the sales agreement up to a maximum of \$60 and \$5 each calendar quarter.

Other Agreements

On March 8, 2018, Super Crypto Mining, Inc. (“SCM”), the Company’s wholly owned subsidiary, entered into an asset purchase agreement with Blockchain Mining Supply & Services Ltd. (“BMSS”). Pursuant to this agreement, SCM has agreed to acquire 1,100 Antminer S9s (the “Miners”) manufactured by Bitmain Technologies, Inc. (the “Bitmain”), in connection with SCM’s mining operations, from BMSS. Pursuant to the agreement, SCM will pay an aggregate of \$3,200,000 to BMSS for the Miners. The Company intends to fund SCM’s acquisition of the Miners through the proceeds derived from its ongoing ATM Offering.

On March 22, 2018, SCM entered into a Master Services Agreement with a U.S. based entity, whereby SCM secured the right to 25 megawatts of power in support of SCM’s operations.

On April 13, 2018, the Company and Milton C. Ault, III, the Company’s Chief Executive Officer, entered into an Amended and Restated Independent Contractor Agreement pursuant to which the parties thereto agreed to amend and restate that certain Independent Contractor Agreement dated September 22, 2016, by and between the Company and Mr. Ault. In accordance with the terms set forth in the Agreement, Mr. Ault shall continue to serve as the Company’s Chief Executive Officer and Chairman of the Board of Directors in consideration of a monthly fee of \$33,333.00, effective November 15, 2017. The Agreement shall terminate on April 30, 2018, and may be renewed on a monthly basis by written agreement between the parties thereto.

Issuances of Common Stock for Services

Between January 1, 2018 and February 7, 2018, the Company issued an aggregate of 1,683,059 shares of its common stock as payment for services to its consultant. The shares were valued at \$3,179, an average of \$1.89 per share.

Issuances of Common Stock upon Exercise of Stock Options

During January 2018, the Company issued a total of 60,000 shares of its common stock upon the cash exercise of options to purchase an aggregate of 60,000 shares of its common stock. These options were issued pursuant to the Company’s Plans. The Company received cash of \$98 as a result of these option exercises.

EXHIBIT 31.1

Certification of the Chief Executive Officer

Pursuant to §240.13a-14 or §240.15d-14 of the Securities Exchange Act of 1934, as amended

I, Milton C. Ault III, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2017 of DPW Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

Explanation of Responses:

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: April 17, 2018

By: /s/ Milton C. Ault III

Name: Milton C. Ault III

Title: Chief Executive Officer

(Principal Executive Officer)

EXHIBIT 31.2

Certification of the Chief Financial Officer

Pursuant to §240.13a-14 or §240.15d-14 of the Securities Exchange Act of 1934, as amended

I, William B. Horne, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2017 of DPW Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: April 17, 2018

By: /s/ William B. Horne

Name: Milton C. Ault III

Title: Chief Executive Officer

(Principal Executive Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of DPW Holdings, Inc. (the "Registrant") on Form 10-K for the period ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Milton C. Ault III, Principal Executive Officer, and I, William B. Horne, Principal Financial Officer and Principal Accounting Officer of the Registrant, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: April 17, 2018

By: /s/ Milton C. Ault III
Name: Milton C. Ault III
Title: Chief Executive Officer and
(Principal Executive Officer)

Date: April 17, 2018

By: /s/ William B. Horne
Name: William B. Horne
Title: Chief Financial Officer and
(Principal Financial Officer)

APPENDIX A-2

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 1 to

FORM 10-K/A

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2017

Commission file number 1-12711

DPW HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

94-1721931

(I.R.S. Employer Identification Number)

48430 Lakeview Blvd Fremont, CA 94538-3158 (510) 657-2635

(Address of principal executive offices) (Zip Code) (Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:

Title of Each Class

Name of each exchange on which registered

Common Stock, \$0.001 par value per share NYSE American

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding year (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding year (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or

Explanation of Responses:

information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, 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	Smaller reporting company
(Do not check if a smaller reporting company)	Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2017, the aggregate market value of the registrant’s common stock held by non-affiliates of the registrant was \$6,831,098 based on the closing sale price as reported on the NYSE Market. Such determination should not be deemed an admission that such directors, officers, or 5 percent beneficial owners are, in fact, affiliates of the registrant.

There were 43,562,860 shares of common stock outstanding as of April 13, 2018.

Documents incorporated by reference: None

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (the “Amended Annual Report”) amends the Annual Report on Form 10-K of DPW Holdings, Inc. originally filed with the Securities and Exchange Commission (the “SEC”) on April 17, 2018 (the “Original Filing”).

This Amended Annual Report on Form 10-K is filed solely for the purpose of adding the required XBRL interactive data files as exhibits to the Original Filing.

Other than the foregoing, this Amended Annual Report speaks as of the original date of the Original Filing, does not reflect events that may have occurred subsequent to the date of the Original Filing and does not modify or update in any way disclosures made in the Original Filing.

PART IV

ITEM 15. EXHIBITS

Exhibit Number	Description
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

*Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: April 18, 2018

DPW HOLDINGS, INC.

By: /s/ Milton C. Ault, III
Milton C. Ault, III
Chief Executive Officer
(Principal Executive Officer)

By: /s/ William B. Horne
William B. Horne
Chief Financial Officer
(Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated.

April 18, 2018 /s/ Milton C. Ault, III
Milton C. Ault, III, Chief
Executive Officer and
Executive Chairman of the
Board

April 18, 2018 /s/ William B. Horne
William B. Horne, Chief
Financial Officer and
Director

April 18, 2018 /s/ Amos Kohn
Amos Kohn, President and
Director

April 18, 2018 /s/ Robert O. Smith
Robert O. Smith, Director

April 18, 2018 /s/ Mordechai Rosenberg
Mordechai Rosenberg,
Director

Explanation of Responses:

April 18, 2018 /s/ Jeffrey A. Bentz
Jeffrey A. Bentz, Director

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APPENDIX A-3

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 2 to

FORM 10-K/A

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2017

Commission file number 1-12711

DPW HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

94-1721931

(I.R.S. Employer Identification Number)

48430 Lakeview Blvd Fremont, CA 94538-3158 (510) 657-2635

(Address of principal executive offices) (Zip Code) (Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:

Title of Each Class

Name of each exchange on which registered

Common Stock, \$0.001 par value per share NYSE American

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding year (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding year (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or

Explanation of Responses:

information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, 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	Smaller reporting company
(Do not check if a smaller reporting company) Emerging growth company	

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2017, the aggregate market value of the registrant’s common stock held by non-affiliates of the registrant was \$6,831,098 based on the closing sale price as reported on the NYSE Market. Such determination should not be deemed an admission that such directors, officers, or 5 percent beneficial owners are, in fact, affiliates of the registrant.

There were 43,562,860 shares of common stock outstanding as of April 13, 2018.

Documents incorporated by reference: None

EXPLANATORY NOTE

This Amendment No. 2 to the Annual Report on Form 10-K/A is being filed solely for the purpose of furnishing an amended Exhibit 31.2, which contained a typo. No change is being made to Parts I, II, III or IV of the Annual Report, nor to any of the other exhibits filed or furnished therewith. Accordingly, only Exhibit 31.2 is included herein.

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PART IV

ITEM 15. EXHIBITS

Exhibit Number	Description
31.2*	Certification of Chief Executive and Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code

*Furnished herewith.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: April 18, 2018

DPW HOLDINGS, INC.

By: /s/ Milton C. Ault, III
Milton C. Ault, III
Chief Executive Officer
(Principal Executive Officer)

By: /s/ William B. Horne
William B. Horne
Chief Financial Officer
(Principal Accounting Officer)

EXHIBIT 31.2

Certification of the Chief Financial Officer

Pursuant to §240.13a-14 or §240.15d-14 of the Securities Exchange Act of 1934, as amended

I, William B. Horne, certify that:

1. I have reviewed this Annual Report on Form 10-K/A for the year ended December 31, 2017 of DPW Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - a) designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: April 18, 2018

By: /s/ William B. Horne

Name: William B. Horne

Title: Chief Financial Officer

(Principal Accounting Officer)

APPENDIX B

DPW HOLDINGS, INC.

2018 STOCK INCENTIVE PLAN

(effective December 28, 2018, subject to stockholder approval)

1

General

1.1 **Purpose.** The purposes of the DPW 2018 Stock Incentive Plan (the “**Plan**”) is to promote the interests of DPW Holdings, Inc. (the “**Company**”) and the stockholders of the Company by providing (i) executive officers and other employees of the Company and its Subsidiaries (as defined below), (ii) certain advisors who perform services for the Company and its Subsidiaries and (iii) non-employee members of the Board of Directors of the Company (the “**Board**”) with appropriate incentives and rewards to encourage them to enter into and continue in the employ and service of the Company and to acquire a proprietary interest in the long-term success of the Company, as well as to reward the performance of these individuals in fulfilling their personal responsibilities for long-range and annual achievements.

