Table of Contents

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

FORM 10-K

(Mark One)

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

For the fifty-two weeks ended January 30, 2016

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

For the transition period from to

Commission file number 0-23071

THE CHILDREN'S PLACE, INC.

(Exact name of registrant as specified in its charter)

Delaware	**31-1241495**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification number)
500 Plaza Drive	
Secaucus, New Jersey	**07094**
(Address of Principal Executive Offices)	(Zip Code)

(201) 558-2400
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act: **Common Stock, $0.10 par value**

Name of each exchange on which registered**: Nasdaq Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: **None.**

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

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

Large accelerated filer x	Accelerated filer o	Non-accelerated filer (Do not check if smaller reporting Company) o	Smaller reporting company o

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

The aggregate market value of common stock held by non-affiliates was $1,104,280,537 at the close of business on August 1, 2015 (the last business day of the registrant's fiscal 2015 second fiscal quarter) based on the closing price of the common stock as reported on the Nasdaq Global Select Market. For purposes of this disclosure, shares of common stock held by persons who hold more than 10% of the outstanding shares of common stock and shares held by executive officers and directors of the registrant have been excluded because such persons may be deemed affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for other purposes.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date: Common Stock, par value $0.10 per share, outstanding at March 22, 2016: 19,125,551.

Documents Incorporated by Reference: Portions of The Children's Place, Inc. Definitive Proxy Statement for its Annual Meeting of Stockholders to be held on May 25, 2016 are incorporated by reference into Part III.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES

ANNUAL REPORT ON FORM 10-K
FOR THE FIFTY-TWO WEEKS ENDED JANUARY 30, 2016
TABLE OF CONTENTS

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

The Business section and other parts of this Annual Report on Form 10-K may contain certain forward-looking statements regarding future circumstances. Forward-looking statements provide current expectations of future events based on certain assumptions and include any statement that does not directly relate to any historical or current fact. Forward-looking statements can also be identified by words such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “plans,” “predicts,” and similar terms. These forward-looking statements are based upon current expectations and assumptions of The Children's Place, Inc. (the “Company”) and are subject to various risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements including, but not limited to, those discussed in the subsection entitled “Risk Factors” under Part I, Item 1A of this Annual Report on Form 10-K. Actual results, events, and performance may differ significantly from the results discussed in the forward-looking statements. Readers of this Annual Report on Form 10-K are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The Company undertakes no obligation to release publicly any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. The inclusion of any statement in this Annual Report on Form 10-K does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

The following discussion should be read in conjunction with the Company's audited financial statements and notes thereto included elsewhere in this Annual Report on Form 10-K.

PART I

ITEM 1.-BUSINESS

As used in this Annual Report on Form 10-K, references to the “Company”, “The Children's Place”, “we”, “us”, “our” and similar terms refer to The Children's Place, Inc. and its subsidiaries. Our fiscal year ends on the Saturday on or nearest to January 31. Other terms that are commonly used in this Annual Report on Form 10-K are defined as follows:

- *Fiscal 2015 - The fifty-two weeks ended January 30, 2016*
- *Fiscal 2014 - The fifty-two weeks ended January 31, 2015*
- *Fiscal 2013 - The fifty-two weeks ended February 1, 2014*
- *Fiscal 2016 - Our next fiscal year representing the fifty-two weeks ending January 28, 2017*
- *GAAP - Generally Accepted Accounting Principles*
- *Comparable Retail Sales — Net sales, in constant currency, from stores that have been open for at least 14 consecutive months and from our e-commerce store, excluding postage and handling fees. Store closures in the current fiscal year will be excluded from Comparable Retail Sales beginning in the fiscal quarter in which the store closes. Stores that temporarily close for non- substantial remodeling will be excluded from Comparable Retail Sales for only the period that they were closed. A store is considered substantially remodeled if it has been relocated or materially changed in size and will be excluded from Comparable Retail Sales for at least 14 months beginning in the period in which the remodel occurred.*
- *SEC - U.S. Securities and Exchange Commission*
- *FASB- Financial Accounting Standards Board*
- *FASB ASC - FASB Accounting Standards Codification, which serves as the source for authoritative U.S. GAAP, except that rules and interpretive releases by the SEC are also sources of authoritative U.S. GAAP for SEC registrants*
- *CCPSA - Canadian Consumer Product Safety Commission*
- *CPSA - U.S. Consumer Product Safety Act*
- *CPSC - U.S. Consumer Products Safety Commission*
- *CPSIA - U.S. Consumer Product Safety Improvement Act of 2008*

General

The Children's Place, Inc. is the largest pure-play children's specialty apparel retailer in North America. We sell apparel, accessories, footwear and other items for children. We design, contract to manufacture, sell at retail and wholesale, and license to sell trend right, high-quality merchandise at value prices, the substantial majority of which is under the proprietary “The Children's Place”, "Place" and "Baby Place" brand names. Our stores offer a friendly and convenient shopping environment. The Children's Place has differentiated departments and serves the wardrobe needs of Girls and Boys (sizes 4-14, with size 16 available online), Toddler Girls and Boys (sizes 12 mos.-5T) and Baby (sizes 0-18 mos.). Stores are visually merchandised by

size segment. Our merchandise is also available online at *www.childrensplace.com*. Our customers are able to shop online, at their convenience, including from their mobile devices, and receive the same high quality, value-priced merchandise and customer service that are available in our physical stores, as well as merchandise which is exclusive to our e-commerce site.

The Children's Place was founded in 1969. The Company became publicly traded on the Nasdaq Global Select Market in 1997. As of January 30, 2016, we operated 1,069 stores throughout North America as well as our online store. During Fiscal 2015, we opened four stores compared to 25 in Fiscal 2014, and we closed 32 stores in Fiscal 2015, compared to 35 in Fiscal 2014. Also in Fiscal 2015, we continued to expand into international markets through territorial agreements with franchisees, and in our wholesale business, we continue to add accounts and expand categories and distribution to our customers.

