



# **FORM 8-K**

**J C PENNEY CO INC - jcp**

**Filed: April 02, 2008 (period: March 27, 2008)**

Report of unscheduled material events or corporate changes.

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

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**FORM 8-K  
CURRENT REPORT**

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

Date of Report (Date of earliest event reported): March 27, 2008

**J. C. PENNEY COMPANY, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation )

1-15274  
(Commission File No.)

26-0037077  
(IRS Employer  
Identification No.)

6501 Legacy Drive  
Plano, Texas

(Address of principal executive offices)

75024-3698

(Zip code)

Registrant's telephone number, including area code: (972) 431-1000

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

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

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

**(d) Election of New Director.** On March 27, 2008, the Board of Directors of J. C. Penney Company, Inc. (“Company”) elected Ken C. Hicks as a member of the Board of Directors. Mr. Hicks currently serves as President and Chief Merchandising Officer of the Company.

A copy of the press release announcing Mr. Hicks’ election to the Board is furnished herewith as Exhibit 99.1.

**(e) Amendments to Change in Control Plan.** On March 27, 2008, the independent directors of the Board approved certain amendments to the J. C. Penney Corporation, Inc. Change in Control Plan (the “Plan”). Under the Plan, participants are entitled to receive a tax gross-up payment in respect of any excise taxes imposed on the benefits payable under the Plan. The Plan further provides that benefits under the Plan may be reduced to keep benefit payments under the threshold that would trigger an excise tax and gross-up payment. Effective March 27, 2008, the Plan was amended to provide that participants will be eligible for tax gross-up payments in the event of a change in control that occurs within five years from the date they become eligible to participate in the Plan, subject to existing limitations and conditions. After five years of participation, participants will either receive their full benefit under the Plan and pay the excise tax themselves or have their benefit reduced so that no excise tax will apply. The Plan was also amended to allow any participant to waive his or her right to receive an excise tax gross-up payment under the Plan. A copy of the amended and restated Plan is filed herewith as Exhibit 10.1 and incorporated herein by reference.

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

Effective March 27, 2008, the Board amended Article II, Section 8 of the Company's Bylaws to provide for a majority vote standard for non-contested director elections. Pursuant to the Bylaw amendment, in any non-contested election of directors, each director shall be elected by the affirmative vote of the majority of the votes cast with respect to that director’s election. Any incumbent director nominee who is not re-elected shall, promptly following the receipt of the final report from the independent inspectors of election, tender his or her resignation, and the Board of Directors (excluding the director who tenders his or her resignation) will promptly decide whether to accept or refuse the resignation. Absent a compelling reason for the director to remain on the Board, the Board shall accept the resignation. Prior to the amendment, the Company’s Bylaws provided that directors shall be elected by a plurality of the votes cast at the stockholder meeting; provided, however, that in any non-contested election of directors, any director nominee who receives more votes “withheld” from his or her election than votes “for” such election shall promptly tender his or her resignation and the Board shall promptly decide whether to accept such resignation.

The Board also amended Article III, Section 4 of the Company’s Bylaws, effective March 27, 2008, to provide that the term of the Company’s current Stockholder Rights Plan, or any new stockholder rights plan adopted after the effective date of the amendment, may not be extended without the approval of two-thirds of the independent members of the Board of Directors.

In addition, effective March 27, 2008, the Board approved certain amendments to Article VIII, Sections 1 and 3 of the Company's Bylaws to clarify the treatment of uncertificated shares under the Direct Registration System and the Delaware General Corporation Law.

A copy of the Company's Bylaws, as amended, is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

- (d) Exhibit 3.1 J. C. Penney Company, Inc. Bylaws, as amended to March 27, 2008
- Exhibit 10.1 J. C. Penney Corporation, Inc. Change in Control Plan, as amended and restated as of March 27, 2008
- Exhibit 99.1 J. C. Penney Company, Inc. News Release issued March 27, 2008

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

J. C. PENNEY COMPANY, INC.

By: /s/ Jeffrey J. Vawrinek  
Jeffrey J. Vawrinek  
Acting Secretary

Date: April 2, 2008

## EXHIBIT INDEX

Exhibit Number	Description
3.1	J. C. Penney Company, Inc. Bylaws, as amended to March 27, 2008
10.1	J. C. Penney Corporation, Inc. Change in Control Plan, as amended and restated as of March 27, 2008
99.1	J. C. Penney Company, Inc. News Release issued March 27, 2008

J. C. PENNEY COMPANY, INC.  
(A Delaware Corporation)

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BYLAWS

As amended to March 27, 2008



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J. C. PENNEY COMPANY, INC.

(A Delaware Corporation)

BYLAWS

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ARTICLE I

OFFICES

SECTION 1. Registered Office. The registered office of J. C. Penney Company, Inc. (hereinafter called the Company) in the State of Delaware shall be at 1209 Orange Street, City of Wilmington, County of New Castle. The name of the registered agent in charge thereof is The Corporation Trust Company.

SECTION 2. Other Offices. The Company may also have an office or offices at such other place or places either within or without the State of Delaware as from time to time the Board of Directors may determine or the business of the Company may require.

## ARTICLE II

## MEETINGS OF STOCKHOLDERS

SECTION 1. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may come before the meeting shall be held at such place and time as shall be fixed by the Board of Directors and specified in the notice of the meeting, on the third Tuesday in May in each year, or on such other day as shall be fixed by the Board of Directors and specified in the notice of the meeting. If the election of directors shall not be held on the day designated herein or the day fixed by the Board, as the case may be, for any annual meeting, or on the day of any adjourned session thereof, the Board of Directors shall cause the election to be held at a special meeting as soon thereafter as convenient. At such special meeting, the stockholders may elect the directors and transact other business with the same force and effect as at an annual meeting duly called and held.

SECTION 2. Special Meetings. Any action required or permitted to be taken by the holders of the Common Stock of the Company must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. A special meeting of stockholders for any purpose or purposes, unless otherwise prescribed by the laws of the State of Delaware or by the certificate of incorporation, may be called at any time only by the Board of Directors pursuant to a resolution approved by a majority of the Board of Directors. Special meetings of stockholders may be held at such place, on

such date, and at such time as shall be designated by resolution of the Board of Directors.

SECTION 3. Notice of Meetings. Except as otherwise required by the laws of the State of Delaware or the certificate of incorporation, notice of each annual or special meeting of stockholders shall be given not less than 10 nor more than 60 days before the day on which the meeting is to be held to each stockholder of record entitled to vote at the meeting by delivering a written notice thereof to him or her personally, or by depositing a copy of the notice in the United States mail, postage prepaid, directed to him or her at his or her address as it appears on the records of the Company, or by transmitting the notice thereof to him or her at such address by telegram, cable, radiogram, telephone facsimile, or other appropriate written communication. Except when expressly required by the laws of the State of Delaware, no publication of any notice of a meeting of stockholders shall be required. Every such notice shall state the place, date, and time of the meeting, and in the case of a special meeting, the purpose or purposes thereof. Notice of any adjourned session of a meeting of stockholders shall not be required to be given if the place, date, and time thereof are announced at the meeting at which the adjournment is taken. If, however, the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 4. List of Stockholders. It shall be the duty of the officer who shall have charge of the stock ledger of the Company to prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected, for any purpose germane to the meeting, by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine such list or to vote in person or by proxy at the meeting.

SECTION 5. Quorum. At each meeting of stockholders, the holders of a majority of the issued and outstanding shares of stock of the Company entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum at any meeting, or any adjourned session thereof, the stockholders of the Company present in person or represented by proxy and entitled to

vote, by majority vote, or in the absence of all the stockholders, any officer entitled to preside or act as secretary at the meeting, may adjourn the meeting from time to time until a quorum shall be present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 6. Organization and Conduct of Meeting. At each meeting of stockholders, the Chairman of the Board or in his or her absence a Vice Chairman of the Board or in his or her absence a chairman chosen by the vote of a majority in interest of the stockholders present in person or represented by proxy and entitled to vote thereat, shall act as chairman. The Secretary or in his or her absence an Assistant Secretary or in the absence of the Secretary and all Assistant Secretaries a person whom the chairman of the meeting shall appoint shall act as secretary of the meeting and keep a record of the proceedings thereof. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem necessary, appropriate, or convenient. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate, or

convenient for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Company, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof, and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 7. Notification of Stockholder Business. At a meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) in the case of an annual meeting of stockholders, otherwise properly requested to be brought before the meeting by a stockholder of record entitled to vote at the

meeting and otherwise a proper subject to be brought before such meeting. For business to be properly requested to be brought before an annual meeting of stockholders, any stockholder who desires to bring any matter (other than the election of directors, which is provided for in Section 15 of Article III of these Bylaws) before such meeting and who is entitled to vote on such matter must give timely written notice of such stockholder's desire to bring such matter before the meeting, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Company not later than 90 days in advance of such meeting. A stockholder's notice to the Secretary in this regard shall set forth: (1) the name and address of the stockholder proposing such business, (2) a representation that such stockholder is a record owner of stock of the Company entitled to vote at the meeting and intends to appear in person at the meeting to present the described business, (3) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, and (4) any material interest of the stockholder in such business. Notwithstanding anything in these Bylaws to the contrary, no business may be conducted at a meeting except in accordance with the procedures set forth in this Article II of these Bylaws. The chairman of a meeting may, if the facts warrant, or if not in accordance with applicable law, determine and declare to the meeting that business proposed to be brought before a meeting was not a proper subject therefor or was not properly brought before the meeting in accordance with the provisions of this Section 7, and if he should



so determine, he may so declare to the meeting, and any such business not a proper subject matter or not properly brought before the meeting shall not be transacted.

SECTION 8. Voting; Proxies; Ballots. Except as otherwise provided in the laws of the State of Delaware or the certificate of incorporation, at every meeting of stockholders, each stockholder of the Company shall be entitled to one vote at the meeting in person or by proxy for each share of stock having voting rights registered in his or her name on the books of the Company on the date fixed pursuant to Section 3 of Article VII of these Bylaws as the record date for the determination of stockholders entitled to vote at the meeting. Shares of its own stock belonging to the Company shall not be voted directly or indirectly (except for shares of stock held by the Company in a fiduciary capacity). The vote of any stockholder entitled thereto may be cast in person or by his or her proxy appointed by an instrument in writing, or by other means of electronic transmission, to the full extent permitted by the laws of the State of Delaware; provided, however, that no proxy shall be voted after three years from its date, unless the proxy provides for a longer period. At all meetings of stockholders, each question (except as otherwise provided by the certificate of incorporation, these Bylaws or the rules and regulations of any stock exchange applicable to the Company, or pursuant to any regulation applicable to the Company and its securities) shall be decided by the vote of the holders of shares of stock having a majority of

the votes which could be cast by the holders of all shares of stock outstanding and entitled to vote thereon. In any non-contested election of directors, each director shall be elected by the affirmative vote of the majority of the votes cast with respect to that director's election. Any director nominee who is an incumbent director and is not re-elected shall, promptly following the receipt of the final report from the independent inspectors of election, tender his or her resignation, and the Board of Directors (excluding the director who tenders his or her resignation pursuant to this Section 8) shall decide whether to accept or refuse the resignation promptly. Absent a compelling reason as determined by the other directors in the exercise of their business judgment for the director to remain on the Board of Directors, the Board of Directors shall accept the resignation. In a contested election (as defined in Section II.H of the Company's Corporate Governance Guidelines), directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the stockholder meeting and entitled to vote on the election of directors and shall not be required to tender any such resignation. If the Board of Directors accepts a director's resignation pursuant to this Section 8, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors may fill the resulting vacancy pursuant to the provisions of Section 13 of Article III of these Bylaws, or may decrease the size of the Board of Directors pursuant to and in accordance with the provisions of Section 3 of Article III of

these Bylaws. All elections of directors and all votes on matters set forth in the notice of meeting shall be by written ballot stating the number of shares voted, but except as otherwise provided in the laws of the State of Delaware, the vote on any other matter need not be by ballot unless directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his or her proxy, if there be such proxy, and shall state the number of shares voted.