1.2 **Effective Date and Term.** The Plan will become effective upon the date it is approved by the stockholders of the Company (the “**Effective Date**”). Unless terminated earlier by the Committee, the Plan will expire on the tenth (10) anniversary of the Effective Date.

1.3 **Definitions.** Capitalized terms in the Plan, unless defined elsewhere in the Plan, shall be defined as set forth below:

1934 Act. The term “1934 Act” shall mean the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder and any successor thereto.

Affiliated Company. The term “Affiliated Company” means any company, partnership, association, organization or other entity controlled by, controlling or under common control with the Company.

Award. The term “Award” means any award or benefit granted under the Plan, including, without limitation, Options, SARs, Restricted Stock, Restricted Stock Units and Other Stock-Based Awards.

Award Agreement. The term “Award Agreement” means a written or electronic Award grant agreement under the Plan.

Change of Control. The term “Change of Control” shall be deemed to occur if and when:

(i) any person, including a “person” as such term is used in Sections 13(d) and 14(d) of the 1934 Act (a “**Person**”), is or becomes a beneficial owner (as such term is defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities;

(ii) individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date 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 shall be considered as though such individual were a member of the Incumbent Board, but excluding for this purpose any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) all or substantially all of the assets of the Company are sold, transferred or distributed, or the Company is dissolved or liquidated; or

(iv) a reorganization, merger, consolidation or other corporate transaction involving the Company (a “**Transaction**”) is consummated, in each case, with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction in substantially the same respective proportions as such stockholders’ ownership of the voting power of the Company immediately before such Transaction.

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Notwithstanding the foregoing or any other provision of this Plan, the term Change of Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company. For the avoidance of doubt, solely with respect to any Award that constitutes “deferred compensation” subject to Section 409A of the Code and that is payable on account of a Change of Control (including any installments or stream of payments that are accelerated on account of a Change of Control), a Change of Control shall occur only if such event also constitutes a “change in the ownership,” “change in effective control,” and/or a “change in the ownership of a substantial portion of assets” of the Company as those terms are defined under Treasury Regulation §1.409A-3(i)(5), but only to the extent necessary to establish a time or form of payment that complies with Section 409A of the Code, without altering the definition of Change of Control for purposes of determining whether a Grantee's rights to such Award become vested or otherwise unconditional upon the Change in Control.

Code. The term “Code” means the Internal Revenue Code of 1986, as amended. A reference to any provision of the Code shall include reference to any successor provision of the Code.

Committee. The term “Committee” means the committee of the Board described in Section 2 hereof and any sub-committee established by such Committee pursuant to Section 2.4 hereof.

Covered Employee. The term “Covered Employee” means an Employee who is, or who is anticipated to become, between the time of grant and payment of the Award, a “covered employee,” as such term is defined in Section 162(m)(3) of the Code (or any successor section thereof).

Disability. The term “Disability” means “Disability” as defined in any Award Agreement to which the Grantee is a party.

Eligible Grantee. The term “Eligible Grantee” shall mean any Employee, Non-Employee Director or Key Advisor, as determined by the Committee in its sole discretion.

Employee. The term “Employee” means an active employee of the Company or a Subsidiary, but excluding any person who is classified by the Company or a Subsidiary as a “contractor” or “consultant,” no matter how characterized by the Internal Revenue Service, other governmental agency or a court, or any employee who is not actively employed, as determined by the Committee. Any change of characterization of an individual by the Internal Revenue Service or any court or government agency shall have no effect upon the classification of an individual as an Employee for purposes of this Plan, unless the Committee determines otherwise.

Fair Market Value. For purposes of determining the “Fair Market Value” of a share of Stock as of any date, the “Fair Market Value” as of that date shall be, unless otherwise determined by the Committee, the closing sale price during regular trading hours of the Stock on the date on the principal securities market in which shares of Stock is then traded; or, if there were no trades on that date, the closing sale price during regular trading hours of the Stock on the first trading day prior to that date. If the Stock is not publicly traded at the time a determination of Fair Market Value is required to be made hereunder, the determination of such amount shall be made by the Committee in such manner as it deems appropriate.

Grantee. The term “Grantee” means an Employee, Non-Employee Director or Key Advisor of the Company or a Subsidiary who has been granted an Award under the Plan.

ISO. The term “ISO” means any Option intended to be and designated as an incentive stock option within the meaning of Section 422 of the Code.

Key Advisor. The term “Key Advisor” means a consultant or other key advisor who performs services for the Company or a Subsidiary.

Non-Employee Director. The term “Non-Employee Director” means a member of the Board who is not an Employee.

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NQSO. The term “NQSO” means any Option that is not designated as an ISO, or which is designated by the Committee as an ISO but which subsequently fails or ceases to qualify as an ISO.

Option. The term “Option” means a right, granted to an Eligible Grantee under Section 4.2(i) hereof, to purchase shares of Stock. An Option may be either an ISO or an NQSO.

Other Stock-Based Award. The term “Other Stock-Based Award” means a right or other interest granted to an Eligible Grantee under Section 4.2(v) hereof that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock, including but not limited to (i) unrestricted Stock awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan, and (ii) a right granted to an Eligible Grantee to acquire Stock from the Company containing terms and conditions prescribed by the Committee.

Performance Award. The term “Performance Award” means a grant made pursuant to Section 4.2(viii) hereof, the amount and settlement of which is contingent on the achievement of specific Performance Goals during a Performance Period, determined using a specific Performance Measure, all as specified in the related Award Agreement. Performance Awards may be granted in the form of Stock Options, SARs, Restricted Stock, Restricted Stock Units, and/or Other Stock-Based Awards.

Performance Goals. The term “Performance Goals” means performance goals based on the attainment on an absolute or relative basis by the Company or any Subsidiary of the Company or any Affiliated Company (or any division or business unit of any such entity), or any two or more of the foregoing, of performance goals pre-established by the Committee in its sole discretion, based on one or more of the following criteria (if applicable, any performance criteria that are financial metrics, may be determined in accordance with United States Generally Accepted Accounting Principles (“GAAP”) or may be adjusted when established to include or exclude any items otherwise includable or excludable under GAAP): (i) the attainment of certain target levels of, or a specified percentage increase in, revenues, earnings, income before taxes and extraordinary items, net income, operating income, earnings before or after deduction for all or any portion of income tax, earnings before interest, taxes, depreciation and amortization or a combination of any or all of the foregoing; (ii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax profits including, without limitation, that attributable to continuing and/or other operations; (iii) the attainment of certain target levels of, or a specified increase in, operational cash flow; (iv) the achievement of a certain level of, reduction of, or other specified objectives with regard to limiting the level of increase in, all or a portion of, the Company’s bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated net of such cash balances and/or other offsets and adjustments as may be established by the Committee; (v) earnings per share or the attainment of a specified percentage increase in earnings per share or earnings per share from continuing operations; (vi) the attainment of certain target levels of, or a specified increase in return on capital employed or return on invested capital; (vii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax return on stockholders’ equity; (viii) the attainment of certain target levels of, or a specified increase in, economic value added targets based on a cash flow return on investment formula; (ix) the attainment of certain target levels in, or specified increases in, the fair market value of the shares of the Company’s common stock; (x) the growth in the value of an investment in the Company’s common stock; (xi) the

attainment of a certain level of, reduction of, or other specified objectives with regard to limiting the level in or increase in, all or a portion of controllable expenses or costs or other expenses or costs; (xii) gross or net sales, revenue and growth of sales revenue (either before or after cost of goods, selling and general administrative expenses, research and development expenses and any other expenses or interest); (xiii) total stockholder return; (xiv) return on assets or net assets; (xv) return on sales; (xvi) operating profit or net operating profit; (xvii) operating margin; (xviii) gross or net profit margin; (xix) cost reductions or savings; (xx) productivity; (xxi) operating efficiency; (xxii) working capital; (xxiii) market share; (xxiv) customer satisfaction; and (xxv) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board. Any of the above Performance Goals may be compared to the performance of a selected group of comparison companies, or a published or special index that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices. Subject to the limitations in Section 4.2 hereof, the Committee in its sole discretion may designate additional business criteria on which the Performance Goals may be based or adjust, or modify or amend the aforementioned business criteria. The relative weights of the criteria that comprise the Performance Goals shall be determined by the Committee in its sole discretion. In establishing the Performance Goals for a performance period, the Committee may establish different Performance Goals for individual Grantees or groups of Grantees. Subject to the limitations in Section 4.2(viii)(d) hereof, the Committee in its sole discretion shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary of the Company or any Affiliated Company or the financial statements of the Company or any Subsidiary of the Company or any Affiliated Company, in response to changes in applicable laws or regulations, including changes in generally accepted accounting principles or practices, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business, as applicable. Performance Goals may include a threshold level of performance below which no Award will be earned, a level of performance at which the target amount of an Award will be earned and a level of performance at which the maximum amount of the Award will be earned.