Jane Elfers, our President and Chief Executive Officer, has established four key strategic initiatives that we are executing to improve sales and margin, as follows:

1. *Superior Product* - Product will always be our number one priority. We continue to significantly differentiate and upgrade the look of our merchandise, which has resonated well with our customers. In addition to apparel, we offer a full line of accessories and footwear and other items so busy moms can quickly and easily put together head-to-toe outfits.
2. *Business Transformation through Technology* - We continue to make progress on our business transformation initiatives to improve sales and margin. The insights from the implementation of our assortment planning tool are delivering gross margin benefits by adding enhanced data driven analytics to our internal processes leading to a better optimization of our overall buys and a better matching of the breadth of assortment with the depth of inventory. Our new inventory allocation and replenishment tool also went live during the back-to-school Fiscal 2015 season. These initiatives have contributed to improved gross margin during Fiscal 2015. Additionally, our digital initiatives continue to gain traction and are focused on driving improvements in customer acquisition, retention and engagement. We also implemented a new digital order management system during Fiscal 2015 which will enable us to pilot omni-channel fulfillment capabilities in Fiscal 2016.
3. *Growth through Alternate Channels of Distribution* - We are pursuing new channels of distribution, including international expansion and wholesale distribution. We continued our international expansion program with our franchise partners adding 29 additional international points of distribution (stores, shop in shops, e-commerce site) during Fiscal 2015 bringing our total count to 102, operating in 16 countries. During Fiscal 2015, in India we opened our first retail store, our first ever shop in shop location and also launched an e-commerce business with our partner Arvind Lifestyle Brands. We also announced a new partnership with El Palacio de Hierro to open free-standing stores and shop in shops in Mexico, and we opened our first shop in shop in Mexico. In our wholesale business, we expanded categories of merchandise available for distribution to our customers during Fiscal 2015.
4. *Fleet Optimization* - We continue to evaluate our store fleet as part of our fleet optimization initiative to improve store productivity and plan to close approximately 200 underperforming stores through fiscal 2017, which includes the 32 stores we closed during Fiscal 2015, the 35 stores we closed in Fiscal 2014 and the 41 stores we closed during Fiscal 2013. Our customer segmentation analysis helps us to better understand customer shopping habits at the store level in order to understand what our ideal store portfolio should look like. These closures should ultimately result in operating margin accretion due to sales transfer, low cost of exit and the elimination of the underperforming locations. In those markets where we have closed stores, we are seeing the neighboring stores along with the e-commerce business become more productive from both a Comparative Retail Sales and profitability perspective. These results further our commitment to executing this optimization program while dramatically slowing down new store openings.

Overlaying these growth initiatives is talent. Talent ultimately defines our success, and over the past five years we have built a best-in-class management team focused on consistent product execution and operational excellence. This talented team is a significant competitive advantage for our Company.

Underlying these growth initiatives is a commitment to operational excellence. The Company’s commitment to operational excellence coupled with its talent, disciplined expense management, improving store operations, and our finance, compliance, legal and human resources areas, forms the strong base necessary to support our long-term growth initiatives.

Segment Reporting

In accordance with the “*Segment Reporting*” topic of the FASB ASC, we report segment data based on geography: The Children’s Place U.S. and The Children’s Place International. Each segment includes an e-commerce business located at *www.childrensplace.com*. Included in The Children’s Place U.S. segment are our U.S. and Puerto Rico based stores and revenue from our U.S. based wholesale customers. Included in The Children's Place International segment are our Canadian

based stores, revenue from the Company's Canada wholesale customer, as well as revenue from international franchisees. We measure our segment profitability based on operating income, defined as income before interest and taxes. Net sales and direct costs are recorded by each segment. Certain inventory procurement functions such as production and design as well as corporate overhead, including executive management, finance, real estate, human resources, legal, and information technology services are managed by The Children's Place U.S. segment. Expenses related to these functions, including depreciation and amortization, are allocated to The Children's Place International segment based primarily on net sales. The assets related to these functions are not allocated. We periodically review these allocations and adjust them based upon changes in business circumstances. Net sales to external customers are derived from merchandise sales and we have no major customers that account for more than 10% of our net sales. The following tables show by segment our net sales and operating income for the past three fiscal years, and total assets as of January 30, 2016 and January 31, 2015 (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net sales:			
The Children's Place U.S.	$ 1,518,117	$ 1,528,762	$ 1,528,276
The Children's Place International (1)	207,660	232,562	237,513
Total net sales	$ 1,725,777	$ 1,761,324	$ 1,765,789

(1) Net sales from The Children's Place International are primarily derived from revenues from Canadian operations. Our foreign subsidiaries, primarily in Canada, have operating results based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. For Fiscal 2015, the effects of these translation rate changes on net sales was a decrease of $29.9 million.

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Operating income:			
The Children's Place U.S.	$ 65,221	$ 63,586	$ 60,267
The Children's Place International (1)	24,859	16,457	16,016
Total operating income	$ 90,080	$ 80,043	$ 76,283
Operating income as a percent of net sales:			
The Children's Place U.S.	4.3%	4.2%	3.9%
The Children's Place International	12.0%	7.1%	6.7%
Total operating income as a percent of net sales	5.2%	4.5%	4.3%

(1) Our foreign subsidiaries, primarily in Canada, have operating results based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. For Fiscal 2015, the effects of these translation rate changes on operating income was a decrease of $1.9 million.

	January 30, 2016	January 31, 2015
Total assets:		
The Children's Place U.S.	$ 748,975	$ 805,462
The Children's Place International	148,973	153,156
Total assets	$ 897,948	$ 958,618

See Note 13 of the Notes to our Consolidated Financial Statements for further segment financial data.