SECTION 9. Inspectors of Election. The Company shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Company, to act at the meeting or any adjournment thereof and to make a written report thereof. The Company may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability.

The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of stock of the Company outstanding and the voting power of each such share, (ii) determine the shares of stock of the Company represented at the meeting and the validity of proxies and ballots, (iii) count

all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of stock of the Company represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Company, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

### ARTICLE III

#### BOARD OF DIRECTORS

SECTION 1. General Powers. The business, property, and affairs of the Company shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities expressly conferred upon the Board of Directors by the certificate of incorporation and these Bylaws, the Board of Directors may exercise all such powers of the Company and do all such lawful acts and things as are not by the laws of the State of Delaware, the certificate of incorporation, or these Bylaws directed or required to be exercised or done by the stockholders.

SECTION 2. Eligibility and Retirement. No person may serve as a director unless he or she is a stockholder of the Company.

Notwithstanding the expiration of a director's term as set forth in Section 3 of this Article III, no person shall be qualified or may continue to serve as a director after attaining age 72.

SECTION 3. Number and Classification of Directors. Except as otherwise provided for or fixed by or pursuant to the provisions of Article Fourth of the certificate of incorporation relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors of the Company which shall constitute the whole Board of Directors shall be such number, not less than three, as from time to time shall be fixed by the Board of Directors. Subject to the provisions of this Section 3 below, until the 2009 annual meeting of stockholders, when the following classification shall cease, the directors, other than those who may be elected pursuant to the aforesaid provisions of said Article Fourth, shall be classified by the Board of Directors, with respect to the duration of the term for which they severally hold office, into three classes as nearly equal in number as possible. Such classes shall originally consist of a first class of four directors who shall be elected at the annual meeting of stockholders held in 1985 for a term expiring at the annual meeting of stockholders to be held in 1986, and election and qualification of their respective successors; a second class of five directors who shall be elected at the annual meeting of stockholders held in 1985 for a term expiring at the annual

meeting of stockholders to be held in 1987, and election and qualification of their respective successors; and a third class of five directors who shall be elected at the annual meeting of stockholders held in 1985 for a term expiring at the annual meeting of stockholders to be held in 1988, and election and qualification of their respective successors. At each annual meeting of stockholders, until the 2007 annual meeting of stockholders, the successors of the class of directors whose term expires at that meeting shall be elected for a term expiring at the annual meeting of stockholders held in the third year following the year of election of such directors and election and qualification of their respective successors. Subject to the provisions of this Section 3 below, until the 2009 annual meeting of stockholders, when the classification of the Board of Directors shall cease, the Board of Directors shall increase or decrease the number of directors in one or more classes as may be appropriate whenever it increases or decreases the number of directors pursuant to this Section 3, in order to ensure that the three classes shall be as nearly equal in number as possible. Directors elected at or after the annual meeting of stockholders to be held in 2007 shall hold office until the first annual meeting of stockholders following their election and until his or her successor shall have been duly elected and qualified or until the director's prior death, resignation or removal.

## SECTION 4. Quorum and Manner of Acting.

(a) A majority of the directors at the time in office shall constitute a quorum for the transaction of business at any meeting, which in no case shall be less than one third of the total number of directors. Except as otherwise provided in the laws of the State of Delaware, the certificate of incorporation, or these Bylaws, the affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be required for the taking of any action by the Board of Directors. In the absence of a quorum at any meeting of the Board, the meeting need not be held, or a majority of the directors present thereat or if no director be present, the Secretary, may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called. Members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting by such means shall constitute presence in person at the meeting.

(b) (i) Notwithstanding anything in these Bylaws to the contrary, the amendment of any Stockholder Rights Plan which has the effect of extending the term of the Stockholder Rights Plan or any rights or options provided thereunder shall require the approval of two-thirds of the independent members of the Board of Directors, and any Stockholder Rights Plan adopted after the effective date of this Section 4(b) shall expire if not so amended no later than one year following the later of the date of its adoption and the date of its last such amendment.

(ii) Paragraph (i) of this Section 4(b) shall not apply to any Stockholder Rights Plan ratified by the stockholders.

(iii) "Stockholder Rights Plan" refers in this Section 4(b) to any stockholder rights plan, rights agreement or any other form of "poison pill" which is designed to or has the effect of making an acquisition of large holdings of the Company's shares of stock more difficult or expensive.

(iv) Nothing in this Bylaw should be construed to permit or validate any decision by the Board of Directors to adopt or amend a Stockholder Rights Plan that would be otherwise prohibited or invalid.

SECTION 5. Offices; Places of Meetings. The Board of Directors may hold meetings and have an office or offices at such place or places within or without the State of Delaware as the



Board may from time to time determine, and in the case of meetings, as shall be specified or fixed in the respective notices or waivers of notice thereof, except where other provision is made in the laws of the State of Delaware, the certificate of incorporation, or these Bylaws.

SECTION 6. Annual Meeting. The Board of Directors shall meet for the purpose of organization, the election of officers, and the transaction of other business, at the time of each annual election of directors. Such meeting may be held prior to the stockholders' meeting, if deemed necessary and appropriate, and if so held, would be held subject to the election of directors at the upcoming stockholders' meeting; provided, however, that no individual not then a director may act as a director prior to his or her election at the upcoming stockholders' meeting. Such meeting shall be called and held at the place and time specified in the notice or waiver and held at the place and time specified in the notice or waiver of notice thereof as in the case of a special meeting of the Board of Directors.

SECTION 7. Regular Meetings. Regular meetings of the Board of Directors shall be held as the Board of Directors shall determine, at such times and places as shall from time to time be determined by the Board, except that in May, the regular meeting shall be held immediately following the adjournment of the annual meeting of the Board. Notice of regular meetings need not be given.

SECTION 8. Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or a Vice Chairman of the Board or by any two of the directors. Notice of each such meeting shall be mailed to each director, addressed to such director at his or her residence or usual place of business, at least two days before the day on which the meeting is to be held, or shall be sent to such director at his or her residence or such place of business by telegram, cable, radiogram, telephone facsimile, or other appropriate written communication, or delivered personally or by telephone, not later than the day before the day on which the meeting is to be held. Each such notice shall state the time and place of the meeting but need not state the purposes thereof except as otherwise herein expressly provided.

SECTION 9. Organization. At each meeting of the Board of Directors, the Chairman of the Board or in his or her absence, a Vice Chairman of the Board or in his or her absence, a director chosen by a majority of the directors present, shall act as chairman. The Secretary or in his or her absence, an Assistant Secretary or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

SECTION 10. Order of Business. At all meetings of the Board of Directors, business shall be transacted in the order determined by the Board.

SECTION 11. Resignation. Any director may resign at any time by giving written notice of his or her resignation to the Board of Directors or to the Chairman of the Board, a Vice Chairman of the Board, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 12. Removal of Directors. Any director may be removed, either with or without cause, at any time, by the affirmative vote of at least 80% of the combined voting power of the then-outstanding shares of all classes and series of stock of the Company entitled to vote generally in the election of directors, voting together as a single class, at a special meeting of stockholders duly called and held for the purpose or at an annual meeting of stockholders.

SECTION 13. Vacancies. Any vacancy in the Board of Directors caused by death, resignation, removal, disqualification, increase in the number of directors, or any other cause, shall be filled by a majority vote of the remaining directors, even though less than a quorum, or by the stockholders at a special meeting duly called and held for the purpose or at an annual meeting, and each director so elected shall hold office until the next succeeding annual meeting of stockholders following such director's election

and until such director's successor shall have been elected and qualified, including in circumstances where such director's predecessor was elected to a longer term.

SECTION 14. Remuneration. Directors and members of any committee may receive such fixed sum per meeting attended, or such annual sum or sums, and such reimbursement for expenses of attendance at meetings, as may be determined from time to time by resolution of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Company in any other capacity and receiving proper compensation therefor.

SECTION 15. Notification of Nominations. Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Any stockholder entitled to vote for the election of directors at a meeting may nominate persons for election as directors only if written notice of such stockholder's intent to make such nomination is given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Company, not later than (i) with respect to an election to be held at an annual meeting of stockholders, 90 days in advance of such meeting, and (ii) with respect to an election to be held at a special meeting of stockholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to stockholders. Each such notice shall set forth: (a) the name and address of the stockholder who

intends to make the nomination and of the person or persons to be nominated, (b) a representation that such stockholder is a holder of record of stock of the Company entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (c) a description of all arrangements or understandings between such stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such stockholder, (d) such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated by the Board of Directors, and (e) the consent of each nominee to serve as a director of the Company if so elected. The chairman of the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedures.

SECTION 16. Action of the Board of Directors by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board or such committee.

## ARTICLE IV

## COMMITTEES

SECTION 1. Executive Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, designate directors of the Company, in such number as the Board shall see fit, but not less than two, as an Executive Committee which shall have and may exercise, during intervals between meetings of the Board, the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers which may require it; but the Executive Committee shall not have the power or authority in reference to filling vacancies in its membership, amending the certificate of incorporation (except that the Executive Committee (or any committee designated pursuant to Section 6 of this Article IV) may, to the full extent permitted by the laws of the State of Delaware, make determinations with respect to the issuance of stock of the Company), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease, or exchange of all or substantially all the Company's property and assets, recommending to the stockholders a dissolution of the Company or a revocation of a dissolution, amending these Bylaws, or declaring a dividend. The Executive Committee (or any committee designated pursuant to Section 6 of this Article IV) shall have the power or authority to authorize the issuance of stock of the Company. The Board of Directors shall designate one of the members of the Executive Committee to be the Chairman of the Committee. Each member of the

Executive Committee shall continue to act as such only so long as he or she shall be a director of the Company and only during the pleasure of a majority of the whole Board of Directors.

SECTION 2. Meetings. Regular meetings of the Executive Committee, of which no notice shall be necessary, shall be held on such days and at such places, within or without the State of Delaware, as shall be fixed by resolution adopted by a majority of, and communicated to all, the members of the Executive Committee. Special meetings of the Committee may be called at the request of any member. Notice of each special meeting of the Committee shall be mailed to each member thereof, addressed to such member at his or her residence or usual place of business, at least two days before the day on which the meeting is to be held, or shall be sent to such member at his or her residence or such place of business by telegram, cable, radiogram, telephone facsimile, or other appropriate written communication, or delivered personally or by telephone, not later than the day before the day on which the meeting is to be held. Each such notice shall state the time and place of the meeting but need not state the purposes thereof except as otherwise herein expressly provided. Subject to the provisions of this Article IV, the Executive Committee, by resolution of a majority of all its members, shall fix its own rules of procedure. The Executive Committee shall keep a record of its proceedings and report them to the Board of Directors at the next regular meeting thereof after such proceedings shall have been taken.

SECTION 3. Quorum and Manner of Acting. Not less than a majority of the members of the Executive Committee then in office shall constitute a quorum for the transaction of business, and the act of a majority of those present at a meeting thereof at which a quorum is present shall be the act of the Executive Committee. The directors comprising the Committee shall act only as a committee, and such directors, individually, shall have no power as such. Members of the Executive Committee, or any committee designated by the Board of Directors, may participate in a meeting of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting by such means shall constitute presence in person at the meeting.

SECTION 4. Vacancies. The Board of Directors, by vote of a majority of the whole Board, shall have power to fill any vacancy in the Executive Committee due to death, resignation, removal, disqualification, or any other cause.