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Performance Measure. The term “Performance Measure” means, with respect to a Performance Award, one or more of the criteria identified at Section 4.2(viii) hereof selected by the Committee for the purpose of establishing, and measuring attainment of, Performance Goals for a Performance Period in respect of such grant, as provided in the related Award Agreement. For purposes of clarity, the Committee may establish a Performance Measure on a regional or jurisdictional basis, Subsidiary by Subsidiary basis, product-line basis, consolidated Company basis, or any other manner that it determines appropriate in its sole discretion.

Performance Period. The term “Performance Period” means, with respect to a Performance Award, the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select during which the attainment of one or more Performance Goals will be measured.

Restricted Stock. The term “Restricted Stock” means an Award of shares of Stock to an Eligible Grantee under Section 4.2(iii) hereof that may be subject to certain restrictions and to a risk of forfeiture. Stock issued upon the exercise of Options or SARs is not “Restricted Stock” for purposes of the plan, even if subject to post-issuance transfer restrictions or forfeiture conditions. When Restricted Stock vests, it ceases to be “Restricted Stock” for purposes of the Plan.

Restricted Stock Unit. The term “Restricted Stock Unit” means a right granted to an Eligible Grantee under Section 4.2(iv) hereof to receive Stock or cash at the end of a specified deferral period, which right may be conditioned on the satisfaction of specified performance or other criteria.

Retirement. The term “Retirement” means any termination of employment or service as an Employee, Non-Employee Director or Key Advisor as a result of retirement in good standing under the rules of the Company or a Subsidiary, as applicable, then in effect.

Rule 16b-3. The term “Rule 16b-3” means Rule 16b-3 under Section 16 of the 1934 Act, as from time to time in effect promulgated by the Securities and Exchange Commission, including any successor to such Rule.

Section 162(m) Grandfathered Award. The term “Section 162(m) Grandfathered Award” means an Award that is intended to constitute “qualified performance-based compensation” within the meaning of Section 162(m) of the Code and that is eligible for transition relief from the changes to Section 162(m) provided under the Tax Cuts and Jobs Act.

Stock. The term “Stock” means shares of Class A common stock, par value \$0.001 per share, of the Company.

Stock Appreciation Right or SAR. The term “Stock Appreciation Right” or “SAR” means the right, granted to an Eligible Grantee under Section 4.2(ii) hereof, to be paid an amount measured by the appreciation in the Fair Market Value of Stock from the date of grant to the date of exercise of the right.

Subsidiary. The term “Subsidiary” means any present or future subsidiary corporation of the Company within the meaning of Section 424(f) of the Code, and any present or future business venture designated by the Committee in which the Company has a significant interest, including, without limitation, any subsidiary corporation in which the Company has at least a 50% ownership interest, as determined in the discretion of the Committee.

Substitute Award. The term “Substitute Award” means an Award granted or Stock issued by the Company in assumption of, or in substitution or exchange for, an award previously granted, or the right or obligation to make a future award, in all cases by a company acquired by the Company or any Subsidiary of the Company or with which the Company or a Subsidiary combines.

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2.1 **Committee.** The authority to manage the operation of and administer the Plan shall be vested in a committee (the “**Committee**”) in accordance with this Section 2. The Committee shall be selected by the Board, and shall consist solely of two or more members of the Board who are non-employee directors within the meaning of Rule 16b-3 and, to the extent the administration of an Award relates to a Section 162(m) Grandfathered Award, are outside directors within the meaning of Section 162(m) of the Code. Unless otherwise determined by the Board, the Company’s Compensation Committee shall be designated as the “**Committee**” hereunder.

2.2 **Powers of the Committee.** The Committee’s administration of the Plan shall be subject to the following:

(i) Subject to the provisions of the Plan, the Committee will have the authority and discretion to select from among the Eligible Grantees those persons who shall receive Awards, to determine the time or times of receipt, to determine the types of Awards and the number of shares covered by the Awards, and to establish the terms, conditions, performance criteria, restrictions, and other provisions of such Awards;

(ii) The Committee will have the authority and discretion to interpret the Plan, to establish, amend, and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any Award Agreement made pursuant to the Plan, and to make all other determinations that may be necessary or advisable for the administration of the Plan;

(iii) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons; and

(iv) In managing the operation of and administering the Plan, the Committee shall take action in a manner that conforms to the articles of incorporation and by-laws of the Company, and applicable state corporate law.

2.3 **Prohibition against Repricing.** Other than pursuant to Section 3.4 hereof, the Committee shall not, without the approval of the Company’s stockholders, (a) lower the option price per share of an Option or SAR after it is granted, (b) cancel an Option or SAR when the exercise price per Share exceeds the Fair Market Value of one share in exchange for cash or another Award (other than in connection with a Change in Control), or (c) take any other action with respect to an Option or SAR that would be treated as a repricing under the rules and regulations of the principal U.S. national securities exchange on which the Company’s shares are then listed.

2.4 **Delegation of Authority.** To the extent not inconsistent with applicable law, the rules of any national securities exchange that may in the future apply to the Company, or other provisions of the Plan, the Committee may, at any time, allocate all or any portion of its responsibilities and powers to any one or more of its members or, with

respect to Awards made to Employees other than executive officers, the Chief Executive Officer, including without limitation, the power to designate Grantees hereunder and determine the amount, timing and terms of Awards hereunder. Any such allocation or delegation may be revoked by the Committee at any time.

2.5 **Indemnification.** Each person who is or shall have been a member of the Committee, or the Board, shall be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken in good faith or failure to act in good faith under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall be in addition to any other rights of indemnification or elimination of liability to which such persons may be entitled under the Company's articles of incorporation or by-laws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

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2.6 **Minimum Vesting Requirement for Full-Value Awards.** Notwithstanding anything to the contrary, Grantees of full-value Awards (i.e., Awards other than Options and SARs), will be required to continue to provide services to the Company (or an Affiliated Company) for not less than one-year following the date of grant in order for any such full-value Awards to fully or partially vest (other than in case of death, Disability or a Change of Control). Notwithstanding the foregoing, up to five percent (5%) of the available shares of Stock authorized for issuance under the Plan pursuant to Section 3.1 hereof may provide for vesting of full-value Awards, partially or in full, in less than one-year.

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Available Shares of Stock under the Plan

3.1 **Shares Available for Awards.** Subject to the adjustments described in Section 3 herein, the maximum number of shares of Stock reserved for the grant of Awards under the Plan shall be 10,000,000. Any shares of Stock that are subject to Options or SARs shall be counted against this limit as one (1) share for every one (1) share granted, and any shares of Stock that are subject to Awards other than Options or SARs shall be counted against this limit as 1.25 shares for every one (1) share granted.

3.2 **Forfeited, Cancelled and Expired Awards.** Awards granted under the Plan that are forfeited, expire or are canceled or settled without issuance of Stock shall not count against the maximum number of shares that may be issued under the Plan as set forth in Section 3.1 hereof and shall be available for future Awards under the Plan. Any Stock that again becomes available for Awards under the Plan pursuant to this Section 3.2 shall be added as (i) one (1) share for every one (1) share subject to Options or SARs granted under the Plan or options, and (ii) as 1.25 shares for every one (1) share subject to Awards other than Options or Stock Appreciation Rights granted under the Plan.

3.3 **Prohibition on Share Recycling.** Notwithstanding anything to the contrary, any and all Stock that is (i) withheld or tendered in payment of an Option exercise price; (ii) withheld by the Company or tendered by the Grantee to satisfy any tax withholding obligation with respect to any Award; (iii) covered by a SAR (to the extent that it is settled in Stock, without regard to the number of shares of Stock that are actually issued to the Grantee upon exercise); (iv) reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of Options, shall not be added to the maximum number of shares of Stock that may be issued under the Plan as set forth in Section 3.1 hereof.