All foreign net sales are in The Children's Place International segment while certain foreign expenses related to our buying operations are allocated between the two segments.

Key Capabilities

Our objective is to deliver high-quality, value-priced, trend-right assortments for children. Our assortment offers one stop shopping across apparel, footwear, accessories and other items for children. Our strategies to achieve this objective are as follows:

Merchandising Strategy

Our merchandising strategy is to offer a compelling assortment of apparel, footwear and accessories for children that enable our customer to outfit their child. Our assortments are modern and colorful, are balanced by category and lifestyle, and are easy to put together. We build our deliveries by season and flow new product to our stores monthly.

High Quality/Value Pricing

We believe that offering high-quality, trend-right, age-appropriate merchandise under “The Children's Place”, "Place" and "Baby Place" brand names at value prices is our competitive advantage. We design and merchandise our branded apparel, footwear and accessories to offer a compelling value to our customers.

Brand Image

We focus on strengthening our brand image and customer loyalty for “The Children's Place” by:

- Consistently offering high-quality and age-appropriate products and trend-right fashion at value prices in a friendly and convenient shopping environment;
- Providing coordinated outfits and accessories for our customers' lifestyle needs;
- Creating strong merchandising and visual presentations to create a compelling in-store experience;
- Emphasizing our great value and fashion in marketing visuals to convey a consistent brand message across all channels;
- Segmenting and leveraging our customer database to frequently communicate with our customers and tailor promotions to maximize customer satisfaction;
- Using our MyPLACE Loyalty Rewards Program to drive customer engagement; and
- Providing exclusive assortments in our e-commerce business to further expand the breadth of our offerings and brand recognition.

Low-Cost Global Sourcing

We design, source and contract to manufacture the substantial majority of The Children's Place branded products. We believe that this is essential to assuring the consistency and quality of our merchandise, as well as our ability to deliver value to our customers. We are strengthening relationships with our most important vendors. Through these relationships and our extensive knowledge of low cost sourcing on a global scale, we are able to offer our customers high-quality products at value prices. We maintain a network of sourcing offices globally in order to communicate with our vendors efficiently and respond to changing business needs effectively. Our sourcing offices in Hong Kong and Shanghai have allowed us substantial access to the Greater Asia market, giving us access to a wide range of vendors. Our sourcing offices in India, Bangladesh and Vietnam, and contract associates on the ground in Greater Africa, Cambodia, Indonesia and other countries in which we source products, allow us to maintain and/or reduce our current merchandise costs by capitalizing on new sourcing opportunities while maintaining our product quality.

Merchandising Process

The strong collaboration between our cross functional teams in design, merchandising, sourcing and planning and allocation departments have enabled us to build our brand.

Design

The Design team gathers information from trends, color services, research and trade shows. Findings and concepts are presented to the Merchandising team.

Merchandising

Each quarter we develop seasonal strategies and the Merchandising team sets the strategies for future seasons.

Planning and Allocation

The Planning and Allocation organization works collaboratively with the Merchandising, Finance and Global Sourcing teams to develop annual and seasonal sales and margin plans to support our financial objectives and merchandising strategies.

Further, this team plans the flow of inventory to ensure that we are adequately supporting floor sets and key promotional periods. Special attention is paid to our store types, as they differ in capacity and layout.

Production, Quality Assurance and Social Compliance

During Fiscal 2015, we engaged approximately 118 independent vendors located primarily in Greater Asia. We continue to pursue global sourcing opportunities to support our inventory needs and to seek to control merchandise costs.

We contract for the manufacture of the substantial majority of the products we sell. We do not own or operate any manufacturing facilities. Increases in manufacturing costs negatively impact our business, and we seek to manage the risks of operational difficulties posed by contract manufacturers, including the availability of adequate manufacturing capacity, errors in complying with our product specifications, insufficient quality control processes, failures to meet production deadlines, worker and environmental safety concerns, and political and social instability in certain regions.

During Fiscal 2015, we purchased approximately 92% of our total merchandise directly without the aid of third party commissioned buying agents. We currently have one agency agreement with a commissioned independent agent for accessories who assists in sourcing, oversees production, provides quality inspection and ensures timely delivery of product. We will continue to evaluate the use of commissioned buying agents, but we expect that the substantial majority of our sourcing volume will continue to be managed through our own independent sourcing offices in China, Hong Kong, India, Bangladesh and Vietnam.

During Fiscal 2015, we sourced approximately 27% of our total goods from China, approximately 16% from Bangladesh, approximately 16% from Vietnam and approximately 12% from Indonesia. No other country accounted for 10% or more of our production.

We do not accept finished goods until each purchase order receives formal certification of compliance from our own quality assurance associates, agents, appointed third party inspectors or our certified/recognized auditors. Our product testing programs meet the testing protocols adopted under the CPSIA.