SECTION 5. Resignation. Any director may resign from the Executive Committee at any time by giving written notice of his or her resignation to the Board of Directors or to the Chairman of the Board, the Chairman of the Executive Committee, a Vice Chairman of the Board, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.



SECTION 6. Other Committees. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate one or more other committees, each such committee to consist of one or more directors of the Company, which shall have and may exercise such powers and authority (subject to the limitations specified in Section 1 of this Article IV) as the Board of Directors may determine and specify in such resolution or resolutions, such committee or committees to have such name or names as may be determined from time to time by the Board of Directors. A majority of all the members of any such committee may fix its rules of procedure, determine its actions, and fix the time and place (whether within or without the State of Delaware) of its meetings and specify what notice thereof, if any, shall be given, unless the Board of Directors shall otherwise by resolution provide. The Board of Directors shall have the power, either with or without cause, at any time, to change the members of any such committee, to fill vacancies, and to discharge any such committee.

## ARTICLE V

### OFFICERS

SECTION 1. Principal Officers. The principal offices of the Company may be a Chairman of the Board and one or more Vice Chairmen of the Board, each of whom shall be members of the Board of Directors, and members of the Company's Corporate Staff, or successor committee then in place (the number and titles thereof to be determined by the Board of Directors). In addition, there may be such other officers, agents, and employees of the

Company as may be appointed in accordance with the provisions of Section 3 of this Article V. Any two or more offices may be held by the same person.

SECTION 2. Election and Term of Office. The officers of the Company, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article V, shall be elected annually by the Board of Directors. Each officer, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article V, shall hold office until his or her successor shall have been duly elected and qualified, or until his or her earlier death, resignation, removal, or disqualification.

SECTION 3. Appointed Officers. In addition to the principal officers enumerated in Section 1 of this Article V, the Company may have such other officers, agents, and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint or remove any such other officers, agents, or employees.

SECTION 4. Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose or except in case of any officer elected by the Board of Directors, by any

officer upon whom the power of removal may be conferred by the Board of Directors.

SECTION 5. Resignation. Any officer may resign at any time by giving written notice of his or her resignation to the Board of Directors or to the Chairman of the Board, a Vice Chairman of the Board, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed in these Bylaws for regular election or appointment to such office.

SECTION 7. Chairman of the Board. The Chairman of the Board may be the chief executive officer of the Company. The Chairman of the Board shall preside at all meetings of the Board of Directors and of the stockholders at which he or she is present. The Chairman of the Board shall have the general supervision of the affairs of the Company, and perform all such duties as are incident to the office or as are properly required of him or her by the Board of Directors. The Chairman of the Board shall have authority to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company, when authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the

Board of Directors or these Bylaws to some other officer, agent, or employee of the Company.

SECTION 8. Vice Chairmen of the Board. The Board of Directors may establish the office of Vice Chairman of the Board. In the absence or disability of the Chairman of the Board, a Vice Chairman of the Board shall perform the duties and exercise the powers of the Chairman of the Board. A Vice Chairman of the Board shall have authority to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company, when authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or these Bylaws to some other officer, agent, or employee of the Company. In addition, a Vice Chairman of the Board shall have such further powers and perform such further duties as may, from time to time, be assigned to him or her by the Board of Directors or the Chairman of the Board or as may be prescribed by these Bylaws.

SECTION 9. Presidents. The Board of Directors may establish the office of President of a division, region, or other unit, function, or activity of the Company. A President shall have such powers and perform such duties as may, from time to time, be assigned to him or her by the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board.

SECTION 10. Vice Presidents. The Board of Directors may establish several classifications of Vice Presidents, such as Executive Vice Presidents, Senior Vice Presidents, Regional Vice

Presidents, and Divisional Vice Presidents. Each Vice President shall have such powers and perform such duties as shall, from time to time, be assigned to him or her by the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board.

SECTION 11. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Company, and shall deposit or cause to be deposited all such funds in the name of the Company in such banks, trust companies, and other depositories as shall be selected in accordance with the provisions of these Bylaws; shall render to the Board of Directors, whenever the Board may require him or her so to do, a report of all his or her transactions as Treasurer; and in general, shall perform all duties as may, from time to time, be assigned to him or her by the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board.

SECTION 12. The Secretary. The Secretary shall record or cause to be recorded in books kept for the purpose the proceedings of the meetings of the stockholders, the Board of Directors, and all committees, if any; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; shall be custodian of the seal of the Company; and in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him or her by the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board.

SECTION 13. The Controller. The Controller shall have charge of the books and records of account of the Company; shall keep or cause to be kept, and shall be responsible for the keeping of, correct and adequate records of the assets, liabilities, business, and transactions of the Company; shall at all reasonable times exhibit his or her books and records of account to any director of the Company upon application at the office of the Company where such books and records are kept; shall be responsible for the preparation and filing of all reports and returns relating to or based upon the books and records of the Company kept by him or her or under his or her direction; and in general, shall perform all duties incident to the office of Controller and such other duties as may, from time to time, be assigned to him or her by the Board of Directors, the Chairman of the Board, or a Vice Chairman of the Board.

#### ARTICLE VI

##### CONTRACTS, LOANS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

SECTION 1. Execution of Contracts. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers or other person or persons to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company, and such authority may be general or confined to specific instances, and unless so authorized by the Board of Directors or by the provisions of these Bylaws, no officer or other person shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable peculiarly for any purpose or to any amount.

SECTION 2. Loans. No loan shall be contracted on behalf of the Company, and no negotiable papers shall be issued in its name, except by such officer or officers or other person or persons as may be designated by the Board of Directors from time to time. If and to the extent authorized by the Board of Directors, the power to contract loans or issue negotiable papers may be delegated by any such officer or officers or other person or persons.

SECTION 3. Checks, Drafts, etc. All checks, drafts, bills of exchange, and other orders for the payment of money, letters of credit, acceptances, obligations, notes, and other evidences of indebtedness, bills of lading, warehouse receipts, and insurance certificates of the Company shall be signed or endorsed by such officer or officers or other person or persons as may be designated by the Board of Directors from time to time. If and to the extent authorized by the Board of Directors, the power to sign or endorse any such instrument may be delegated by any such officer or officers or other person or persons.

SECTION 4. Bank Accounts. The Board of Directors may from time to time authorize the opening and maintenance of general and special bank and custodial accounts with such banks, trust companies, and other depositories as it may select. Rules, regulations, and agreements applicable to such accounts may be made, and changed from time to time, by the Board of Directors, including, but without limitation, rules, regulations, and agreements with respect to the use of facsimile and printed signatures. Any of such powers of the Board of Directors with

respect to bank and custodial accounts may be delegated by the Board of Directors to any officer or officers or other person or persons as may be designated by the Board of Directors, and if and to the extent authorized by the Board of Directors, any such power may be further delegated by any such officer or officers or other person or persons.

## ARTICLE VII

### BOOKS AND RECORDS

SECTION 1. Location. The books and records of the Company may be kept at such place or places within or without the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The stock record books shall be kept by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at his or her address as it appears on the records of the Company.

SECTION 3. Fixing Date for Determination of Stockholders of Record. In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any other change, conversion, or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a



record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

## ARTICLE VIII

### SHARES OF STOCK AND THEIR TRANSFER

SECTION 1. Certificates of Stock. The shares of the Company may be represented by certificates or may be uncertificated, as provided under the Delaware General Corporation Law. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Company by, the Chairman of the Board, a Vice Chairman of the Board, a President, or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may, nevertheless, be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

SECTION 2. Record, etc. A record shall be kept of the name of the person, firm, or corporation owning the stock represented by each certificate of stock of the Company issued, the number of shares represented by each such certificate, and the date thereof, and in the case of cancellation, the date of cancellation. The person in whose name shares of stock stand on the books of the Company shall be deemed the owner of record thereof for all purposes as regards the Company.

SECTION 3. Transfer of Stock. Transfers of shares of the stock of the Company shall be made only on the books of the Company by the owner of record thereof, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with such officer or agent as shall be designated by the Board of Directors or with the transfer agent of the Company, and if certificated, on the surrender of the certificate or certificates for such share properly endorsed and the payment of all taxes thereon, or if uncertificated, in accordance with applicable law.

## ARTICLE IX

### DIVIDENDS AND RESERVES

The Board of Directors may, from time to time, determine whether any, and if any, what part, of the net profits of the Company or of its surplus, available therefor pursuant to law and to the certificate of incorporation, shall be declared as dividends on the stock of the Company. The Board of Directors may, in its discretion, set apart out of any of such net profits or surplus a reserve or reserves for any proper purpose and may abolish any such reserve.

## ARTICLE X

## INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

The Company may indemnify, in accordance with and to the full extent permitted by the laws of the State of Delaware as in effect at the time of the adoption of this Article X or as such laws may be amended from time to time, and shall so indemnify to the full extent required by such laws, any person (and the heirs and legal representatives of such person) made or threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, employee, or agent of the Company or any constituent corporation absorbed in a consolidation or merger, or serves or served as such with another corporation, partnership, joint venture, trust, or other enterprise at the request of the Company or any such constituent corporation. Notwithstanding any other provision of this Article X or the laws of the State of Delaware to the contrary, no such person shall be entitled to indemnification or the advancement of expenses pursuant to this Article X with respect to any action, suit, or proceeding, or part thereof, brought or made by such person against the Company, unless such indemnification or advancement of expenses (i) is due to such person pursuant to the specific provisions of any agreement in writing between such person and the Company approved by the Company's Board of Directors or (ii) has been approved in writing in advance of the commencement of such action, suit, or

proceeding, or part thereof, by or at the direction of the Company's Board of Directors. Any indemnification or advancement of expenses pursuant to this Article X shall only be made in the specific case by a separate determination made (i) by a majority vote of the directors who are not parties to such action, suit, or proceeding, even though less than a quorum, or (ii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the Company's stockholders, as to entitlement to advancement of expenses and/or indemnification, as the case may be.

#### ARTICLE XI

#### RATIFICATION

Any transaction, questioned in any stockholders' derivative suit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer, or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified, before or after judgment, by the Board of Directors or by the stockholders in case less than a quorum of directors are qualified, and if so ratified, shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Company and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## ARTICLE XII

## SEAL

The Board of Directors shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Company and the words and figures "Corporate Seal 1924 Delaware".

## ARTICLE XIII

## FISCAL YEAR

The fiscal year of the Company shall end at the close of business on the Saturday closest to January 31 and shall, in each case, begin at the opening of business on the day next succeeding the last day of the preceding fiscal year.

## ARTICLE XIV

## WAIVER OF NOTICE

Whenever notice is required to be given under any provision of these Bylaws, the certificate of incorporation, or the laws of the State of Delaware, a written waiver thereof, whether in the form of a writing signed by, or a telegram, cable, radiogram, telephone facsimile, or other appropriate written communication from, the person entitled to notice and whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to

the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the stockholders or directors or a committee of directors need be specified in any written waiver of notice.

#### ARTICLE XV

#### EMERGENCY BYLAWS

SECTION 1. General. Notwithstanding any other provisions of the certificate of incorporation and these Bylaws, the emergency bylaws (hereinafter called Emergency Bylaws) provided in this Article XV shall be operative during any emergency resulting from an attack on the United States or on any locality in which the Company conducts its business or customarily holds meetings of its Board of Directors or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition (any such condition being hereinafter called an Emergency), as a result of which a quorum of the Board of Directors or the Executive Committee cannot readily be convened for action. To the extent not inconsistent with these Emergency Bylaws, the Bylaws of the Company shall remain in effect during any Emergency. Upon termination of the Emergency, these Emergency Bylaws shall cease to be operative unless and until another Emergency shall occur.