3.4 **Adjustments.** In the event of any change in the Company's capital structure, including but not limited to a change in the number of shares of Stock outstanding, on account of (i) any stock dividend, stock split, reverse stock split or any similar equity restructuring, or (ii) any combination or exchange of equity securities, merger, consolidation, recapitalization, reorganization, or divestiture or any other similar event affecting the Company's capital structure, to reflect such change in the Company's capital structure, the Committee shall make appropriate equitable adjustments to (a) the maximum number of shares of Stock that may be issued under the Plan as set forth in Section 3.1 hereof, (b) the number of shares of Stock issuable upon outstanding Awards, and (c) any individual Award

limitations or restrictions, as applicable. In the event of any extraordinary dividend, divestiture or other distribution (other than ordinary cash dividends) of assets to stockholders, or any transaction or event described above, to the extent necessary to prevent the enlargement or diminution of the rights of Grantees, the Committee shall make appropriate equitable adjustments to the number or kind of shares subject to an outstanding Award, the exercise price applicable to an outstanding Award, and/or a Performance Goals. Any adjustments under this Section 3.4 shall be consistent with Section 409A or Section 424 of the Code, to the extent applicable, and made in a manner that does not adversely affect the exemption provided pursuant to Rule 16b-3 or qualification under Section 162(m) of the Code, to the extent each may be applicable. The Company shall give each Grantee notice of an adjustment to an Award hereunder and, upon notice, such adjustment shall be final, binding and conclusive for all purposes. Notwithstanding the foregoing, the Committee shall decline to adjust any Award made to a Grantee if such adjustment would violate applicable law.

3.5 Fractional Shares. The Company shall not be obligated to issue any fractional shares of Stock in settlement of Awards granted under the Plan. Except as otherwise provided in an Award Agreement or determined by the Committee, (i) the total number of shares issuable pursuant to the exercise, vesting or earning of an Award shall be rounded down to the nearest whole share, and (ii) no fractional shares shall be issued. The Committee may, in its discretion, determine that a fractional share shall be settled in cash.

3.6 Substitute Awards; Plans of Acquired Companies. Substitute Awards shall not count against the maximum number of shares that may be issued under the Plan as set forth in Section 3.1 hereof. In addition, shares of Stock issued in connection with awards that are assumed, converted or substituted as a result of the acquisition of another company by the Company or any Subsidiary of the Company (including by way of merger, combination or similar transaction) will not count against the number of shares of Stock that may be issued under the Plan. Available shares under a stockholder-approved plan of an acquired company (as appropriately adjusted to reflect the transaction) may be used for Awards under the Plan and do not reduce the maximum number of shares available for grant under the Plan, subject to applicable stock exchange requirements.

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4.1 **General.** The term of each Award shall be for such period as may be determined by the Committee, subject to the limitations set forth below. Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or any Subsidiary of the Company upon the grant, maturation, or exercise of an Award may be made in such forms as the Committee shall determine at the date of grant or thereafter, including, without limitation, cash, Stock, or other property. In addition to the foregoing, the Committee may impose on any Award or the exercise thereof, at the date of grant, such additional terms and conditions not inconsistent with the provisions of the Plan, including, but not limited to forfeiture and clawback provisions, as the Committee shall determine; provided, however, that any such terms and conditions shall not be inconsistent with Section 409A of the Code.

4.2 **Types of Awards.** The Committee is authorized to grant the Awards described in this Section 4.2, under such terms and conditions as deemed by the Committee to be consistent with the purposes of the Plan. Such Awards may be granted with value and payment contingent upon Performance Goals. Each Award shall be evidenced by an Award Agreement containing such terms and conditions applicable to such Award as the Committee shall determine.

(i) *Options.* The Committee is authorized to grant Options to Grantees on the following terms and conditions:

Type of Award. The Award Agreement evidencing an Option shall designate the Option as either an ISO or an NQSO, as determined in the discretion of the Committee. At the time of the grant of Options, the Committee may a. place restrictions on the exercisability or vesting of Options that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

Exercise Price. The exercise price of each Option granted under this Section 4.2 shall be established by the Committee or shall be determined by a method established by the Committee at the time the Option is granted; provided, however, that the exercise price shall not be less than 100% of the Fair Market Value of a share of Stock b. on the date of grant of the Award. Notwithstanding the foregoing, the exercise price of any Substitute Awards may be issued at any such price as the Committee determines necessary in order to preserve for such newly Eligible Grantee the economic value of all or a portion of such acquired entity award. No dividends or dividend equivalents will be paid on shares of Stock subject to an Option.

c. Exercise. Upon satisfaction of the applicable conditions relating to vesting and exercisability, as determined by the Committee and set forth in the Award Agreement, and upon provision for the payment in full of the exercise price and applicable taxes due, the Grantee shall be entitled to exercise the Option and receive the number of shares of Stock issuable in connection with the Option exercise provided, however, that no Option may be exercised more than ten years after its grant date. Except as set forth in Section 4.3 hereof, no NQSO granted hereunder may be exercised after the earlier of (A) the expiration of the NQSO or (B) unless otherwise provided by the Committee in an Award Agreement, ninety days after the severance of an NQSO holder's employment or service with the Company or any Subsidiary. The shares issued in connection with the Option exercise may be subject to such

conditions and restrictions as the Committee may determine, from time to time. An Option may be exercised by any method as may be permitted by the Committee from time to time, including but not limited to any “net exercise” or other “cashless” exercise method.

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Restrictions Relating to ISOs. In addition to being subject to the terms and conditions of this Section 4.2(i), ISOs shall comply with all other requirements under Section 422 of the Code. Accordingly, ISOs may be granted only to Eligible Grantees who are employees (as described in Treasury Regulation Section 1.421-7(h)) of the Company or of any "Parent Corporation" (as defined in Section 424(e) of the Code) or of any "Subsidiary Corporation" (as defined in Section 424(f) of the Code) on the date of grant. The aggregate Fair Market Value (determined as of the time the ISO is granted) of the Stock with respect to which ISOs (under all option plans of the Company and of any Parent Corporation and of any Subsidiary Corporation) are exercisable for the first time by an Eligible Grantee during any calendar year shall not exceed \$100,000. ISOs shall not be transferable by the Eligible Grantee otherwise than by d. will or the laws of descent and distribution and shall be exercisable, during the Eligible Grantee's lifetime, only by such Eligible Grantee. The Committee shall not grant ISOs to any Employee who, at the time the ISO is granted, owns stock possessing (after the application of the attribution rules of Section 424(d) of the Code) more than ten percent (10%) of the total combined voting stock of the Company or of any Parent Corporation or of any Subsidiary Corporation, unless the exercise price of the ISO is fixed at not less than one hundred and ten percent (110%) of the Fair Market Value of a share of Common Stock on the date of grant and the exercise of such ISO is prohibited by its terms after the fifth (5th) anniversary of the ISO's date of grant. In addition, no ISO shall be issued to an Eligible Grantee in tandem with a NQSO issued to such Eligible Grantee in accordance with Treasury Regulation Section 14a.422A-1, Q/A-39.

(ii) SARs. The Committee is authorized to grant SARs to Grantees on the following terms and conditions:

In General. SARs may be granted independently or in tandem with an Option at the time of grant of the related Option. An SAR granted in tandem with an Option shall be exercisable only to the extent the underlying Option is exercisable. Payment of an SAR may be made in cash, Stock, or a combination of the foregoing, as specified in the a. Award Agreement or determined in the sole discretion of the Committee. At the time of the grant of SARs, the Committee may place restrictions on the exercisability or vesting of SARs that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

Term and Exercisability of SARs. SARs shall be exercisable over the exercise period at such times and upon such conditions as the Committee may determine, as reflected in the Award Agreement; provided, however, that no SAR may be exercised more than ten years after its grant date. Except as set forth in Section 4.3 hereof, no SAR granted b. hereunder may be exercised after the earlier of (A) the expiration of the SAR or (B) unless otherwise provided by the Committee in an Award Agreement, ninety days after the severance of an SAR holder's employment or service with the Company or any Subsidiary.

Payment. An SAR shall confer on the Grantee a right to receive an amount with respect to each share of Stock subject thereto, upon exercise thereof, equal to the excess of (A) the Fair Market Value of one share of Stock on the date of exercise over (B) the grant price of the SAR (which in the case of an SAR granted in tandem with an Option shall be equal to the exercise price of the underlying Option, and which in the case of any other SAR shall be such c. price as the Committee may determine but in no event shall be less than the Fair Market Value of a share of Stock on the date of grant of such SAR). An SAR may be exercised by giving written notice of such exercise to the Committee or its designated agent. No dividends or dividend equivalents will be paid on shares of Stock subject to an SAR.

(iii) *Restricted Stock*. The Committee is authorized to grant Restricted Stock to Grantees on the following terms and conditions:

Issuance and Restrictions. Restricted Stock shall be subject to such restrictions on transferability and other restrictions, if any, as the Committee may impose at the date of grant, which restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, or otherwise, as the Committee may determine. The Committee may place restrictions on Restricted Stock that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year. Except to the extent restricted under the Award Agreement relating to the Restricted Stock, a Grantee granted Restricted Stock shall have all of the rights of a stockholder including, without limitation, the right to vote Restricted Stock and the right to receive dividends thereon.

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Certificates for Stock. Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Grantee, such certificates shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may retain physical possession of the certificate.