In addition to our quality assurance procedures, we administer a responsible sourcing program that seeks to protect our company and enhance our brand by continually providing guidance in-line with industry standards to our global vendors in their efforts to provide safe and otherwise appropriate working conditions for their employees. These efforts are part of an ongoing process to encourage the continued improvement by our vendors of factory working conditions, and ultimately, the lives of their employees who make our product. This is achieved through encouraging our vendors to comply with local legal regulations, as well as industry-standards and socially responsible business practices. The components of our program are as follows:

- *Vendor Code of Conduct* - By formally acknowledging and agreeing to our code of conduct, our vendors affirm their commitment to integrate compliance with local law and industry standards into their manufacturing and sourcing practices. Topics covered by these standards include child labor, involuntary or forced labor, slavery and human-trafficking, coercion/harassment, discrimination, health and safety, compensation, working hours, freedom of association, environment, unauthorized subcontracting, security practices and undue influence of independent auditors.
- *Ongoing Auditing Program* - We administer a factory auditing program staffed by our internal sourcing team and/or professional third party auditors who visit factory locations at least once a year on average to provide insight into general factory working conditions and other production characteristics in all factories that manufacture The Children's Place products. With this information, we can understand factories' challenges, help the factories identify non-compliance with industry standards and offer guidance on corrective action plans for the factories to achieve better compliance, All factories that are approved for The Children's Place production must undergo a social compliance audit prior to any orders being placed and at least once annually thereafter.
- *Corrective Action Plans* - Following each social audit, a corrective action plan outlines any areas of non-compliance identified through the factory audit. Each factory is expected to develop a remediation plan and remediation timeline for any non-compliance found. Through follow-up social audits, we assess a factory's progress in achieving its remediation plan. It is our preference to work with factories to remediate and achieve compliance rather than terminate our relationship; however, where there is serious non-compliance of critical standards, repeated non-compliance or failure of the factories to invest in continued improvement, we reserve the right to terminate our relationship.
- *Vendor Factory Engagement* - Our responsible sourcing team provides guidance and training to vendors and factories in order to help vendors and factories improve compliance with industry standards. Our goal is to serve as a resource for vendors and factories as they develop and strengthen their capabilities to better manage the working conditions of their employees.

- *Worker Education and Community Investment* - In some cases, we will provide support to factories that wish to implement worker training and community investment initiatives. We have encouraged factories to invest in health and nutrition education for their workers, which we have financially supported in factories in Bangladesh, China, India, Indonesia, and Vietnam.

Additionally, under our responsible sourcing program we monitor changes in local laws and other conditions (e.g., worker safety, workers' right of association and political instability) in the countries from which we source in order to identify and assess potential risks to our sourcing capabilities.

Company Stores

The following section highlights various store information for The Children's Place operated stores as of January 30, 2016.

Existing Stores

As of January 30, 2016, we operated a total of 1,069 The Children's Place stores in the United States, Canada and Puerto Rico, most of which are clustered in and around major metropolitan areas and our store at *www.childrensplace.com.* In addition, our international partners operated 102 international points of distribution in 16 countries. We operate 658 stores located in malls, 233 in strip centers, 136 in outlet centers and 42 in street locations. The following table sets forth the number of stores in each U.S. state, Puerto Rico and each Canadian province as of the current and prior fiscal year end:

Location	Number of Stores	
	January 30, 2016	January 31, 2015
United States & Puerto Rico		
Alabama	15	15
Arizona	19	19
Arkansas	9	8
California	90	93
Colorado	14	14
Connecticut	13	13
Delaware	3	3
District of Columbia	1	1
Florida	38	39
Georgia	32	31
Hawaii	1	2
Idaho	4	4
Illinois	37	39
Indiana	18	19
Iowa	10	10
Kansas	5	6
Kentucky	15	15
Louisiana	16	16
Maine	4	5
Maryland	23	23
Massachusetts	23	24
Michigan	20	19
Minnesota	12	13
Mississippi	14	14
Missouri	18	18
Montana	2	2
Nebraska	5	5
New Hampshire	6	6
New Jersey	44	46
New Mexico	6	6
New York	83	85
Nevada	8	8
United States & Puerto Rico (continued)		
North Carolina	29	28
North Dakota	4	4
Ohio	32	33
Oklahoma	8	8
Oregon	7	8
Pennsylvania	41	43
Rhode Island	2	3
South Carolina	16	16
South Dakota	1	2
Tennessee	20	21
Texas	89	91
Utah	11	13
Vermont	1	1
Virginia	23	24
Washington	13	13
West Virginia	6	6
Wisconsin	13	13
Wyoming	2	2
Puerto Rico	11	13
Total United States & Puerto Rico	***937***	***963***
Canada		
Alberta	19	19
British Columbia	17	17
Manitoba	4	4
New Brunswick	3	3
Nova Scotia	4	4
Ontario	55	56
Prince Edward Island	1	1
Quebec	25	26
Saskatchewan	3	3
Newfoundland and Labrador	1	1
Total Canada	***132***	***134***
Total Stores	**1,069**	**1,097**

Store Concepts

At The Children's Place, our store concepts consist of "Tech^2", "Apple-Maple", "Technicolor" and "Outlet" formats, as follows:

Tech^2 - Our current Tech^2 store format creates an open, brightly lit environment for customers. Tech^2 features crisp white floor-wall fixtures to ensure the product is the focal point, using color to brand and create shop identifiers. Stores using our Tech^2 store format cost us approximately 35% less to build than our prior Technicolor store format. The average store is approximately 4,100 square feet and as of January 30, 2016, approximately 46% of our stores used this concept.

Technicolor - This retired store format was significantly more expensive to design, build, maintain and staff than stores using the Tech^2 format. The average store using the Technicolor format is approximately 4,900 square feet and as of January 30, 2016, approximately 20% of our stores were of this concept.

Apple-Maple - This retired store format features light wood floors, fixtures and trim. The average store size using this format is approximately 4,200 square feet and as of January 30, 2016, approximately 21% of our stores were of this concept.

Outlet - The average outlet store size using this format is approximately 7,100 square feet. As of January 30, 2016, approximately 13% of our stores were in this format. Our outlet stores are strategically placed within each market to provide a discount value alternative.