SECTION 2. Meetings and Notice of Meetings. During any Emergency any meeting of the Board of Directors or of the Executive Committee may be called by any director or officer of the Company. Notice of the meeting shall be given by the person calling the meeting, shall state the time and place of the meeting, and shall be required to be given only to such of the directors or members of the Executive Committee, as the case may be, and the persons referred to in Section 3 of this Article XV as it may be feasible to reach at the time and by any means as may then be feasible at the time.

SECTION 3. Quorum, Emergency Directors, and Manner of Acting. The directors and members of the Executive Committee, as the case may be, in attendance at a meeting pursuant to Section 2 of this Article XV, which in no case shall be less than two, shall constitute a quorum of the Board of Directors or the Executive Committee, as the case may be, and they may take any action at the meeting, by majority vote, as they shall, in their sole discretion, deem to be in the best interests of the Company. Notwithstanding the foregoing, if the number of directors or members of the Executive Committee, as the case may be, available to constitute a quorum at any such meeting, shall be less than two, additional directors, or additional members of the Executive Committee, as the case may be, in whatever number shall be necessary to constitute a Board or Executive Committee, as the case may be, of at least two members, shall be deemed selected automatically from the officers or other persons designated on a list approved by the Board of Directors before the Emergency, all

in such order of priority and subject to such conditions and for such period or periods as may be provided in the resolution approving the list. The Board of Directors or Executive Committee, as the case may be, as so constituted shall continue until the termination of the Emergency. The Board of Directors, either before or during any Emergency, may provide, and from time to time modify, lines of succession in the event that during such Emergency any or all officers of the Company shall for any reason be rendered incapable of discharging their duties. Any additional director or additional member of the Executive Committee, as the case may be, may be removed, either with or without cause, by a majority vote of the remaining directors or members of the Executive Committee, as the case may be, then in office.

SECTION 4. Offices; Places of Meeting. The Board of Directors, either before or during any Emergency, may, effective during the Emergency, change the head office of the Company or designate several alternative head offices or regional offices of the Company or authorize the officers to do so.

SECTION 5. Liability during an Emergency. No officer, director, or employee shall be personally liable for acting in accordance with these Emergency Bylaws, except for willful misconduct.

#### ARTICLE XVI

#### AMENDMENTS

Subject to the provisions of the certificate of incorporation, all Bylaws of the Company shall be subject to alteration,



amendment, or repeal, in whole or in part, and new bylaws not inconsistent with the laws of the State of Delaware or any provision of the certificate of incorporation may be made, either by the affirmative vote of a majority of the whole Board of Directors at any regular or special meeting of the Board, or by the affirmative vote of the holders of record of a majority of the issued and outstanding stock of the Company entitled to vote in respect thereof, given at an annual meeting or at any special meeting at which a quorum shall be present, provided that in each case notice of the proposed alteration, amendment, or repeal or the proposed new bylaws be included in the notice of the meeting of the Board or the stockholders, or the form of consent thereof, as the case may be.

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**J. C. PENNEY CORPORATION, INC.**

**CHANGE IN CONTROL PLAN**

**AS AMENDED AND RESTATED**

**Effective March 27, 2008**

**J. C. PENNEY CORPORATION, INC.  
CHANGE IN CONTROL PLAN**

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**J. C. PENNEY CORPORATION, INC.  
CHANGE IN CONTROL PLAN**

**ARTICLE ONE**

**INTRODUCTION**

**1.01 Purpose Of Plan**

The J.C. Penney Corporation, Inc. Change in Control Plan (the "Plan") consists primarily of (i) severance benefits, (ii) additional cash benefits after termination of employment to be paid outside of the Corporation's non-qualified retirement plans and (iii) a cash amount payable at Employment Termination equal to the Corporation's cost of health and welfare benefits the associate participated in immediately prior to the Change in Control. The purpose and intent of the Plan is to attract and retain key associates and to improve associate productivity by reducing distractions resulting from a potential Change in Control situation, all of which are in the best interest of the Corporation, and J.C. Penney Company, Inc. and its stockholders.

Capitalized terms used throughout the Plan have the meanings set forth in Article Two except as otherwise defined in the Plan, or the context clearly requires otherwise.

**1.02 Plan Status**

The Plan is intended to be a plan providing Severance Pay and certain other benefits following a Change in Control. The Plan is intended to be a top hat plan for a select group of management or highly compensated executives, subject only to the administration and enforcement provisions of ERISA. To the extent applicable, it is intended that portions of this Plan either comply with or be exempt from the provisions of Code Section 409A. This Plan shall be administered in a manner consistent with this intent and any provision that would cause this Plan to fail to either comply with or be exempt from Code Section 409A, as the case may be, shall have no force and effect.

**1.03 Entire Plan**

This document, including any Appendix hereto, and any documents incorporated by reference set forth the provisions of the Plan effective as of the Effective Date, except as otherwise provided herein.

#### 1.04 Administration

The Human Resources and Compensation Committee of the Board (“Committee”) shall administer the Plan, provided, however, that none of the members of the Committee will be a Participant. The powers and duties of the Committee in administering the Plan are set forth in Article Six.

## ARTICLE TWO

### DEFINITIONS

2.01 For purposes of this Plan the following terms shall have the following meanings:

Accounting Firm means a nationally recognized accounting firm, or actuarial, benefits or compensation consulting firm, (with experience in performing the calculations regarding the applicability of Section 280G of the Code and of the tax imposed by Section 4999 of the Code) selected by the Corporation prior to a change in control (as defined in Section 4.09(h) of this Plan) or Change in Control.

Board means the Board of Directors of J.C. Penney Company, Inc.

Change in Control means the occurrence of any of the following events:

- (i) any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of the combined voting power of the then-outstanding Voting Stock of the Company or Corporation; provided, however, that:
  - (1) for purposes of this Section (i)(1), the following acquisitions shall not constitute a Change in Control: (A) any acquisition of Voting Stock of the Company or Corporation directly from the Company or Corporation that is approved by a majority of the Incumbent Directors, (B) any acquisition of Voting Stock of the Company or Corporation by the Company or any Subsidiary, (C) any acquisition of Voting Stock of the Company or Corporation by the trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, and (D) any acquisition of Voting Stock of the Company or Corporation by any Person pursuant to a Business Transaction that complies with clauses (A), (B) and (C) of Section (iii) below;
  - (2) if any Person becomes the beneficial owner of 20% or more of combined voting power of the then-outstanding Voting Stock of the Company or Corporation as a result of a transaction described in clause (A) of Section (i)(1) above and such Person thereafter becomes the beneficial owner of any additional shares of Voting Stock of the Company or Corporation representing 1% or more of the then-

outstanding Voting Stock of the Company or Corporation, other than in an acquisition directly from the Company or Corporation that is approved by a majority of the Incumbent Directors or other than as a result of a stock dividend, stock split or similar transaction effected by the Company or Corporation in which all holders of Voting Stock are treated equally, such subsequent acquisition shall be treated as a Change in Control;

- (3) a Change in Control will not be deemed to have occurred if a Person becomes the beneficial owner of 20% or more of the Voting Stock of the Company or Corporation as a result of a reduction in the number of shares of Voting Stock of the Company or Corporation outstanding pursuant to a transaction or series of transactions that is approved by a majority of the Incumbent Directors unless and until such Person thereafter becomes the beneficial owner of any additional shares of Voting Stock of the Company or Corporation representing 1% or more of the then-outstanding Voting Stock of the Company or Corporation, other than as a result of a stock dividend, stock split or similar transaction effected by the Company or Corporation in which all holders of Voting Stock are treated equally; and
  - (4) if at least a majority of the Incumbent Directors determine in good faith that a Person has acquired beneficial ownership of 20% or more of the Voting Stock of the Company or Corporation inadvertently, and such Person divests as promptly as practicable but no later than the date, if any, set by the Incumbent Directors a sufficient number of shares so that such Person beneficially owns less than 20% of the Voting Stock of the Company or Corporation, then no Change in Control shall have occurred as a result of such Person's acquisition; or
- (ii) a majority of the board of the Company or of the Corporation ceases to be comprised of Incumbent Directors; or
  - (iii) the consummation of a reorganization, merger or consolidation, or sale or other disposition of all or substantially all of the assets of the Company or the Corporation, or the acquisition of the stock or assets of another corporation, or other transaction (each, a "Business Transaction"), unless, in each case, immediately following such Business Transaction (A) the Voting Stock of the Company outstanding immediately prior to such Business Transaction continues to represent (either by remaining



outstanding or by being converted into Voting Stock of the surviving entity or any parent thereof), more than 50% of the combined voting power of the then outstanding shares of Voting Stock of the entity resulting from such Business Transaction (including, without limitation, an entity which as a result of such transaction owns the Company, Corporation or all or substantially all of the Company's or Corporation's assets either directly or through one or more subsidiaries), (B) no Person (other than the Company, such entity resulting from such Business Transaction, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary or such entity resulting from such Business Transaction) beneficially owns, directly or indirectly, 20% or more of the combined voting power of the then outstanding shares of Voting Stock of the entity resulting from such Business Transaction, and (C) at least a majority of the members of the Board of Directors of the entity resulting from such Business Transaction were Incumbent Directors at the time of the execution of the initial agreement or of the action of the Board providing for such Business Transaction; or

- (iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company, except pursuant to a Business Transaction that complies with clauses (A), (B) and (C) of Section (iii).

Code shall mean the Internal Revenue Code of 1986, as amended and the proposed, temporary and final regulations promulgated thereunder. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

Company shall mean J. C. Penney Company, Inc., a Delaware corporation, or any successor company.

Compensation shall mean the annual base salary rate of a Participant, plus the Participant's target annual incentive compensation (at \$1.00 per unit), under the Corporation's Management Incentive Compensation Plan (or any successor plans thereto) for the fiscal year, all at the greater of the amount in effect on the date of the Change in Control or as of his/her Employment Termination date. As applied to a Participant employed by an affiliate or Subsidiary of the Corporation, Compensation shall include the same elements of pay to the extent the affiliate or Subsidiary maintains similar or comparable pay arrangements.

Corporation shall mean J. C. Penney Corporation, Inc., a Delaware corporation, or any successor company.

Effective Date shall mean March 27, 2008. The Plan was first adopted effective March 21, 2006.

Employment Termination shall be deemed to have occurred when a Participant has a Separation from Service within two years after a Change in Control (or prior to a Change in Control if the Participant has reasonably demonstrated that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control, or (ii) otherwise arose in connection with or in anticipation of a Change in Control) because of either a Separation from Service for Good Reason or an Involuntary Separation from Service other than as a result of a Summary Dismissal. An Employment Termination shall not include a termination by reason of the Participant's death, disability, voluntary quit other than a Separation from Service for Good Reason, or Normal Retirement.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder. Reference to any section or subsection of ERISA includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder. Reference to any section or subsection of the Exchange Act includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

Excise Tax shall mean, collectively, (i) the tax imposed by Section 4999 of the Code by reason of being "contingent on a change in ownership or control" of the Company, within the meaning of Section 280G of the Code, or (ii) any similar tax imposed by state or local law, or (iii) any interest or penalties with respect to any excise tax described in clause (i) or (ii).