Dividends. Except to the extent restricted under the applicable Award Agreement, cash dividends paid on Restricted Stock shall be paid at the dividend payment date subject to no restriction. Unless otherwise determined by the Committee, Stock distributed in connection with a stock split or stock dividend shall be subject to the transfer restrictions, forfeiture risks and vesting conditions to the same extent as the Restricted Stock with respect to which such Stock or other property has been distributed. Notwithstanding the foregoing, the Committee may not provide for the current payment of dividends for Restricted Stock subject to Performance Goals; for such Awards, dividends may accrue but shall not be payable unless and until the Award vests upon satisfaction of the applicable Performance Goals and all other applicable conditions to vesting.

(iv) Restricted Stock Units. The Committee is authorized to grant Restricted Stock Units to Grantees, subject to the following terms and conditions:

Conditions to Vesting. At the time of the grant of Restricted Stock Units, the Committee may place restrictions on Restricted Stock Units that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

Benefit upon Vesting. Unless otherwise provided in an Award Agreement, upon the vesting of a Restricted Stock Unit, there shall be delivered to the Grantee, within 30 days of the date on which such Award (or any portion thereof) vests, the number of shares of Stock equal to the number of Restricted Stock Units becoming so vested.

Dividend Equivalents. To the extent provided in an Award Agreement, subject to the requirements of Section 409A of the Code, an Award of Restricted Stock Units may provide the Grantee with the right to receive dividend equivalent payments with respect to Stock subject to the Award (both before and after the Stock subject to the Award is earned, vested, or acquired), which payments may be either made currently or credited to an account for the Grantee, and may be settled in cash or Stock, as determined by the Committee. Any such settlements and any such crediting of dividend equivalents may, at the time of grant of the Restricted Stock Unit, be made subject to the transfer restrictions, forfeiture risks, vesting and conditions of the Restricted Stock Units and subject to such other conditions, restrictions and contingencies as the Committee shall establish at the time of grant of the Restricted Stock Unit, including the reinvestment of such credited amounts in Stock equivalents, provided that all such conditions, restrictions and contingencies shall comply with the requirements of Section 409A of the Code. Notwithstanding the foregoing in this Section 4.2(iv)(c), dividend equivalents may accrue on unearned Restricted Stock Units subject to Performance Goals but shall not be payable unless and until the applicable Performance Goals are met and certified.

(v) Other Stock-Based Awards. The Committee is authorized to grant Awards to Grantees in the form of Other Stock-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan.

At the time of the grant of Other Stock-Based Awards, the Committee may place restrictions on the payout or vesting of Other Stock-Based Awards that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year. The Committee shall determine the terms and conditions of such Awards at the date of grant. Other Stock-Based Awards may not be granted with the right to receive dividend equivalent payments.

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Settlement of Options and SARs. Shares of Stock delivered pursuant to the exercise of an Option or SAR shall be subject to such conditions, restrictions and contingencies as the Committee may establish in the applicable Award Agreement. Settlement of SARs may be made in shares of Stock (valued at their Fair Market Value at the time of (vi) exercise), in cash, or in a combination thereof, as determined in the discretion of the Committee and set forth in the Award Agreement. The Committee, in its discretion, may impose such conditions, restrictions and contingencies with respect to shares of Stock acquired pursuant to the exercise of an Option or an SAR as the Committee determines to be desirable.

(vii) *Vesting; Additional Terms.* Subject to Section 2.6, and except as provided in Section 4.3, hereof, other than Options, SARs, Restricted Stock, Restricted Stock Units or Other Stock-Based Awards conditioned upon the attainment of Performance Goals that relate to performance periods of at least one fiscal year, Options, SARs, Restricted Stock, Restricted Stock Units or Other Stock-Based Awards granted hereunder shall vest as determined by the Committee and set forth in the Award Agreement. The term of any Award granted under the Plan will not exceed ten years from the date of grant.

(viii) *Qualified Performance-Based Compensation.*

The Committee may determine that Restricted Stock, Restricted Stock Units or Other Stock-Based Awards granted to a Covered Employee shall be considered “performance-based compensation,” or Performance Awards, in which case the provisions of this Section 4.2(viii) shall apply. To the extent required pursuant to Section 162(m) of the Code and the regulations promulgated thereunder, the Committee’s authority to grant new awards that are intended to qualify as performance-based compensation within the meaning of Section 162(m) of the Code (other than qualifying Options and qualifying SARs) shall terminate upon the first meeting of the Company’s stockholders that occurs in the fifth year following the year in which the Company’s stockholders first approve this Plan.

When Performance Awards are made under this Section 4.2(viii), the Committee shall establish in writing (i) the objective Performance Goals that must be met, (ii) the period during which performance will be measured, (iii) the maximum amounts that may be paid if the Performance Goals are met, and (iv) any other conditions that the Committee deems appropriate and consistent with the requirements of Section 162(m) of the Code. The Performance Goals shall satisfy the Committee’s requirements for “performance-based compensation,” including the requirement that the achievement of the goals be substantially uncertain at the time they are established and that the Performance Goals be established in such a way that a third party with knowledge of the relevant facts could determine whether and to what extent the Performance Goals have been met. The Committee shall not have discretion to increase the amount of compensation that is payable, but may reduce the amount of compensation that is payable, pursuant to Performance Awards identified by the Committee as “performance-based compensation.”

c. At the time each a Performance Award is granted, the Committee shall establish in writing the Performance Period, the Performance Measure and the Performance Goals in respect of such Performance Awards.

d. The Committee in its sole discretion shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary of the Company

or any Affiliated Company or the financial statements of the Company or any Subsidiary of the Company or any Affiliated Company, for the following items: (1) asset write-downs; (2) litigation or claim judgments or settlements; (3) the effect of changes in tax laws, accounting principles, regulations, or other laws or regulations affecting reported results; (4) any reorganization and restructuring programs, including discontinued operations; (5) acquisitions or divestitures; (6) unusual nonrecurring or extraordinary items identified in the Company's audited financial statements, including footnotes; (7) any reorganization or change in the corporate or capital structures of the Company; (8) foreign exchange gains and losses; (9) business interruption events; (10) annual incentive payments or other bonuses; or (11) capital charges, provided such adjustment is appropriate and consistent with the requirements established by the Committee to which the Performance Goal relates. In addition, the Committee may specify that certain equitable adjustments to the Performance Goals will be made during the applicable Performance Period, provided such specification is appropriate and consistent with the requirements established by the Committee pursuant to Section 4.2(viii)(c) hereof.

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The Committee shall certify the performance results for the performance period specified in the Award Agreement after the Performance Period ends. The Committee shall determine the amount, if any, to be paid pursuant to each e. Award based on the achievement of the Performance Goals and the satisfaction of all other terms of the Award Agreement. Subject to adjustment as provided in Section 3.4 hereof, the following limits will apply to Awards of the specified type granted to any one Grantee in any single fiscal year:

(i) Appreciation Awards – Options and SARs: 3,750,000 shares; and

(ii) Full Value Awards – Awards (other than Options and SARs) that are denominated in Shares: 2,500,000 shares.

In applying the foregoing limits, (a) all Awards of the specified type granted to the same Grantee in the same fiscal year will be aggregated and made subject to one limit; (b) the limits applicable to Options and SARs refer to the number of shares of Stock subject to those Awards; (c) the share limit under clause (ii) refers to the maximum number of shares of Stock that may be delivered under an Award or Awards of the type specified in clause (ii) assuming a maximum payout; and (d) each of the specified limits in clauses (i) and (ii) is multiplied by two (2) for Awards granted to a Grantee in the year employment commences.

The Committee may provide in the Award Agreement that Awards under this Section 4.2(viii) shall be payable, in f. whole or in part, in the event of the Grantee's death or Disability, or under other circumstances consistent with the Treasury regulations and rulings under Section 162(m) of the Code.

(ix) *Automatic Extended Exercisability in Certain Cases.* Notwithstanding the foregoing provisions of this Section, if the date an Award would otherwise terminate is a date that the Grantee is prohibited from exercising the Award under the Company's insider trading policy or such other conditions under applicable securities laws as the Committee shall specify, the term of the Award shall be extended to the second business day after the Grantee is no longer so prohibited from exercising the Award, but in no event shall the Award be extended beyond the original stated term of the Award.