Fleet Optimization

As part of our store fleet optimization initiative, we plan to close approximately 200 underperforming stores through fiscal 2017, which includes the 32 stores we closed during Fiscal 2015, the 35 stores we closed in Fiscal 2014 and the 41 stores we closed during Fiscal 2013. The stores selected for closure underperformed the fleet average and do not meet our hurdle rates and other criteria. Our customer segmentation analysis helps us to better understand customer shopping habits at the store level in order to understand what our ideal store portfolio should look like. These closures should ultimately result in operating margin accretion due to sales transfer, low cost of exit and the elimination of the underperforming locations. In those markets where we have closed stores, we are seeing the neighboring stores along with the e-commerce business become more productive from both a Comparative Retail Sales and profitability perspective. These results further our commitment to executing this optimization program while dramatically slowing down new store openings.

We continuously review the performance of our store fleet. We base our decisions to open, close or remodel stores on a variety of factors, including lease terms, landlord negotiations, market dynamics and projected financial performance. When assessing whether to close a store, we also consider remaining lease life and current financial performance.

Internet Sales (“e-commerce”)

Our U.S. and International segments each include an e-commerce business located at *www.childrensplace.com* and e-commerce growth remains one of our top strategic priorities. We are committed to delivering a world class, end-to-end user experience to our customers from product assortment and website design to operations, fulfillment and customer service. We are further committed to delivering these experiences to our customers when, where and how they are looking to access the brand, accounting for cross-channel behavior, growth of mobile devices, and the growing interest in our brand from international audiences. As such, we will continue to make required investments in back-end infrastructure, as well as front-end technology to deliver on this commitment. We believe that the critical investments made in areas such as e-commerce infrastructure and mobile optimization as well as additional front-end website features have improved our customers' experience.

International Franchises and Wholesale

We continued our international expansion program with our franchise partners adding 29 additional international points of distribution (stores, shop in shops, e-commerce site) during Fiscal 2015 bringing our total count to 102, operating in 16 countries. During Fiscal 2015, in India we opened our first retail store, our first ever shop in shop location and also launched an e-commerce business with our partner Arvind Lifestyle Brands. We also announced a new partnership with El Palacio de Hierro to open free-standing stores and shop in shops in Mexico, and we opened our first shop in shop in Mexico during Fiscal 2015. We generate revenues from our franchisees from the sale of products and sales royalties. In our wholesale business, we expanded categories of merchandise available for distribution to our customers during Fiscal 2015.

Store Operations

The Children's Place U.S. store operations are organized into five regions. We employ two U.S. Zone Vice Presidents and one Canadian Vice President who oversee our operations of both Place and Outlet stores and to whom regional directors report. A regional director oversees a region and has between 13 and 14 district managers reporting to them. Each district manager is responsible for nine to 16 stores. Our stores are staffed by a store management team and sales associates, with additional part-time associates hired to support seasonal needs. Our store management teams spend a high percentage of their time on the store's selling floor providing direction, motivation, and development to store personnel. To maximize selling productivity, our teams emphasize greeting, replenishment, presentation standards, procedures and controls. In order to motivate our store management, we offer a monthly incentive compensation plan that awards bonuses for achieving certain financial goals.

Seasonality

Our business is subject to seasonal influences, with heavier concentrations of sales during the back-to-school and holiday seasons. Our first fiscal quarter results are dependent upon sales during the period leading up to the Easter holiday, third fiscal quarter results are dependent upon back-to-school sales, and our fourth fiscal quarter results are dependent upon sales during

the holiday season. The business is also subject to seasonal shifts due to unseasonable weather conditions. The following table shows the quarterly distribution, as a percentage of the full year, of net sales and operating income (loss):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Quarterly net sales as a percentage of full year				
Fiscal 2015	23.5%	21.2 %	26.4%	28.9%
Fiscal 2014	23.3%	21.8 %	27.7%	27.2%
Quarterly operating income (loss) as a percentage of full year				
Fiscal 2015	25.8%	(22.3)%	64.0%	32.6%
Fiscal 2014	25.1%	(20.6)%	69.8%	25.8%

Table may not add due to rounding.

For more information regarding the seasonality of our business, refer to Item 7.-Management's Discussion and Analysis of Financial Condition and Results of Operations-Quarterly Results and Seasonality.

Marketing

The Children's Place is a well recognized brand, with a trend right offering and a compelling value proposition. We attempt to build on our brand recognition through a multi-channel marketing campaign that aligns store front windows, in-store marketing, internet marketing, and our customer loyalty program. Our direct marketing program utilizes both on and off-line channels.

We promote customer loyalty through a loyalty rewards program called MyPLACE Rewards. At the end of Fiscal 2015, our MyPLACE Rewards loyalty program had 7.9 million members who accounted for approximately 67% of sales. We also promote customer loyalty through our private label credit card. Our card is issued to our customers for use exclusively at The Children's Place stores and online at www.childrensplace.com, and credit is extended to such customers through a third-party financial institution on a non-recourse basis to us. Approximately 11% of our net sales during Fiscal 2015 were transacted using our private label credit card. In Fiscal 2015, we entered into an agreement with a new private label credit card provider, with the transition to the new provider expected to occur during Fiscal 2016. The Company also anticipates transitioning to a new customer loyalty program in Fiscal 2016. We promote affinity and loyalty through our marketing programs by utilizing specialized incentive programs.

Distribution

In the United States we own and operate a 700,000 square foot distribution center in Alabama which supports both U.S. retail store operations and U.S. e-commerce operations. In Canada we operate a 95,000 square foot distribution center in Ontario for our Canadian retail store operations. We also use a third-party provider to support our Canadian e-commerce operations. On occasion, we may utilize additional facilities to support seasonal warehousing needs. We also use a third-party provider of warehousing and logistics services in Malaysia to support our international franchise business.

Competition

The children's apparel, footwear and accessories retail markets are highly competitive. Our primary competitors are specialty stores and mass merchandisers, including Target Corporation and GapKids, babyGap and Old Navy (each of which is a division of The Gap, Inc.), The Gymboree Corporation, Justice (a division of The Ascena Retail Group, Inc.), Carter's, Inc., J.C. Penney Company, Inc., Kohl's Corporation and other department stores, as well as other discount stores such as Walmart Stores, Inc. We also compete with regional retail chains, catalog companies and Internet retailers. One or more of our competitors are present in substantially all of the areas in which we have stores.