Good Reason within the meaning of Code section 409A and Treasury Regulation section 1.409A-1(n)(2)(i) or any successor thereto, shall mean a condition resulting from any of the actions listed below taken by a Service Recipient, without the consent of the Participant, directed at a Participant:

- (a) a material decrease in salary or incentive compensation opportunity (the amount paid at target as a percentage of salary under the Corporation's Management Incentive Compensation Program) as in effect immediately prior to the Change in Control, or
- (b) failure by the Service Recipient to pay the Participant a material portion of his/her current base salary, or incentive compensation within seven days of its due date, or

- (c) a material adverse change in reporting responsibilities, duties, or authority as compared with pre-Change in Control responsibilities, duties, or authority, or
- (d) a material diminution in the authority, duties, or responsibilities of the supervisor to whom the Participant is required to report, including a requirement that a Participant report to a corporate officer or employee instead of reporting directly to the Board of the Corporation, or
- (e) a material diminution in the budget over which the Participant retains authority as compared to the pre-Change in Control budget, or
- (f) the Service Recipient requires the Participant to have the Participant's principal location of work changed to a location more than 50 miles from the location thereof immediately prior to the Change in Control, or
- (g) discontinuance of any material paid time off policy, fringe benefit, welfare benefit, incentive compensation, equity compensation, or retirement plan (without substantially equivalent compensating remuneration or a plan or policy providing substantially similar benefits) in which the Participant participates or any action that materially reduces such Participant's benefits or payments under such plans, as in effect immediately before the Change in Control.

Provided, however, that the Participant must provide notice to the Corporation of the existence of the condition described above within 90 days of the initial existence of the condition, upon the notice of which the Corporation will have 30 days during which it or a Service Recipient may remedy the condition and not be required to pay any amount owed under this Plan. Any Separation from Service as a result of a Good Reason condition must occur within two years of the initial existence of the condition in order for benefits to be due under this Plan. A Separation from Service for Good Reason will be treated as an Involuntary Separation from Service for purposes of this Plan.

Gross-Up Payment within the meaning of Code section 409A and Treasury Regulation section 1.409A-3(i)(1)(v) or any successor thereto, means a payment to reimburse the Participant in an amount equal to all or a designated portion of the Federal, state, local, or foreign taxes imposed upon the Participant as a result of compensation paid or made available to the Participant by the Service Recipient, including the amount of additional taxes imposed upon the Participant due to the Service Recipient's payment of the initial taxes on such compensation.

Incumbent Directors means the individuals who, as of the Effective Date hereof, are Directors of the Company or the Corporation, as the context requires, and any individual becoming a Director subsequent to the date

hereof whose election, nomination for election by the Company's or Corporation's stockholders, or appointment, was approved by a vote of at least two-thirds of the then Incumbent Directors (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without objection to such nomination); provided, however, that an individual shall not be an Incumbent Director if such individual's election or appointment to the Board occurs as a result of an actual or threatened election contest (as described in Rule 14a-12(c) of the Exchange Act) with respect to the election or removal of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board.

Involuntary Separation from Service shall mean Separation from Service due to the independent exercise of the unilateral authority of the Service Recipient to terminate the Participant's services, other than due to the Participant's implicit or explicit request, where the Participant was willing and able to continue performing services, within the meaning of Code section 409A and Treasury Regulation section 1.409A-1(n)(1) or any successor thereto.

Normal Retirement shall mean retirement at or after a Participant's normal retirement date as determined in accordance with the J. C. Penney Corporation, Inc. Pension Plan as in effect immediately prior to a Change in Control.

Participant shall mean each person appointed by the Board to the Executive Board allowing them to participate in the Plan as provided in Article Three and who continues to be an Executive Board member immediately prior to a Change in Control.

Participating Employer shall mean the Corporation and any Subsidiary or affiliate of the Corporation which is designated as a Participating Employer under the Plan by the Board, excluding, however, any division of the Corporation or of a Subsidiary or affiliate that is designated by the Board as ineligible to participate in the Plan. Appendix I contains a list of the Participating Employers currently participating in the Plan that have adopted the Plan pursuant to Article Six.

Separation from Service within the meaning of Code section 409A and Treasury Regulation section 1.409A-1(h) or any successor thereto, shall mean the date a Participant retires, dies or otherwise has a termination of employment with the Service Recipient. In accordance with Treasury Regulation section 1.409A-1(h) or any successor thereto, if a Participant is on a period of leave that exceeds six months and the Participant does not retain a right to reemployment under an applicable statute or by contract, the employment relationship is deemed to terminate on the first date immediately following such six-month period, and also, a Participant is presumed to have a Separation from Service where the level of bona fide services performed

(whether as an employee or an independent contractor) decreases to a level equal to 20 percent or less of the average level of services performed (whether as an employee or an independent contractor) by the Participant during the immediately preceding 36-month period (or the full period of service to the Service Recipient if the employee has been providing services for less than the 36-month period).

Service Recipient shall mean the Corporation or any successor thereto, for whom the services are performed and with respect to whom the legally binding right to compensation arises, and all persons with whom the Corporation would be considered a single employer under Code section 414(b) (employees of controlled group of corporations), and all persons with whom the Corporation would be considered a single employer under Code section 414(c) (employees of partnerships, proprietorships, etc., under common control), using the “at least 50 percent” ownership standard, within the meaning of Code section 409A and Treasury Regulation section 1.409A-1(h)(3) or any successor thereto.

Severance Pay shall mean the cash severance payments payable to a Participant pursuant to Section 4.01 of the Plan.

Severance Benefits shall mean Severance Pay and the other benefits described in Article Four of the Plan payable to a Participant.

Subsidiary shall mean any entity in which the Company, directly or indirectly, beneficially owns 50% or more of the Voting Stock.

Summary Dismissal shall mean a termination due to:

- (a) any willful or negligent material violation of any applicable securities laws (including the Sarbanes-Oxley Act of 2002);
- (b) any intentional act of fraud or embezzlement from the Corporation or Company;
- (c) a conviction of or entering into a plea of nolo contendere to a felony that occurs during or in the course of the Participant’s employment with the Corporation;
- (d) any breach of a written covenant or agreement with the Corporation, which is material and which is not cured within 30 days after written notice thereof from the Corporation; and
- (e) willful and continued failure of the Participant to substantially perform his/her duties for the Corporation (other than as a result of incapacity due to physical or mental illness) or to materially comply with Corporation or

Company policy after written notice, in either case, from the Corporation and a 30-day opportunity to cure.

For purposes hereof, an act, or failure to act, shall not be deemed to be “willful” or “intentional” unless it is done, or omitted to be done, by the Participant in bad faith or without a reasonable belief that the action or omission was in the best interests of the Corporation.

Voting Stock means securities entitled to vote generally in the election of directors.

## **ARTICLE THREE**

### **ELIGIBILITY AND PARTICIPATION**

#### 3.01 Eligibility on the Effective Date

Each person who has been appointed to the Executive Board of the Corporation (“Executive Board”) by the Board as of the Effective Date will be a Participant in the Plan.

#### 3.02 Future Eligibility

Each person who is appointed to the Executive Board by the Board after the Effective Date and prior to the occurrence of a Change in Control will be a Participant in the Plan.

## ARTICLE FOUR

### BENEFITS

#### 4.01 Severance Pay

Upon an Employment Termination, a Participant shall become entitled to Severance Pay in accordance with the following schedule.

Title	Severance Pay Period
Chief Executive Officer and direct reports	3 years
Other Executive Vice Presidents	2.5 years
Senior Vice Presidents	2 years

Severance Pay will be computed by multiplying the Participant's Compensation times the number of years (including any fraction of a year) in the Participant's Severance Pay Period, plus a cash amount equal to the aggregate Corporation's premium cost for active associate medical, dental and life insurance coverage, if any, provided to the Participant on the date of the Change in Control, or if higher, the amount in effect at Employment Termination, times the number of years (including any fraction of a year) in the Severance Pay Period. Such lump sum Corporation contribution toward medical, dental and life insurance coverage for the Severance Pay Period will be grossed-up for federal income taxes using the applicable federal income tax rate that applied to the Participant for his/her prior year's Compensation. To the extent applicable, Severance Pay will be reduced as provided in Sections 4.09(g) or 4.09(k) hereof.

Severance Pay shall be paid in a lump sum within 30 days after Employment Termination.

In the event a Participant is entitled to any cash severance payments that are payable in the event of termination of employment pursuant to a written contract ("contract payments") between the Participant and the Corporation or an affiliate or Subsidiary, Severance Pay otherwise payable to the Participant under this Section 4.01 shall be reduced by the amount of such contract payments. Notwithstanding the foregoing, if the Participant receives payments and benefits pursuant to this Section 4.01, the Participant shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company or an affiliate or Subsidiary, unless otherwise specifically provided therein in a specific reference to this Plan.



#### 4.02 Prorated Incentive Compensation

A Participant who is covered under the Corporation's Management Incentive Compensation Program (or any successor plan thereto) and who becomes entitled to Severance Pay under this Plan shall be paid a lump sum equal to the Participant's pro-rated target annual incentive compensation (at \$1.00 per unit), under the Corporation's Management Incentive Compensation Program for the fiscal year; provided, however, if the Employment Termination occurs on the last day of the Corporation's fiscal year the Participant shall be paid the higher of (a) target annual incentive compensation (at \$1.00 per unit) or (b) the actual annual incentive compensation earned under the Corporation's Management Incentive Compensation Program. Notwithstanding the foregoing, if the Participant has elected to defer under the Corporation's Mirror Savings Plan (or any successor plan thereto) a portion of the annual incentive to be paid under the Corporation's Management Incentive Compensation Program for the fiscal year, then that portion of the prorated incentive compensation will be deferred and paid in accordance with the terms of the Corporation's Mirror Savings Plan, and the remaining portion of the prorated incentive compensation will be paid in a lump sum under this Section. To the extent applicable, prorated incentive compensation will be reduced as provided in Sections 4.09(g) or 4.09(k) hereof. Such lump sum to be paid with the Severance Pay payable under Section 4.01.

#### 4.03 Retiree Medical, Dental, Gold Card, and Long Term Care Eligibility

For the purpose of determining eligibility for retiree coverage under the J. C. Penney Corporation, Inc. Health and Welfare Benefits Plan ("H&W Plan"), a Participant who is covered under the H&W Plan and who becomes entitled to Severance Pay under this Plan shall be provided with up to 12 months of additional age and service credit under the H&W Plan to reach a critical age, date or points for retiree eligibility purposes the same as any other involuntary termination resulting from a reduction in force would receive under the terms of the H&W Plan. This provision shall apply to retiree eligibility for medical, dental, long term care insurance and the associate discount benefits provided under the H&W Plan. Any insurance benefits shall be paid solely from the insurance policy or policies provided under said plan.

#### 4.04 Associate-Paid Retiree Term Life Insurance Eligibility

Notwithstanding any provision of the J. C. Penney Corporation, Inc. Voluntary Employees' Beneficiary Association ("VEBA") Life and Disability Benefit Plan to the contrary, if a Participant becomes entitled to Severance Pay under this Plan, he/she shall be provided with up to 12 months of additional age and service credit under the terms of the life insurance portion of the VEBA Life and Disability Benefit Plan to reach a critical age, date or points for retiree eligibility purposes the same as any other involuntary

termination resulting from a reduction in force would receive under the terms of such plan. Retiree life insurance benefits shall be paid solely from the insurance policy or policies provided under said plan.