4.3 **Change of Control of the Company.**

(i) The Committee may, at the time an Award is made or at any time prior to, coincident with or after the time of a Change of Control:

a. provide for the cancellation of any Awards then outstanding if the surviving entity or acquiring entity (or the surviving or acquiring entity's parent company) in the Change of Control replaces the Awards with new rights of substantially equivalent value, as determined by the Committee. For an Award to be validly assumed by a successor for purpose of this Section 4.3(i)(a), it must (x) provide such Grantee with rights and entitlements substantially

equivalent to or better than the rights, terms and conditions applicable under such Award, including, but not limited to, an identical or better exercise or vesting schedules; (y) have substantially equivalent value to such Award (determined at the time of the Change in Control); and (z) be based on stock that is traded on an established U.S. securities market or an established securities market outside the United States upon which the Grantees could readily trade the stock without administrative burdens or complexities. In the event of any ambiguity or discrepancy, the determination of the Committee shall be final and binding;

provide that upon an involuntary termination of a Grantee's employment as a result of a Change of Control, any time periods shall accelerate, and any other conditions relating to the vesting, exercise, payment or distribution of an Award shall be waived; or

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provide that Awards shall be purchased for an amount of cash equal to the amount that could have been obtained for the shares covered by a Restricted Stock Award if it had been vested and or by an Option or SAR if it had been exercised at the time of the Change of Control, provided however that Awards outstanding as of the date of the Change in Control may be cancelled and terminated without payment if the consideration payable with respect to one share of Stock in connection with the Change in Control is less than the exercise price or grant price applicable to such Award, as applicable.

Notwithstanding any other provisions of the Plan or an Award Agreement to the contrary, the vesting, payment, purchase or distribution of an Award may not be accelerated by reason of a Change of Control for any Grantee (ii) unless the Grantee's employment is involuntarily terminated as a result of the Change of Control as provided in the Award Agreement or in any other written agreement, including an employment agreement, between us and the Grantee.

4.4 Limitation on Award Grants to Non-Employee Directors. The maximum number of shares of Stock subject to Awards granted during a single fiscal year to any non-employee director, taken together with any cash fees paid to such non-employee director during the fiscal year, shall not exceed \$350,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); *provided*, that the Board may make exceptions to this limit for individual non-employee directors in extraordinary circumstances as the Board may determine in its sole discretion, so long as (x) the aggregate limit does not exceed \$500,000 in total value during a fiscal year and (y) the non-employee director receiving such additional compensation does not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving non-employee directors.

5

Operation

5.1 Duration. Grants may be made under the Plan through September 6, 2028. In the event of Plan termination while Awards remain outstanding, the Plan shall remain in effect as long as any Awards under it are outstanding, although no further grants may be made following Plan termination.

5.2 Uncertificated Stock. Nothing contained in the Plan shall prohibit the issuance of Stock on an uncertificated basis, to the extent allowed by the Company's Articles of Incorporation and Bylaws, by applicable law and by the applicable rules of any stock exchange.

5.3 Tax Withholding. All distributions under the Plan are subject to withholding of all applicable taxes, and the Committee may condition the delivery of any shares or other benefits under the Plan on satisfaction of the applicable withholding obligations. The Committee, in its discretion, and subject to such requirements as the Committee may impose prior to the occurrence of such withholding, may permit such withholding obligations to be satisfied through cash payment by the Grantee, through the surrender of shares of Stock which the Grantee already owns, through

withholding from other compensation payable to the Grantee or through the surrender of unrestricted shares of Stock to which the Grantee is otherwise entitled under the Plan, but only to the extent of the minimum amount required to be withheld under applicable law (or, if permitted by the Company, such other withholding rate as will not cause adverse accounting consequences and is permitted under applicable IRS withholding rules).

5.4 **Use of Shares.** Subject to the limitations on the number of shares of Stock that may be delivered under the Plan, the Committee may use available shares of Stock as the form of payment for compensation, grants or rights earned or due under any other compensation plans or arrangements of the Company or a Subsidiary, including the plans and arrangements of the Company or a Subsidiary assumed in business combinations.

5.5 **Non-transferability.** Awards granted under the Plan, and during any period of restriction on transferability, shares of Common Stock issued in connection with the exercise of an Option or a SAR, or vesting of a Restricted Stock Award may not be sold, pledged, hypothecated, assigned, margined or otherwise transferred by a Grantee in any manner other than by will or the laws of descent and distribution, unless and until the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed or have been waived by the Committee. No Award or interest or right therein shall be subject to the debts, contracts or engagements of a Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law, by judgment, lien, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy and divorce), and any attempted disposition thereof shall be null and void, of no effect, and not binding on the Company in any way. Notwithstanding the foregoing, the Committee may permit Options and/or shares issued in connection with an Option or a SAR exercise that are subject to restrictions on transferability, to be transferred one time and without payment or consideration to a member of a Grantee's immediate family or to a trust or similar vehicle for the benefit of a Grantee's immediate family members. During the lifetime of a Grantee, all rights with respect to Awards shall be exercisable only by such Grantee or, if applicable pursuant to the preceding sentence, a permitted transferee.

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5.6 **Form and Time of Elections.** Unless otherwise specified herein, each election required or permitted to be made by any Grantee or other person entitled to benefits under the Plan, and any permitted modification, or revocation thereof, shall be in writing filed with the Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee shall require.

5.7 **Agreement with Company.** An Award under the Plan shall be subject to such terms and conditions, not inconsistent with the Plan, as the Committee shall, in its sole discretion, prescribe. The terms and conditions of any Award to any Grantee shall be reflected in such form of written document as is determined by the Committee. A copy of such document shall be provided to the Grantee, and the Committee may, but need not, require that the Grantee shall sign a copy of such document. Such document is referred to in the Plan as an “Award Agreement” regardless of whether any Grantee signature is required.

5.8 **Gender and Number.** Where the context admits, words in any gender shall include any other gender, words in the singular shall include the plural and the plural shall include the singular.

5.9 **Limitation of Implied Rights.**

The Plan shall at all times be unfunded and neither a Grantee nor any other person shall, by reason of participation in the Plan, acquire any right in or title to any assets, funds or property of the Company or any Subsidiary whatsoever, including, without limitation, any specific funds, assets, or other property which the Company or any Subsidiary, in its sole discretion, may set aside in anticipation of a liability under the Plan. Nothing contained in the (i) Plan and no action taken pursuant hereto shall create or be construed to create a fiduciary relationship between the Company and any Grantee or any other person. A Grantee shall have only a contractual right to the Stock or amounts, if any, payable under the Plan, unsecured by any assets of the Company or any Subsidiary, and nothing contained in the Plan shall constitute a guarantee that the assets of the Company or any Subsidiary shall be sufficient to pay any benefits to any person.

The Plan does not constitute a contract of employment or service, and selection as a Grantee will not give any participating Employee, Non-Employee Director or Key Advisor the right to be retained in the employ or service of the Company or any Subsidiary, nor any right or claim to any benefit under the Plan, unless such right or claim (ii) has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan or the Award Agreement, no Award under the Plan shall confer upon the holder thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights.

5.10 **Section 409A.** It is intended that all Options and SARs granted under the Plan shall be exempt from the provisions of Section 409A of the Code and that all other Awards under the Plan, to the extent that they constitute “non-qualified deferred compensation” within the meaning of Section 409A of the Code, will comply with Section 409A

of the Code (and any regulations and guidelines issued thereunder). The Plan and any Award Agreements issued hereunder may be amended in any respect deemed by the Board or the Committee to be necessary in order to preserve compliance with Section 409A of the Code. Notwithstanding anything in this Plan to the contrary, if required by Section 409A of the Code, if a Grantee is considered a “specified employee” for purposes of Section 409A of the Code and if payment of any Award under this Plan is required to be delayed for a period of six months after “separation from service” within the meaning of Section 409A of the Code, payment of such Award shall be delayed as required by Section 409A of the Code, and the accumulated amounts with respect to such Award shall be paid in a lump sum payment within ten days after the end of the six month period. If the Grantee dies during the postponement period prior to the payment of benefits, the amounts withheld on account of Section 409A of the Code shall be paid to the Grantee’s beneficiary within sixty (60) days after the date of the Grantee’s death. For purposes of Section 409A of the Code, each payment under the Plan shall be treated as a separate payment. In no event shall a Grantee, directly or indirectly, designate the calendar year of payment. To the extent that any provision of the Plan would cause a conflict with the requirements of section 409A of the Code, or would cause the administration of the Plan to fail to satisfy the requirements of Section 409A of the Code, such provision shall be deemed null and void to the extent permitted by applicable law. Notwithstanding anything in the Plan or any Award Agreement to the contrary, each Grantee shall be solely responsible for the tax consequences of Awards under the Plan, and in no event shall the Company have any responsibility or liability if an Award does not meet any applicable requirements of Section 409A of the Code. Although the Company intends to administer the Plan to prevent taxation under Section 409A of the Code, the Company does not represent or warrant that the Plan or any Award complies with any provision of federal, state, local or other tax law.

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5.11 **Regulations and Other Approvals.**

The obligation of the Company to sell or deliver Stock with respect to any Award granted under the Plan shall be subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Committee.

Each Award is subject to the requirement that, if at any time the Committee determines, in its absolute discretion, that the listing, registration or qualification of Stock issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Award or the issuance of Stock, no such Award shall be granted or payment made or Stock issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Committee.