Trademarks and Service Marks

“The Children's Place,” “babyPLACE,” “Place” and certain other marks have been registered as trademarks and/or service marks with the United States Patent and Trademark Office and in Canada and other foreign countries. The registration of the trademarks and the service marks may be renewed to extend the original registration period indefinitely, provided the marks are still in use. We intend to continue to use and protect our trademarks and service marks and maintain their registrations. We have also registered our trademarks in other countries where we source our products and where we have established and

anticipate establishing franchising operations. We believe our trademarks and service marks have received broad recognition and are of significant value to our business.

Government Regulation

We are subject to extensive federal, state, provincial and local laws and regulations affecting our business, including product safety, consumer protection, privacy, truth-in-advertising, accessibility, customs, wage and hour laws and regulations, and zoning and occupancy ordinances that regulate retailers generally and/or govern the promotion and sale of merchandise and the operation of retail stores and e-commerce. We also are subject to similar international laws and regulations affecting our business. We believe that we are in material compliance with these laws and regulations.

We are committed to product quality and safety. We focus our efforts to adhere to all applicable laws and regulations affecting our business, including the provisions of the CPSIA, the Federal Hazardous Substances Act, the Flammable Fabrics Act and the Textile Fiber Product Identification Act, the Canada Consumer Product Safety Act, the Canadian Textile Labelling Act, the Canadian Care Labelling Program, and various environmental laws and regulations. Each of our product styles currently covered by the CPSIA and the CCPSA are appropriately tested to meet current standards.

Virtually all of our merchandise is manufactured by third-party factories located outside of the United States. These products are imported and are subject to U.S. and Canadian customs laws, which impose tariffs, anti-dumping and countervailing duties on certain imported products, including textiles, apparel, footwear and accessories. We currently are not restricted by any such duties in the operation of our business. In addition, custom duties and tariffs do not comprise a material portion of the cost of our products.

Employees

As of January 30, 2016, we had approximately 15,300 employees, approximately 1,400 of whom were based at our corporate offices and distribution centers, approximately 2,100 of whom were full-time store employees and approximately 11,800 of whom were part-time and seasonal store employees. None of our employees are covered by a collective bargaining agreement. We believe that our relationship with our employees is good.

Internet Access to Reports

We are a public company and are subject to the disclosure requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Accordingly, we file periodic reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information may be obtained by visiting the Public Reference Room of the SEC at 100 F Street, NE, Room 1580, Washington, D.C. 20549 or by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website (http://www.sec.gov) that contains reports, proxy and information statements and other information regarding us and other issuers that file electronically.

Our website address is *www.childrensplace.com*. We make available without charge, through our website, copies of our Proxy Statement, Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after such reports are filed with or furnished to the SEC. References in this document to our website are not and should not be considered part of this Annual Report on Form 10-K, and the information on our website is not incorporated by reference into this Annual Report on Form 10-K.

We also make available our corporate governance materials, including our corporate governance guidelines and our code of business conduct, on our website. If we make any substantive amendments to our code of business conduct or grant any waiver, including any implicit waiver, from a provision of the code for the benefit of our Chief Executive Officer and President, our Chief Operating Officer and our Chief Financial Officer we will disclose the nature of such amendment or waiver on that website or in a Current Report on Form 8-K.

Item 1A. RISK FACTORS

Investors in the Company should consider the following risk factors as well as the other information contained herein:

Changes in our Comparable Retail Sales and/or quarterly results of operations could have a material adverse effect on the market price of our common stock.

Numerous factors affect our Comparable Retail Sales and quarterly results, including unseasonable weather conditions, merchandise assortment, retail prices, fashion trends, mall traffic, number of visits to our e-commerce site, the retail sales environment, calendar shifts of holidays or seasonal periods, birth rate fluctuations, timing of promotional events, fluctuations in currency exchange rates, macro-economic conditions and our success in executing our business strategies.

Unseasonable weather, for example, warm weather in the winter or cold weather in the spring over an extended period of time, or the occurrence of frequent or severe storms, adversely affect our sales and therefore our Comparable Retail Sales. The nature of our target customer heightens the effects of bad weather on our sales. Our target customer is a value conscious, lower to middle income mother buying for infants and children based on need rather than based on fashion, trend or impulse. Therefore, for example, our target customer will not purchase warm weather spring clothing during an extended period of unseasonably cold weather occurring in what otherwise should be warmer weather months.

Our Comparable Retail Sales and quarterly results have fluctuated significantly in the past due to the factors cited above, and we anticipate that they will continue to fluctuate in the future, particularly in the current difficult and highly competitive retail environment and continued weak economic conditions affecting our target customer, which may result in declines or delays in consumer spending. The investment community follows Comparable Retail Sales and quarterly results closely and fluctuations in these results, or the failure of our results to meet investor expectations, may have a significant adverse effect on the price of our common stock.

We may not be able to successfully execute our business strategies.

Our strategic initiatives involve the transformation of our business systems, including to augment our digital and omni-channel capabilities to optimize of our inventory buys and allocations, to expand our channels of distribution and geographical coverage, and to optimize our North American retail store fleet. Our failure to properly execute our plans, delays in executing our plans or failure to identify alternative strategies could have a material adverse effect on our financial position, results of operations and cash flows.