#### 4.05 Non-Qualified Retirement Plans

If a Participant becomes entitled to Severance Pay under this Plan, he/she will receive an immediate lump sum payment within 30 days after Employment Termination, of any incremental benefit provided outside the terms of the applicable retirement plan calculated as follows, subject to any reduction provided for under Sections 4.09(g) or 4.09(k) hereof, if he/she,

- (a) is a participant in the Corporation's Supplemental Retirement Plan for Management Profit-Sharing Associates ("SRP"), or was a participant immediately prior to such plan's termination following a change in control as defined in Section 4.09(h) of this Plan, he/she will receive an incremental benefit equal to the number of years in the Participant's Severance Pay Period as years of additional age and additional service credit from either the date of such plan's termination or the date of Employment Termination, as applicable, to make him/her eligible for a benefit, and if eligible, to provide him/her with the highest benefit available as though the entire amount of his/her incremental benefit were provided under such plan (including any offsets under such plan or offsets calculated under (b) or (c) of this Section 4.05) and using the higher of his/her Compensation or actual Average Final Compensation under the SRP, as his/her Average Final Compensation for purposes of such calculation and then offsetting the amount actually paid under the SRP as a result of vesting under such plan; and/or
- (b) is a participant in the Corporation's Benefit Restoration Plan ("BRP"), or was a participant immediately prior to such plan's termination following a change in control as defined in Section 4.09(h) of this Plan, he/she will receive an incremental benefit equal to the number of years in the Participant's Severance Pay Period as years of additional age and additional service credit from either the date of such plan's termination or the date of Employment Termination, as applicable, to make him/her eligible for a benefit, and if eligible, to provide him/her with the highest benefit available as though the entire amount of his/her incremental benefit were provided under such plan and using the higher of his/her Compensation or actual Average Final Pay under the BRP, as his/her Average Final Pay for purposes of such calculation and then offsetting the amount actually paid under the BRP as a result of vesting under such plan; and/or

- (c) is a participant in the Corporation's Mirror Savings Plan, or was a participant immediately prior to such plan's termination following a change in control as defined in Section 4.09(h) of this Plan, he/she will receive an incremental benefit equal to the Corporation's match under such plan for each year in the Participant's Severance Pay Period, and assuming the same Corporation contribution rate as in effect at the time of the Change in Control to provide him/her with the highest benefit available using his Compensation for each year of the Severance Pay Period and using his/her election in effect immediately prior to such plan's termination date or his/her Employment Termination, as applicable, to determine his/her contribution and the Corporation's matching contribution as though the entire amount of his/her incremental matching contribution benefit were provided under such plan and then offsetting the amount of match actually paid under the Corporation's Mirror Savings Plan as a result of the vesting of matching contributions under such plan;

provided, however, that if and to the extent a Participant is otherwise entitled to receive any additional age and/or service credit under any such plan as a result of Employment Termination, the additional age and/or service credit otherwise provided under this Section 4.05 shall not be counted twice for purposes of determining eligibility.

#### 4.06 Legal Fees

All expenses of a Participant incurred in enforcing his/her rights and/or to recover his/her benefits under this Article Four, including but not limited to, attorney's fees, court costs, arbitration costs, and other expenses shall be paid by the Corporation, in accordance with Code section 409A and Treasury Regulation section 1.409A-3(i)(1)(iv)(A) or any successor thereto and shall meet the requirements below. The Corporation shall reimburse the Participant for any such fees, costs or expenses, promptly upon delivery of reasonable documentation, provided, however, all invoices for reimbursement of fees, costs or expenses must be submitted to the Corporation and paid in a lump sum payment by the end of the calendar year following the calendar year in which the fee, cost or expense was incurred. To be eligible for reimbursement, all fees, costs or expenses must be incurred within a 20 year period following the latest of a change in control (as defined in Section 4.09(h)), a Change in Control, or Employment Termination. The amount of fees, costs or expenses paid or eligible for reimbursement in one year under this Section 4.06 shall not affect the fees, costs or expenses paid or eligible for reimbursement in any other taxable year. The right to payment or reimbursement under this Section 4.06 is not subject to liquidation or exchange for another benefit.

#### 4.07 Outplacement Services/Financial Counseling

Following an Employment Termination, a Participant will be paid a lump sum payment in cash of \$25,000 to allow the Participant to pay for outplacement and financial counseling services. To the extent applicable, the benefit will be reduced as provided in Sections 4.09(g) or 4.09(k) hereof. Such lump sum will be paid with the Severance Pay payable under Section 4.01.

#### 4.08 Special Bonus Hours

In the event of an Employment Termination, a Participant will be paid for Special Bonus Hours, if he/she is also a participant in the Paid Time Off Policy (“PTO Policy”) the same as any other involuntary termination resulting from a reduction in force would receive under the terms of the PTO Policy. Such payment will be determined in accordance with the provisions of the PTO Policy and paid within 30 days after the Participant’s Employment Termination date.

#### 4.09 Gross-Up Payments To Make Participants Whole if Excise Tax Applies

Anything in the Plan to the contrary notwithstanding, but subject to paragraph (g) below and except as otherwise provided in paragraphs (j) and (k) of this Section 4.09, if it shall be determined (as hereafter provided) that any payment or distribution by the Corporation or an affiliate or Subsidiary to or for the benefit of the Participant, whether paid or payable or distributed or distributable pursuant to the terms of the Plan or otherwise pursuant to or by reason of any other agreement, policy, plan, program or arrangement, including without limitation any stock option, stock appreciation right or similar right, or the lapse or termination of any restriction on or the vesting or exercisability of any of the foregoing (a “Payment”), would be subject to the Excise Tax, then the Participant shall be entitled to receive a Gross-Up Payment in an amount such that, after payment by the Participant of all taxes (including any interest or penalties imposed with respect to such taxes other than interest and penalties imposed by reason of the Employee’s failure to timely file a tax return or pay taxes shown due on his/her return), including any Excise Tax imposed upon the Gross-Up Payment, the Participant retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. No Gross-Up Payment will be made with respect to the Excise Tax, if any, attributable to (a) any incentive stock option, as defined by Section 422 of the Code (“ISO”) granted prior to the commencement of a Participant’s eligibility under the Plan (unless a comparable Gross-Up Payment has theretofore been made available with respect to such option), or (b) any stock appreciation or similar right, whether or not limited, granted in tandem with any ISO described in clause (a) above. Notwithstanding any other provision of this Section 4.09, the Corporation may, in its sole discretion, withhold and pay over to the Internal Revenue Service or any other

applicable taxing authority, for the benefit of the Participant, all or any portion of any Gross-Up Payment, and by receiving Severance Pay or Severance Benefits under this Plan, the Participant hereby consents to such withholding.

(a) Subject to the provisions of paragraph (e) hereof, all determinations required to be made under Section 4.09 of the Plan, including whether an Excise Tax is payable by the Participant and the amount of such Excise Tax and whether a Gross-Up Payment is required to be paid by the Corporation to the Participant and the amount of such Gross-Up Payment, shall be made by the Accounting Firm. The Accounting Firm shall make an initial determination at the time of a change in control (as defined in Section 4.09(h)) of any Gross-Up Payment required to be paid taking into account current payments and estimated future payments that might affect the amount of the Gross-Up Payment. In addition, the Corporation shall direct the Accounting Firm to submit its determination and detailed supporting calculations to both the Corporation and the Participant within 15 calendar days after the date of the Participant's Employment Termination, if applicable, and any other such time or times as may be requested by the Corporation or the Participant; notwithstanding the foregoing, the first two Gross-Up Payments, if otherwise required, shall be made at a time and manner specified in Section 4.09(i) hereof in relation to a change in control (as defined in Section 4.09(h) hereof) and the Employment Termination of the Participant, if applicable. If the Accounting Firm determines that any Excise Tax is payable by the Participant, then, except as provided in paragraphs (j) and (k), the Corporation shall pay the required Gross-Up Payment to the Participant within five business days after the receipt of such determination and calculations. If the Accounting Firm determines that no Excise Tax is payable by the Participant, it shall, at the same time as it makes such determination, furnish the Participant with an opinion that he/she has substantial authority not to report any Excise Tax on his/her federal, state, local income or other tax return. As a result of the uncertainty in the application of Section 4999 and other applicable provisions of the Code (or any successor provisions thereto) and the possibility of similar uncertainty regarding applicable state or local tax law at the time of any determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments that shall not have been made by the Corporation should have been made (an "Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Corporation exhausts or fails to pursue its remedies pursuant to paragraph (e) hereof and the Participant thereafter is required to make a payment of any Excise Tax, the Corporation shall direct the Accounting Firm to determine the amount of the Underpayment that has occurred and to submit its determination and detailed supporting calculations to both the Corporation and the Participant as promptly as possible. Except as provided in paragraphs (j) and (k), any such Underpayment shall be promptly paid by the Corporation to, or for the benefit of, the Participant within five business days after receipt of such determination and calculations, provided,

however, any Underpayment will be paid or reimbursed only in the time and manner specified in Section 4.09(i) hereof.

(b) The Corporation and the Participant shall each provide the Accounting Firm access to and copies of any books, records and documents in the possession of the Corporation or the Participant, as the case may be, reasonably requested by the Accounting Firm, and otherwise cooperate with the Accounting Firm in connection with the preparation and issuance of the determination contemplated by paragraphs (a) or (k) hereof. Any reasonable determination by the Accounting Firm as to the amount of the Gross-Up Payment (and supported by the calculations done by the Accounting Firm) shall be binding upon the Corporation and the Participant.

(c) The federal, state and local income or other tax returns filed by the Participant shall be prepared and filed on a consistent basis with the determination of the Accounting Firm with respect to the Excise Tax, if any, payable by the Participant. The Participant shall make proper payment of the amount of any Excise Tax, and at the request of the Corporation, provide to the Corporation true and correct copies (with any amendments) of his/her federal income tax return as filed with the Internal Revenue Service and corresponding state and local tax returns, if relevant, as filed with the applicable taxing authority, and such other documents reasonably requested by the Corporation, evidencing such payment. If prior to the filing of Participant's Federal income tax return, or corresponding state or local tax return, if relevant, the Accounting Firm determines that the amount of the Gross-Up Payment should be reduced, the Participant shall within five business days pay to the Corporation the amount of such reduction.

(d) The fees and expenses of the Accounting Firm for its services in connection with the determinations and calculations contemplated by paragraphs (a) and (c) hereof shall be borne by the Corporation. If such fees and expenses are initially paid by the Participant, the Corporation shall reimburse the Participant the full amount of such fees and expenses within five business days after receipt from the Participant of a statement therefore and reasonable evidence of his/her payment thereof. Any reimbursement or payment of such fees and expenses will be made by the Corporation in accordance with Code section 409A and Treasury Regulation section 1.409A-3(i)(1)(iv)(A) or any successor thereto and shall meet the requirements below. The Corporation shall reimburse the Participant for any such fees and expenses, promptly upon delivery of reasonable documentation, provided, however, all invoices for reimbursement of fees and expenses must be submitted to the Corporation and paid in a lump sum payment by the end of the calendar year following the calendar year in which the fee or expense was incurred. To be eligible, all fees and expenses must be incurred within a 20 year period following the latest of a change in control (as defined in Section 4.09(h), a Change in Control, or Employment Termination. The amount of

fees and expenses paid or eligible for reimbursement in one year under this Section 4.09(d) shall not affect the fees and expenses paid or eligible for reimbursement in any other taxable year. The right to payment or reimbursement under this Section 4.09(d) is not subject to liquidation or exchange for another benefit.