In the event that the disposition of Stock acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act and is not otherwise exempt from such registration, such Stock shall be restricted against transfer to the extent required by the Securities Act of 1933, as amended, or regulations thereunder, and applicable state securities laws, and the Committee may require a Grantee receiving Stock pursuant to the Plan, as a condition precedent to receipt of such Stock, to represent to the Company in writing that the Stock acquired by such Grantee is acquired for investment only and not with a view to distribution.

With respect to persons subject to Section 16 of the 1934 Act, it is the intent of the Company that the Plan and all transactions under the Plan comply with all applicable provisions of Rule 16b-3.

All Awards under the Plan will be subject to any compensation, clawback and recoupment policies that may be applicable to the employees of the Company, as in effect from time to time and as approved by the Board or Committee, whether or not approved before or after the Effective Date. Subject to the requirements of applicable law, any such compensation, clawback and recoupment policies shall apply to Awards made after the effective date of the policy.

5.12 Non-Employee Director Award Deferrals. The Committee may permit a Non-Employee Director to defer receipt of the payment of cash or the delivery of shares that would otherwise be due to such Non-Employee Director in connection with any Restricted Stock, Restricted Stock Units or Other Stock-Based Awards. If any such deferral election is permitted, the Committee shall establish rules and procedures for such deferrals and may provide for interest or other earnings to be paid on such deferrals, which rules and procedures shall be consistent with applicable requirements of Section 409A of the Code. Unless otherwise specified in a Non-Employee Director's valid election, any deferred amount will be deferred until the earliest to occur of the Non-Employee Director's death, separation from service, or Change of Control; provided that any such deferral election is made by the Non-Employee Director on or prior to December 31 of the calendar year preceding the calendar year in which any such amounts are earned, or if

such Non-Employee Director is newly eligible for purposes of Section 409A of the Code, then within 30 days following the date he or she is first eligible, and then only with respect to amounts earned after the date of the election.

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Amendment and Termination

The Plan may be terminated or amended by the Board at any time, except that the following actions may not be taken without stockholder approval:

- (i) any increase in the number of shares that may be issued under the Plan (except by certain adjustments provided for under the Plan);
- (ii) any change in the class of persons eligible to receive ISOs under the Plan;
- (iii) any change in the requirements of Sections 4.2(i)(b) and 4.2(ii)(c) hereof regarding the exercise price of Options and the grant price of SARs;
- (iv) any repricing or cancellation and regrant of any Option or, if applicable, other Award at a lower exercise, base or purchase price, as set forth in Section 2.3 hereof; or
- (v) any other amendment to the Plan that would require approval of the Company's stockholders under applicable law, regulation or rule or stock exchange listing requirement.

Notwithstanding any of the foregoing, adjustments pursuant to Section 3 hereof shall not be subject to the foregoing limitations of this Section 6.

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Governing Law

The Plan and all Award Agreements entered into under the Plan shall be construed in accordance with and governed by the laws of the State of New York, except that any principles or provisions of New York law that would apply the law of another jurisdiction (other than applicable provisions of U.S. Federal law) shall be disregarded. Notwithstanding the foregoing, matters with respect to indemnification, delegation of authority under the Plan, and the legality of shares of Stock issued under the Plan, shall be governed by the Delaware General Corporation Law.

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Severability

If any of the provision of this Plan is finally held to be invalid, illegal or unenforceable (whether in whole or in part), such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or

unenforceability and the remaining provisions shall not be affected thereby; provided that, if any such provision is finally held to be invalid, illegal or unenforceable because it exceeds the maximum scope determined to be acceptable to permit such provision to be enforceable, such provision shall be deemed modified to the minimum extent necessary in order to make such provision enforceable.

9

Clawback and Non-compete

Notwithstanding any other provisions of this Plan, any Award which is subject to recovery under any law, government regulation, stock exchange listing requirement, or Company policy, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement, or any policy adopted by the Company whether pursuant to any such law, government regulation or stock exchange listing requirement or otherwise. In addition and notwithstanding any other provisions of this Plan, any Award shall be subject to such noncompete provisions under the terms of the Agreement or any other agreement or policy adopted by the Company, including, without limitation, any such terms providing for immediate termination and forfeiture of an Award if and when a Participant becomes an employee, agent or principal of a competitor without the express written consent of the Company.

* * * * *

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Using a black ink pen, mark your votes with an X as shown in this example. Please do not write outside the designated areas. X 02Y1KB 1 U PX + Annual Meeting Proxy Card . IMPORTANT ANNUAL MEETING INFORMATION + A Proposals — The Board of Directors recommends a vote FOR all the nominees listed in Proposal 1 and FOR Proposals 2 through 10. 01 _____ Milton “Todd” Ault, III* 1. Election of Directors: 02 _____ Amos Kohn* 03 _____ Robert Smith* 04 _____ Moti Rosenberg* 05 _____ Jeffrey Bentz* 06 _____ William Horne* For Withhold For Withhold To cumulate votes as to a particular nominee or nominees as explained in the Proxy Statement, check the box to the right and then indicate the number of votes to be given to such nominee(s) next to his or her name. NOTE: If you wish to use cumulative voting, you MUST vote your proxy by mail. * To be elected as directors to serve until the next annual meeting and until their respective successors are elected and qualified. For Withhold For Against Abstain 2. To ratify the appointment of Marcum, LLP, as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2018. For Against Abstain 3. To approve (i) the grant of 1,000,000 shares of Common Stock, which shares shall vest ratably over 48 months beginning on January 1, 2020, (ii) the grant of options to purchase 500,000 shares of Common Stock at an exercise price of \$0.80, which option will vest over 60 months, and the issuance of the shares of Common Stock issuable upon exercise of such option, and (iii) the CEO Performance Award, each pursuant to the terms of the Ault Employment Agreement dated June 17, 2018, in order to comply with the listing rules of the NYSE American. 4. To approve (i) the grant of 1,000,000 shares of Common Stock, which shares shall vest in installments of two hundred thousand (200,000) shares annually over five (5) years beginning on January 1, 2019, and (ii) the grant of options to purchase 500,000 shares of Common Stock at an exercise price of \$2.32, which option will vest over 60 months, and the issuance of the shares of Common Stock issuable upon exercise of such option pursuant to the terms of the Horne Employment Agreement dated January 25, 2018, in order to comply with the listing rules of the NYSE American. 5. To approve equity issuances to directors and executive officers of the Company, in order to comply with the listing rules of the NYSE American. 3 9 6 5 0 9 1 000000000.000000 ext 000000000.000000 ext 000000000.000000 ext 000000000.000000 ext 000000000.000000 ext 000000000.000000 ext 000000000.000000 ext 000004 MR A SAMPLE DESIGNATION (IF ANY) ADD 1 ADD 2 ADD 3 ADD 4 ADD 5