During Fiscal 2016, we will continue to implement and refine our systems transformation initiatives designed to increase sales and profitability. These initiatives include the continued development and implementation of our digital capabilities. This includes upgrades to our e-commerce website and mobile site to provide advanced functionality and enhancements to our CRM capabilities designed to increase customer acquisition, retention and engagement. Our digital initiatives are also critical to our omni-channel strategy as we continue to refine our distributed order management system which will enable us to implement cross channel fulfillment. Our inventory management initiatives will also be ongoing in Fiscal 2016, such as the refinement of our assortment planning tool to optimize our overall buys and better match the breadth of our assortment of merchandise with the depth of inventory, and our allocation and replenishment tool which permits the allocation of merchandise to stores closer to need, increasing our allocation frequency and lowering our average units allocated per allocation cycle. All of these initiatives require the execution of complex projects involving significant systems and operational changes which place significant demands on our management and our information and other systems. Our ability to successfully implement and capitalize on those projects is dependent on management’s ability to manage these projects effectively and implement and operate them successfully. If we fail to implement these projects effectively or we experience significant delay or cost overruns, we may not realize the return on our investments that we anticipate, and our business, financial position, operating results and cash flows could be materially adversely affected.

During Fiscal 2016, we plan to drive additional growth through our international and wholesale distribution channels. Consumer demand, behavior, taste and purchasing trends may differ in international markets and/or in the distribution channels through which our wholesale customers sell products and, as a result, sales of our products may not be successful or meet our expectations, or the margins on those sales may not be in line with those we currently anticipate. We may also face difficulties integrating foreign business operations and/or wholesaling operations with our current sourcing, distribution, information technology systems and other operations. Any of these challenges could hinder our success in new markets or new distribution channels. There can be no assurance that we will successfully complete any planned expansion or that any new business will be profitable or meet our expectations.

During Fiscal 2016, we will continue our store fleet optimization program, which is intended to increase profitability on our existing retail store fleet. Currently, it is planned that this program will close approximately 200 underperforming retail stores through fiscal 2017, which include 32 retail stores we closed in Fiscal 2015, 35 retail stores we closed in Fiscal 2014 and 41 retail stores we closed in Fiscal 2013. Failure to properly identify or measure underperforming retail stores, failure to achieve anticipated sales transfer rates among closed stores, on the one hand, and remaining retail stores in a geographic region and/or e-commerce sales, on the other hand, and failure to properly identify and analyze customer segmentation and spending patterns could have a material adverse effect on our financial position, results of operations and cash flows. In addition, pursuant to generally accepted accounting principles, we are required to recognize an impairment charge when circumstances indicate that the carrying value of long-lived assets may not be recoverable. If a determination is made that the asset’s carrying value of a long-lived asset is not recoverable over its estimated useful life, the asset is written down to its estimated fair value. We have recognized impairment charges of $2.4 million in Fiscal 2015, $11.1 million in Fiscal 2014 and $29.6 million in Fiscal 2013.

Any of the above risks, individually or in aggregation, could negatively impact our financial position, results of operations and cash flows.

A privacy breach, through a cybersecurity incident or otherwise, or failure to comply with privacy laws could adversely affect our business.

As part of normal operations, we and our third party vendors and partners, receive and maintain confidential and personally identifiable information about our customers and employees, and confidential financial, intellectual property and other information. We regard the protection of our customer, employee, and company information as critical. The regulatory environment surrounding information security and privacy is very demanding, with the frequent imposition of new and changing requirements. Despite our efforts and technology to secure our computer network and systems, a cybersecurity breach or vandalism, whether targeted, random, or inadvertent, and whether at the hands of cyber criminals, hackers, rogue employees or other persons, may occur and could go undetected for a period of time, resulting in a material disruption of our computer network, a loss of information valuable to our business, including without limitation customer or employee personally identifiable information, and/or theft. A similar breach to the computer networks and systems of our third party vendors and partners may occur, leading to a material disruption of our computer network, a decrease in e-commerce sales and/or a loss of information valuable to our business, including without limitation customer or employee personally identifiable information. Such a cyber incident could result in any of the following:

- theft, destruction, loss, misappropriation or release of confidential financial and other data, intellectual property or customer or employee information, including personally identifiable information such as payment card information, email addresses, passwords, social security numbers, home addresses or health information;
- operational or business delays resulting from the disruption of our computer network and subsequent material clean-up and mitigation costs and activities;
- negative publicity resulting in substantial reputation or brand damage with our customers, partners or industry peers;
- loss of sales, including those generated through our e-commerce website; and
- governmental enforcement actions and /or class action and other lawsuits

Our systems and procedures are required to meet the Payment Card Industry ("PCI") data security standards, which require periodic audits by independent third parties to assess compliance. Failure to comply with the security requirements or rectify a security issue may result in substantial fines and the imposition of material restrictions on our ability to accept payment by credit or debit cards. There can be no assurance that we will be able to satisfy PCI security standards or to identify security issues in a timely fashion. In addition, PCI is controlled by a limited number of vendors who have the ability to impose changes in PCI's fee structure and operational requirements on us without negotiation. Such changes in fees and operational requirements may result in our failure to comply with PCI security standards, as well as significant unanticipated expenses.

Any of the above risks, individually or in aggregation, could substantially damage our reputation and result in lost sales, fines, and/or class action and other lawsuits, which in turn could have a material adverse effect on our financial position, results of operations and cash flows. Although we carry cybersecurity insurance, in the event of a cyber incident, that insurance may not be extensive enough or adequate in amount to cover damages we may incur. Further, a significant breach of federal, state, provincial, local or international privacy laws could have a material adverse effect on our reputation, financial position, results of operations and cash flows.

A material disruption in, failure of, or inability to upgrade, our information technology systems could materially adversely affect our business, financial position or results of operations and cash flows.