(e) The Participant shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of a Gross-Up Payment. Such notification shall be given as promptly as practicable but no later than 10 business days after the Participant actually receives notice of such claim and the Participant shall further apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid (in each case, to the extent known by the Participant). The Participant shall not pay such claim prior to the earlier of (i) the expiration of the 30-calendar-day period following the date on which he gives such notice to the Corporation and (ii) the date that any payment of amount with respect to such claim is due. If the Corporation notifies the Participant in writing prior to the expiration of such period that it desires to contest such claim, the Participant shall:

- (1) provide the Corporation with any written records or documents in his/her possession relating to such claim reasonably requested by the Corporation;
- (2) take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including without limitation accepting legal representation with respect to such claim by an attorney competent in respect to the subject matter and reasonably selected by the Corporation;
- (3) cooperate with the Corporation in good faith in order effectively to contest such claim; and
- (4) permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including interest and penalties) incurred in connection with such contest and shall reimburse and hold harmless the Participant, on an after-tax basis, for and against any Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses, all such taxes, costs and expenses will be reimbursed as specified in Section 4.09(i). Without limiting the foregoing provisions of this paragraph (e), the Corporation shall control all proceedings taken in connection with the contest of any claim contemplated by this paragraph (e) and, at its sole option, may pursue or forego any and all

administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim (provided, however, that the Participant may participate therein at his/her own cost and expense) and may, at its option, either direct the Participant to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Participant agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; provided, however, that if the Corporation directs the Participant to pay the tax claimed and sue for a refund, the Corporation shall pay to the Participant the amount of such tax (including interest and penalties) and shall reimburse and hold the Participant harmless, on an after-tax basis, from any Excise Tax or directly related income tax or other tax, including interest or penalties imposed with respect to such payment, all such taxes, costs and expenses will be reimbursed as specified in Section 4.09(i); and provided further, however, that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Participant with respect to which the contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Corporation's control of any such contested claim shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Participant shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(f) If the Participant receives any refund with respect to such contested claim filed at the Corporation's request under paragraph (e), the Participant shall (subject to the Corporation's complying with the requirements of paragraph (e) hereof) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after any taxes applicable thereto). If a determination is made that the Participant shall not be entitled to any refund with respect to such claim and the Corporation does not notify the Participant in writing of its intent to contest such denial prior to the expiration of 30 calendar days after such determination, then the amount paid to the Participant by the Corporation as provided in paragraph (e) shall be in full satisfaction of the Corporation's Gross-Up Payment obligation.

(g) Notwithstanding any provision of this Plan to the contrary, but giving effect to any redetermination of the amount of Gross-Up Payments otherwise required by this Section 4.09, if (1) but for this sentence, the Corporation would be obligated to make a Gross-Up Payment to the Participant and (2) the aggregate "present value" of the "parachute payments" to be paid or provided to the Participant under this Plan or otherwise does not exceed 1.10 multiplied by 2.99 times the Participant's "base amount," then the payments and benefits to be paid or provided under this Plan will be reduced (or repaid to the Corporation, if previously paid or provided) to the minimum extent necessary so that no portion of any payment or benefit to the Participant, as so reduced or repaid, constitutes an "excess parachute



payment.” For purposes of this paragraph (g), the terms “excess parachute payment,” “present value,” “parachute payment,” and “base amount” will have the meanings assigned to them by Section 280G of the Code. The determination of whether any reduction in or repayment of such payments or benefits to be provided under this Plan is required pursuant to this paragraph (g) will be made at the expense of the Corporation by the Accounting Firm. Appropriate adjustments will be made to amounts previously paid to the Participant, or to amounts not paid pursuant to this paragraph (g), as the case may be, to reflect properly a subsequent determination that the Participant owes more or less Excise Tax than the amount previously determined to be due. In the event that any payment or benefit is required to be reduced or repaid pursuant to this paragraph (g), reductions will be made, to the extent necessary, to any payments otherwise owed to the Participant under Sections 4.01, 4.02 (excluding any amount elected to be deferred under the Corporation’s Mirror Savings Plan), 4.05 and 4.07 of the Plan (to the extent not previously paid). In the event that additional amounts are owed to the Corporation after the imposition of any such reductions, the Participant shall be required to repay to the Corporation the additional amount owed within 30 days of the determination being made by the Accounting Firm.

(h) The term “change in control,” as used in the Plan, including in Sections 4.09(a), (d), (j) and (k), shall mean a change in control within the meaning of Code section 409A and Treasury Regulation section 1.409A-3(i)(5), or its successor, including a change in the ownership of the corporation, a change in the effective control of the corporation, or a change in the ownership of a substantial portion of the assets of the corporation as such events are defined in Treasury Regulation sections 1.409A-3(i)(5)(v), (vi), and (vii). For this purpose, “corporation” has the meaning given in Treasury Regulation section 1.409A-3(i)(5)(ii), or its successor.

(i) To the extent applicable, in accordance with Code section 409A and Treasury Regulation section 1.409A-3(i)(1)(v) or any successor thereto, all Gross-Up Payments or Excise Tax reimbursements made under this Section 4.09 shall be paid to or on behalf of the Participant by the end of the Participant’s taxable year following the Participant’s taxable year in which the Excise Tax or directly related income tax or other tax, including interest or penalties, was paid to the taxing authority. In addition, a right to the reimbursement of expenses incurred due to a tax audit or litigation addressing the existence or amount of a tax liability, whether Federal, state, local or foreign, will be reimbursed or the payment made by the end of the Participant’s taxable year following the Participant’s taxable year in which the taxes that are subject to the audit or litigation are remitted to the taxing authority or where as a result of such audit or litigation no taxes are remitted, the year in which the audit is completed or there is a final and nonappealable settlement or other resolution of the litigation.

(j) A Participant shall be entitled to receive a Gross-Up Payment pursuant to the provisions of this Section 4.09 only if a change in control (as defined in Section 4.09(h)) or Change in Control occurs during the five-year period commencing on the date the Participant first became or becomes covered under the Plan. During this five-year period, a Participant may waive in writing any right he/she may have to a Gross-Up Payment under this Section 4.09, provided that any such election to waive the Gross-Up Payment must be made and effective no later than the date of the earlier of a change in control (as defined in Section 4.09(h)) or Change in Control. If the right to receive a Gross-Up Payment is waived, the Payments shall be paid or provided in full without any reduction; and the Participant shall be solely responsible for paying any Excise Tax that may be due.

(k) If a change in control (as defined in Section 4.09(h)) or Change in Control occurs after the end of the five-year period described in paragraph (j) hereof, and any Payment to a Participant would be subject to the Excise Tax, the Participant shall receive Payments in accordance with the provisions of this paragraph and shall not be entitled to receive a Gross-Up Payment. The Accounting Firm shall calculate the amount of any “parachute payment” and “excess parachute payment” due to the Participant and the related Excise Tax. The Accounting Firm also shall calculate a “reduced payment amount” by reducing the Participant’s Payments (which could require repayment of amounts previously paid or provided to the Participant) to the minimum extent necessary so that no portion of any Payment, as so reduced or repaid, constitutes an “excess parachute payment.” Based on these calculations, the Participant shall receive either (i) all Payments otherwise due to him or her or (ii) the reduced payment amount described in the preceding sentence, whichever will provide him or her with the greater after-tax economic benefit taking into account for these purposes any applicable Excise Tax. For purposes of this paragraph (k), the terms “excess parachute payment” and “parachute payment” will have the meanings assigned to them by Section 280G of the Code. The determinations required by this paragraph (k) will be made at the expense of the Corporation in accordance with paragraph (d), and shall be made at the time or times provided for in paragraph (a).

Appropriate adjustments will be made to amounts previously paid to the Participant, or to amounts not paid pursuant to this paragraph (k), as the case may be, to reflect properly any subsequent changes to the calculations described above in this paragraph (k). In the event that any payment or benefit is required to be reduced or repaid pursuant to this paragraph (k), reductions will be made, to the extent necessary, to any payments otherwise owed to the Participant under Sections 4.01, 4.02 (excluding any amount elected to be deferred under the Corporation’s Mirror Savings Plan), 4.05 and 4.07 of the Plan (to the extent not previously paid). In the event that additional amounts are owed to the Corporation after the imposition of such

reductions, the Participant shall be required to repay to the Corporation the additional amount owed within 30 days of the determination being made by the Accounting Firm.

Any reasonable determination by the Accounting Firm as to the amount of the Excise Tax, “parachute payment,” “excess parachute payment,” or “reduced payment amount” (and supported by the calculations done by the Accounting Firm) shall be binding upon the Corporation and the Participant. If the Accounting Firm determines that no Excise Tax is payable by the Participant, it shall, at the same time as it makes such determination, furnish the Participant with an opinion that he/she has substantial authority not to report any Excise Tax on his/her federal, state, local income or other tax return.



## ARTICLE FIVE

### AMENDMENT AND TERMINATION

#### 5.01 Amendment

The Plan may be amended by the Board at any time; provided, however, that

(a) any amendment which would have an adverse effect on any Participant's Plan benefits and/or rights, except as may be otherwise required to comply with changes in applicable laws or regulations, including, but not limited to, Code Section 409A, or

(b) any amendment within one year before or two years after a Change in Control,

cannot be applied to any Participant who would be adversely affected by such amendment without such Participant's consent. After a Change in Control, any amendment shall also require the consent of the Committee.

#### 5.02 Termination

The Plan shall continue indefinitely after the Effective Date, unless the Board shall decide to terminate the Plan by duly adopting resolutions terminating the Plan; provided, however, following the commencement of any discussion with a third party that ultimately results in a Change in Control, the Plan shall continue subject to Section 5.01, until such time as the Corporation and each affiliate or Subsidiary (as appropriate) shall have fully performed all of their obligations under the Plan with respect to all Participants, and shall have paid all Severance Benefits under the Plan in full to all Participants.

## ARTICLE SIX

### MISCELLANEOUS

#### 6.01 Participant Rights

The Corporation and each affiliate or Subsidiary intend this Plan to constitute a legally enforceable obligation between (a) the Corporation or an affiliate or Subsidiary (as appropriate) and (b) each Participant.

It is also intended that the Plan shall confer vested and non-forfeitable rights for each Participant to receive benefits to which the Participant is entitled under the terms of the Plan with Participants being third party beneficiaries.

Except as provided in the definitions of Summary Dismissal or Good Reason, nothing in this Plan shall be construed to confer on any Participant any right to continue in the employ of the Corporation or an affiliate or Subsidiary or to affect in any way the right of the Corporation or an affiliate or Subsidiary to terminate a Participant's employment without prior notice at any time for any reason or no reason.

#### 6.02 Authority of Committee

The Committee will administer the Plan and have the full authority and discretion necessary to accomplish that purpose, including, without limitation, the authority and discretion to: (i) resolve all questions relating to the eligibility of Executive Board members to become or continue as Participants, (ii) determine the amount of benefits, if any, payable to Participants under the Plan and determine the time and manner in which such benefits are to be paid, to either comply with or be exempt from Code Section 409A, as the case may be, (iii) engage any administrative, legal, tax, actuarial, accounting, clerical, or other services it deems appropriate in administering the Plan, (iv) construe and interpret the Plan, supply omissions from, correct deficiencies in and resolve inconsistencies or ambiguities in the language of the Plan, resolve inconsistencies or ambiguities between the provisions of this document, and adopt rules for the administration of the Plan which are not inconsistent with the terms of the Plan document and that are intended to make any benefits provided under the Plan either comply with or be exempt from Code Section 409A, as the case may be, (v) compile and maintain all records it determines to be necessary, appropriate or convenient in connection with the administration of the Plan, and (vi) resolve all questions of fact relating to any matter for which it has administrative responsibility. The Committee shall perform all of the duties and may exercise all of the powers and discretion that the Committee deems necessary or appropriate for the proper administration of the Plan, and shall do so in a uniform, nondiscriminatory manner. Any failure by the Committee to apply any provisions of this Plan to any particular situation

shall not represent a waiver of the Committee's authority to apply such provisions thereafter. Every interpretation, choice, determination or other exercise of any power or discretion given either expressly or by implication to the Committee shall be conclusive and binding upon all parties having or claiming to have an interest under the Plan or otherwise directly or indirectly affected by such action, without restriction, however, on the right of the Committee to reconsider and redetermine such action. Any decision rendered by the Committee and any review of such decision shall be limited to determining whether the decision was so arbitrary and capricious as to be an abuse of discretion. The Committee may adopt such rules and procedures for the administration of the Plan as are consistent with the terms hereof.