ADD 6 ENDORSEMENT_LINE _____ SACKPACK _____ 1234 5678 9012 345 C123456789
 MR A SAMPLE (THIS AREA IS SET UP TO ACCOMMODATE 140 CHARACTERS) MR A SAMPLE AND MR
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 A SAMPLE AND MR A SAMPLE AND C 1234567890 J N T qIF YOU HAVE NOT VOTED VIA THE
 INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM
 PORTION IN THE ENCLOSED ENVELOPE.q Electronic Voting Instructions Available 24 hours a day, 7 days a
 week! Instead of mailing your proxy, you may choose one of the voting methods outlined below to vote your proxy.
 VALIDATION DETAILS ARE LOCATED BELOW IN THE TITLE BAR. Proxies submitted by the Internet or
 telephone must be received by 11:59 p.m, Eastern Time, on December 27, 2018. Vote by Internet • Go to
 www.envisionreports.com/DPW • Or scan the QR code with your smartphone • Follow the steps outlined on the secure
 website Vote by telephone • Call toll free 1-800-652-VOTE (8683) within the USA, US territories & Canada on a
 touch tone telephone • Follow the instructions provided by the recorded message . 201 Shipyard Way Newport Beach,
 CA 92663 (510) 657-2635 THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS The
 undersigned hereby appoints Milton “Todd” Ault, III and William B. Horne, or any one of them, as proxy, with full
 power to appoint substitutes, and hereby authorizes Messrs. Ault and Horne, or any one of them, to represent and to
 vote as designated below, all the shares of common stock of DPW Holdings, Inc., held of record by the undersigned as
 of November 13, 2018, at the 2018 Annual Meeting of Shareholders to be held at Hotel Irvine located at 17900
 Jamboree Road, Trabuco Room, Irvine, CA 92614, at 9:00 a.m. Pacific Time, on December 28, 2018, and any
 adjournments or postponements thereof, and hereby ratifies all that said proxies may do by virtue hereof. THIS
 PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE
 UNDERSIGNED SHAREHOLDER. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR THE
 ELECTION OF THE NOMINEES LISTED (AND THE PROXYHOLDER WILL HAVE DISCRETIONARY
 AUTHORITY TO CUMULATE VOTES AMONG NOMINEES) IN PROPOSAL ONE AND FOR PROPOSALS
 TWO AND THREE. THE PROXY HOLDER WILL HAVE DISCRETIONARY AUTHORITY TO VOTE WITH
 RESPECT TO OTHER BUSINESS WHICH PROPERLY MAY COME BEFORE THE MEETING, OR ANY
 ADJOURNMENTS OR POSTPONEMENTS THEREOF. PLEASE READ, SIGN, DATE AND RETURN THIS
 PROXY PROMPTLY USING THE ENCLOSED ENVELOPE. (IF YOU VOTE BY INTERNET, PLEASE DO NOT
 MAILBACK THIS PROXY CARD). THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF THE
 NOTICE OF ANNUAL MEETING AND PROXY STATEMENT FURNISHED IN CONNECTION THEREWITH.
 Proxy — DPW HOLDINGS, INC. C Authorized Signatures — This section must be completed for your vote to be
 counted. — Date and Sign Below Please sign exactly as name(s) appears hereon. Joint owners should each sign. When
 signing as attorney, executor, administrator, corporate officer, trustee, guardian, or custodian, please give full title.
 Date (mm/dd/yyyy) — Please print date below. Signature 1 — Please keep signature within the box. Signature 2 — Please
 keep signature within the box. B Non-Voting Items Change of Address — Please print new address below. 6. To
 approve the issuance of an additional 6,044,685 shares of Common Stock pursuant to an amendment that reduced the
 conversion price of the Secured Convertible Promissory Note dated May 15, 2018, to \$0.40 from \$0.75, in order to
 comply with the listing rules of the NYSE American. 7. To approve the issuance of (i) 2,500,000 shares of Common
 Stock pursuant to the conversion of a Senior Secured Convertible Promissory Note, at a conversion price equal to
 \$0.40 per share, and (ii) up to 400,000 shares of Common Stock, in accordance with the Securities Purchase
 Agreement dated July 2, 2018, as amended on August 31, 2018, in order to comply with the listing rules of the NYSE
 American. For Against Abstain For Against Abstain 8. To approve the issuance of (i) 5,000,000 shares of Common
 Stock pursuant to the conversion of a Senior Secured Convertible Promissory Note, at a conversion price equal to
 \$0.40 per share, and (ii) up to 620,000 shares of Common Stock, in accordance with the Securities Purchase
 Agreement dated August 31, 2018, in order to comply with the listing rules of the NYSE American. 9. To adopt the
 Company’s 2018 Stock Incentive Plan. 10. To approve the amendment to the Company’s Certificate of Incorporation to
 increase the authorized shares of Common Stock from 200,000,000 to 500,000,00. IF VOTING BY MAIL, YOU
 MUST COMPLETE SECTIONS A - C ON BOTH SIDES OF THIS CARD. + + qIF YOU HAVE NOT VOTED VIA
 THE INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE
 BOTTOM PORTION IN THE ENCLOSED ENVELOPE.q Using a black ink pen, mark your votes with an X as
 shown in this example. Please do not write outside the designated areas. X 02Y1LB 1 U PX + q PLEASE FOLD
 ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED

ENVELOPE. q Annual Meeting Proxy Card . IMPORTANT ANNUAL MEETING INFORMATION + A 01

_____ Milton "Todd" Ault, III* 1. Election of Directors: 02 _____ Amos Kohn* 03 _____ Robert Smith* 04
 _____ Moti Rosenberg* 05 _____ Jeffrey Bentz* 06 _____ William Horne* For Withhold For Withhold

To cumulate votes as to a particular nominee or nominees as explained in the Proxy Statement, check the box to the right and then indicate the number of votes to be given to such nominee(s) next to his or her name. NOTE: If you wish to use cumulative voting, you MUST vote your proxy by mail. * To be elected as directors to serve until the next annual meeting and until their respective successors are elected and qualified. For Withhold For Against Abstain For Against Abstain 3. To approve (i) the grant of 1,000,000 shares of Common Stock, which shares shall vest ratably over 48 months beginning on January 1, 2020, (ii) the grant of options to purchase 500,000 shares of Common Stock at an exercise price of \$0.80, which option will vest over 60 months, and the issuance of the shares of Common Stock issuable upon exercise of such option, and (iii) the CEO Performance Award, each pursuant to the terms of the Ault Employment Agreement dated June 17, 2018, in order to comply with the listing rules of the NYSE American. 4. To approve (i) the grant of 1,000,000 shares of Common Stock, which shares shall vest in installments of two hundred thousand (200,000) shares annually over five (5) years beginning on January 1, 2019, and (ii) the grant of options to purchase 500,000 shares of Common Stock at an exercise price of \$2.32, which option will vest over 60 months, and the issuance of the shares of Common Stock issuable upon exercise of such option pursuant to the terms of the Horne Employment Agreement dated January 25, 2018, in order to comply with the listing rules of the NYSE American. 5. To approve equity issuances to directors and executive officers of the Company, in order to comply with the listing rules of the NYSE American. Proposals — The Board of Directors recommends a vote FOR all the nominees listed in Proposal 1 and FOR Proposals 2 through 10. 2. To ratify the appointment of Marcum, LLP, as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2018. 3 9 6 5 0 9 2 q PLEASE FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE. q . Proxy — DPW HOLDINGS, INC. B Authorized Signatures — This section must be completed for your vote to be counted. — Date and Sign Below Please sign exactly as name(s) appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, corporate officer, trustee, guardian, or custodian, please give full title. Date (mm/dd/yyyy) — Please print date below. Signature 1 — Please keep signature within the box. Signature 2 — Please keep signature within the box. 201 Shipyard Way Newport Beach, CA 92663 (510) 657-2635 THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS The undersigned hereby appoints Milton "Todd" Ault, III and William B. Horne, or any one of them, as proxy, with full power to appoint substitutes, and hereby authorizes Messrs. Ault and Horne, or any one of them, to represent and to vote as designated below, all the shares of common stock of DPW Holdings, Inc., held of record by the undersigned as of November 13, 2018, at the 2018 Annual Meeting of Shareholders to be held at Hotel Irvine located at 17900 Jamboree Road, Trabuco Room, Irvine, CA 92614, at 9:00 a.m. Pacific Time, on December 28, 2018, and any adjournments or postponements thereof, and hereby ratifies all that said proxies may do by virtue hereof. THIS PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED SHAREHOLDER. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR THE ELECTION OF THE NOMINEES LISTED (AND THE PROXYHOLDER WILL HAVE DISCRETIONARY AUTHORITY TO CUMULATE VOTES AMONG NOMINEES) IN PROPOSAL ONE AND FOR PROPOSALS TWO AND THREE. THE PROXY HOLDER WILL HAVE DISCRETIONARY AUTHORITY TO VOTE WITH RESPECT TO OTHER BUSINESS WHICH PROPERLY MAY COME BEFORE THE MEETING, OR ANY ADJOURNMENTS OR POSTPONEMENTS THEREOF. PLEASE READ, SIGN, DATE AND RETURN THIS PROXY PROMPTLY USING THE ENCLOSED ENVELOPE. THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF THE NOTICE OF ANNUAL MEETING AND PROXY STATEMENT FURNISHED IN CONNECTION THEREWITH. 6. To approve the issuance of an additional 6,044,685 shares of Common Stock pursuant to an amendment that reduced the conversion price of the Secured Convertible Promissory Note dated May 15, 2018, to \$0.40 from \$0.75, in order to comply with the listing rules of the NYSE American. 7. To approve the issuance of (i) 2,500,000 shares of Common Stock pursuant to the conversion of a Senior Secured Convertible Promissory Note, at a conversion price equal to \$0.40 per share, and (ii) up to 400,000 shares of Common Stock, in accordance with the Securities Purchase Agreement dated July 2, 2018, as amended on August 31, 2018, in order to comply with the listing rules of the NYSE American. For Against Abstain For Against Abstain 8. To approve the issuance of (i) 5,000,000 shares of Common Stock pursuant to the conversion of a Senior Secured Convertible Promissory Note, at a conversion price equal to \$0.40 per share, and (ii)

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up to 620,000 shares of Common Stock, in accordance with the Securities Purchase Agreement dated August 31, 2018, in order to comply with the listing rules of the NYSE American. 9. To adopt the Company's 2018 Stock Incentive Plan. 10. To approve the amendment to the Company's Certificate of Incorporation to increase the authorized shares of Common Stock from 200,000,000 to 500,000,00. IF VOTING BY MAIL, YOU MUST COMPLETE SECTIONS A AND B ON BOTH SIDES OF THIS CARD. + +