### 6.03 Claims Procedure

A. Allocation of Claims Responsibility: With respect to any claim for benefits which are provided exclusively under this Plan, the claim shall be approved or denied by the Committee within 60 days following the receipt of the information necessary to process the claim. In the event the Committee denies a claim for benefits in whole or in part, it will give written notice of the decision to the claimant or the claimants authorized representative, which notice will set forth in a manner calculated to be understood by the claimant, stating the specific reasons for such denial, make specific reference to the pertinent Plan provisions on which the decision was based, and provide any other additional information, as applicable, required by 29 Code of Federal Regulations Section 2560.503-1 applicable to the Plan.

With respect to any claim for benefits which, under the terms of the Plan, are provided under another employee benefit plan maintained by the Corporation (i.e., life insurance, H&W Plan, PTO/MTO Policy, Pension, Savings, Mirror Savings, BRP, and SRP benefits), the Committee shall determine claims regarding the Participant's eligibility under the Plan in accordance with the preceding paragraph, but the administration of any other claim with respect to such benefits (including the amount of such benefits) shall be subject to the claims procedure specified in such other employee benefit plan or program.

B. Litigation or Appeal In the event the Committee denies a claim in whole or in part for benefits which are provided exclusively under the Plan, or denies a claim regarding the claimant's eligibility under the Plan, Participants will then be allowed to file a lawsuit in Federal Court as provided under ERISA.

Appeals with respect to any claim for benefits which, under the terms of the Plan, are provided under another employee benefit plan maintained by the Corporation (i.e., life insurance, H&W Plan, PTO/MTO Policy, Pension, Savings, Mirror Savings, BRP, and SRP benefits), shall be subject to the claims and appeals procedure specified in such other employee benefit plan.

#### 6.04 Records and Reports

The Committee will maintain adequate records of all of their proceedings and acts and all such books of account, records, and other data as may be necessary for administration of the Plan. The Committee will make available to each Participant upon his request such of the Plan's records as pertain to him for examination at reasonable times during normal business hours.

#### 6.05 Reliance on Tables, Etc.

In administering the Plan, the Committee is entitled to the extent permitted by law to rely conclusively upon all tables, valuations, certificates, opinions and reports which are furnished by accountants, legal counsel or other experts employed or engaged by the Committee. The Committee will be fully protected in respect of any action taken or suffered by the Committee in good faith reliance upon all such tables, valuations, certificates, reports, opinions or other advice. The Committee is also entitled to rely upon any data or information furnished by a Participating Employer or by a Participant as to any information pertinent to any calculation or determination to be made under the provisions of the Plan, and, as a condition to payment of any benefit under the Plan the Committee may request a Participant to furnish such information as it deems necessary or desirable in administering the Plan.

#### 6.06 Availability of Plan Information and Documents

Any Participant having a question concerning the administration of the Plan or the Participant's eligibility for participation in the Plan or for the payment of benefits under the Plan may contact the Committee and request a copy of the Plan document. Each Participating Employer will keep copies of this Plan document, exhibits and amendments hereto, and any related documents on file in its administrative offices, and such documents will be available for review by a Participant or a designated representative of the Participant at any reasonable time during regular business hours. Reasonable copying charges for such documents will be paid by the requesting party.

#### 6.07 Expenses

All Plan administration expenses incurred by the Committee shall be paid by the Corporation and all other administration expenses incurred by the Corporation or an affiliate or Subsidiary shall be paid by the Corporation or an affiliate or Subsidiary (as appropriate).



## 6.08 Adoption Procedure for Participating Employer

Any Subsidiary or affiliate of the Corporation may become a Participating Employer under the Plan provided that (i) the Board approves the adoption of the Plan by the Subsidiary or affiliate and designates the Subsidiary or affiliate as a Participating Employer in the Plan and (ii) by appropriate resolutions of the board of directors or other governing body of the Subsidiary or affiliate, the Subsidiary or affiliate agrees to become a Participating Employer under the Plan and also agrees to be bound by any other terms and conditions which may be required by the Board or the Committee, provided that such terms and conditions are not inconsistent with the purposes of the Plan. A Participating Employer may withdraw from participation in the Plan, subject to approval by the Committee, by providing written notice to the Committee that withdrawal has been approved by the board of directors or other governing body of the Participating Employer; provided, however, following the commencement of any discussion with a third party that ultimately results in a Change in Control, the Committee shall have no authority to approve the withdrawal of any Participating Employer until such time as the Corporation and each affiliate or Subsidiary (as appropriate) shall have fully performed all of their obligations under the Plan with respect to all Participants, and shall have paid all Severance Benefits under the Plan in full to all Participants. The Board may at any time remove a Participating Employer from participation in the Plan by providing written notice to the Participating Employer that it has approved removal; provided, however, following the commencement of any discussion with a third party that ultimately results in a Change in Control, the Board shall have no authority to remove or approve the withdrawal of any Participating Employer until such time as the Corporation and each affiliate or Subsidiary (as appropriate) shall have fully performed all of their obligations under the Plan with respect to all Participants, and shall have paid all Severance Benefits under the Plan in full to all Participants. The Board will act in accordance with this Article pursuant to unanimous written consent or by majority vote at a meeting.

## 6.09 Effect on Other Benefits

Except as otherwise provided herein, the Plan shall not affect any Participant's rights or entitlement under any other retirement or employee benefit plan offered to him/her by the Corporation or an affiliate or Subsidiary (as appropriate) as of his/her Employment Termination.

## 6.10 Successors

The Plan shall be binding upon any successor in interest of the Corporation or an affiliate or Subsidiary (as appropriate) and shall inure to the benefit of, and be enforceable by, a Participant's assigns or heirs.

## 6.11 Severability

The various provisions of the Plan are severable and any determination of invalidity or unenforceability of any one provision shall not have any effect on the remaining provisions.

## 6.12 Construction

In determining the meaning of the Plan, words imparting the masculine gender shall include the feminine and the singular shall include the plural, unless the context requires otherwise. Headings of sections and subsections of the Plan are for convenience only and are not intended to modify or affect the meaning of the substantive provisions of the Plan.

## 6.13 References to Other Plans and Programs

Each reference in the Plan to any plan, policy or program, the Plan or document of the Corporation or an affiliate or Subsidiary, shall include any amendments or successor provisions thereto without the necessity of amending the Plan for such changes.

## 6.14 Notices

- (a) General. Notices and all other communications contemplated by this Plan shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of the Participant, (i) mailed notices shall be addressed to the Participant at the Participant's home address which was most recently communicated to the Corporation in writing or (ii) in the case of a Participant who is an employee, distributed to the employee at his or her place of employment in compliance with 29 CFR Section 2520.104b-1(c). In the case of the Corporation, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its General Counsel at J.C. Penney Corporation, Inc., 6501 Legacy Drive, Plano, Texas 75024.
- (b) Notice of Termination. Any notice of Summary Dismissal by the Corporation or by the Participant for Good Reason shall be communicated by a notice of termination to the other party given in accordance with this Section 6.14. Such notice shall indicate the specific termination provision in this Plan relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide the basis for termination under the provision so indicated, and shall specify the Employment Termination date.

6.15 No Duty to Mitigate

The Participant shall not be required to mitigate the amount of any payment contemplated under this Plan, nor shall such payment be reduced by any earnings that the Participant may receive from any other source.

6.16 Employment Taxes

All payments made pursuant to this Plan shall be subject to withholding of applicable income and employment taxes.

6.17 Governing Law

**Except to the extent that the Plan may be subject to the provisions of ERISA, the Plan will be construed and enforced according to the laws of the State of Texas, without giving effect to the conflict of laws principles thereof. Except as otherwise required by ERISA, every right of action by an Associate with respect to the Plan shall be barred after the expiration of three years from the date of termination of employment or the date of receipt of the notice of denial of a claim for benefits or eligibility, if earlier. In the event ERISA's limitation on legal action does not apply, the laws of the State of Texas with respect to the limitations of legal actions shall apply and the cause of action must be brought no later than four years after the date the action accrues.**

## **APPENDIX I**

### **Participating Employers**

J.C. Penney Corporation, Inc.

J.C. Penney Company, Inc.

JCP Publications Corp.

JCP Overseas Services, Inc.

J.C. Penney Puerto Rico, Inc.

JCP Logistics L. P.

JCP Media L.P.

JCP Procurement L.P.

J.C. Penney Private Brands, Inc.

JCP Construction Services, Inc.

The Original Arizona Jean Company



## JCPENNEY PRESIDENT KEN C. HICKS JOINS BOARD OF DIRECTORS

**PLANO, Texas (March 27, 2008)** – J. C. Penney Company, Inc. (NYSE: JCP) today announced that President and Chief Merchandising Officer Ken C. Hicks has been named to the Company's Board of Directors. A highly experienced retail industry executive, Mr. Hicks joined JCPenney in 2002.

Myron E. (Mike) Ullman, III, chairman and chief executive officer of JCPenney said, "Ken Hicks has generated deep respect across our Company and our industry for his operational talent and merchandising expertise as well as his intelligence and integrity. Among his many achievements at JCPenney is spearheading our merchandise improvement initiatives to ensure that we are delivering fresh and exciting assortments to our customers every time they shop with us. The Board joins me in welcoming Ken, and looks forward to his contributions as we continue to position JCPenney within the current environment and deliver increased value to our shareholders over the long term."

Mr. Hicks, 55, was named president and chief merchandising officer in 2005, after joining the Company in 2002 as president and chief operating officer of JCPenney stores and merchandise operations. Before joining JCPenney, he was president of Payless ShoeSource, Inc. (now known as Collective Brands, Inc.), from 1999 to 2002, where he oversaw all operations related to its 4,900 stores in seven countries. Prior to that, Mr. Hicks was executive vice president and general merchandise manager for the Home Shopping Network. From 1987 to 1998, he held senior management and merchandising positions for May Department Stores, which he joined after spending five years at McKinsey and Company Consultants.

Mr. Hicks graduated from the United States Military Academy at West Point, NY and served in the U. S. Army, attaining the rank of captain. After leaving the Army, he earned an MBA with highest honors from Harvard University. Mr. Hicks serves on the boards of Avery Dennison Corporation, National 4-H Council and Southern Methodist University's Cox School of Business.

In addition to Mr. Ullman and Mr. Hicks, JCPenney's Board includes: Colleen C. Barrett, president of Southwest Airlines Co.; M. Anthony Burns, chairman emeritus of Ryder System, Inc.; Maxine K. Clark, founder, chairman and CEO, Build-A-Bear Workshop, Inc.; Thomas J. Engibous, chairman of Texas Instruments Incorporated; Kent B. Foster, retired chairman of Ingram Micro Inc.; Burl Osborne, retired chairman of The Associated Press; Leonard H. Roberts, retired chairman and CEO, RadioShack Corporation; Javier Teruel, retired vice chairman of Colgate-Palmolive Company and partner, Spectron Desarrollo, SC; R. Gerald Turner, president of Southern Methodist University; and Mary Beth West, executive vice president and chief marketing officer, Kraft Foods Inc.

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**About JCPenney**

JCPenney is one of America's leading retailers, operating 1,073 department stores throughout the United States and Puerto Rico, as well as one of the largest apparel and home furnishing sites on the Internet, [jcp.com](http://jcp.com), and the nation's largest general merchandise catalog business. Through these integrated channels, JCPenney offers a wide array of national, private and exclusive brands which reflect the Company's commitment to providing customers with style and quality at a smart price. Traded as "JCP" on the New York Stock Exchange, the Company posted revenue of \$19.9 billion in 2007 and is executing its strategic plan to be the growth leader in the retail industry. Key to this strategy is JCPenney's "Every Day Matters" brand positioning, intended to generate deeper, more emotionally driven relationships with customers by fully engaging the Company's 155,000 Associates to offer encouragement, provide ideas and inspire customers every time they shop with JCPenney.

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