We rely heavily on various information systems to manage our complex operations, including our online business, management of our supply chain, merchandise assortment planning, inventory allocation and replenishment, order management, point-of-sale processing in our stores, gift cards, our private label credit card, and various other processes and transactions. We continue to evaluate and implement upgrades and changes to our IT systems. In addition, we will be upgrading our IT systems in connection with our transition to a new private label credit card provider, with the transition to the new provider expected to occur in the second half of Fiscal 2016. Implementing upgrades and changes to our IT systems carries substantial risk, including failure to operate as designed, failure to properly integrate with other systems, potential loss of data or information, cost overruns, implementation delays, disruption of operations, failure to implement appropriate security measures, lower customer satisfaction resulting in lost customers or sales, inability to deliver the optimal level of merchandise to our stores in a timely manner, inventory shortages, inventory levels in excess of customer demand, inability to meet the demands of our international franchise partners or our wholesale and retail customers, and the potential inability to meet reporting requirements. In addition, any disruptions or malfunctions affecting our current or new information systems could cause critical information upon which we rely to be delayed, unreliable, corrupted, insufficient or inaccessible. Further, there is no assurance that a successfully implemented system will deliver or continue to deliver any anticipated sales or margin improvements or other benefits to us. Risks associated with our information technology systems include:

- risks associated with the failure of our information technology systems due to inadequate system capacity, security breaches, computer viruses, human error, changes in programming, system upgrades or migration of these services to new systems;
- natural disasters or adverse weather conditions;
- disruptions in telephone service or power outages;
- reliance on third parties for computer hardware and software, as well as delivery of merchandise to our customers;
- rapid technology changes; and
- consumer privacy and information security concerns and regulation.

Any of these potential issues, individually or in aggregation, could have a material adverse effect on our business, financial position, results of operations and cash flows.

We also rely on third-party vendors and outsourcing partners to design, program, implement, maintain and service our existing and planned information systems. Any failures of these vendors to properly deliver their services in a timely fashion or any failure of these vendors to protect our personal or competitively sensitive data or to prevent the authorized access to such data, whether in their possession or through our information systems, could have a material adverse effect on our business, financial position, results of operations and cash flows.

Our business could be negatively affected as a result of actions of activist shareholders, and such activism could cause us to incur substantial costs, and divert management's attention and resources.

Certain activist shareholders have made, or may in the future make, strategic proposals, suggestions or requested changes concerning the Company's operations, strategy, governance, management, businesses or other matters. Responding to actions by activist shareholders is costly and time-consuming, is disruptive to our operations and diverts the attention of management and our employees. Such activities could interfere with our ability to execute our strategic plan. The perceived uncertainties as to our future direction also could affect the market price and volatility of our common stock. We cannot predict, and no assurances can be given, as to the outcome or timing of any matters relating to the foregoing, and any such matters may materially impact the value of the Company's common stock and could have a material adverse effect on our financial position, results of operations and cash flows.

We depend on our relationships with unaffiliated manufacturers, transportation companies, and independent agents. Our inability to maintain relationships with any of these entities, or the failure of any of their businesses, could adversely affect our business and results of operations.

We do not own or operate any manufacturing facilities, and therefore, are dependent upon independent third parties for the manufacture of all of our products. Most of our products are currently manufactured to our specifications, pursuant to purchase orders, by approximately 118 independent manufacturers located primarily in Greater Asia. In Fiscal 2015, we sourced approximately 27% of our total goods from China, approximately 16% from Bangladesh, approximately 16% from Vietnam and approximately 12% from Indonesia. No other country accounted for 10% or more of our production. We have no exclusive or long-term contracts with our manufacturers. We compete with other companies for manufacturing facilities, many of which have greater financial resources than we have or pay a higher unit price than we do. If an existing manufacturer of merchandise must be replaced for any reason, we will have to find alternative sources of manufacturing or increase purchases from our other third-party manufacturers, and there is no assurance we will be able to do so or do so on terms that are acceptable to us.

We have significantly reduced the use of commissioned buying agents to the point where we only use one commissioned agent for the sourcing of select product categories. Although we believe that we have the in-house capability to more efficiently source substantially all of our purchases, our inability to do so, or our inability to find adequate sources to support our current needs for merchandise and future growth, could have a material adverse effect on our business, financial position, results of operations and cash flows.

The failure of our third-party manufacturers which we do not control to adhere to local law, industry standards and practices generally accepted as ethical in the United States in the areas of worker safety (e.g. fire safety and building codes), worker rights of association, and social compliance and health and welfare could result in accidents and practices that cause disruptions or delays in production and/or substantial harm to our reputation, either of which could have a material adverse effect on our business, financial position, results of operations and cash flows.

Our merchandise is shipped directly from manufacturers through third parties to our distribution and fulfillment centers, our stores, our e-commerce customers and our international franchise partners and wholesale customers. Our operating results depend in large part on the orderly, timely and accurate operation of our receiving and distribution process, which depends, in

part, on our manufacturers' adherence to shipping schedules and our third party providers' effective management of our domestic and international distribution facilities and capacity. Furthermore, it is possible that events beyond our control, such as political unrest, a terrorist or similar act, military action, strike, weather patterns, natural disaster, continuing government spending cuts or other disruption impacting the countries that we source from, could result in delays in delivery of merchandise to our distribution centers or our stores, international franchise partners and wholesale customers, or the fulfillment of e-commerce orders to our customers, or require us to incur additional costs in air freight to ensure timely delivery. Any such event could have a material adverse effect on our business, financial position, results of operations and cash flows.

If our internal agents, independent agents, principal manufacturers or freight operators experience negative financial consequences, our inability to use or find substitute providers to support our manufacturing and distribution needs in a timely manner could have a material adverse effect on our business, financial position, results of operations and cash flows.

Because we purchase our products internationally and from unaffiliated manufacturers, our business is sensitive to risks associated with international business and the lack of control of independent manufacturers.

Virtually all of our merchandise is purchased from foreign suppliers, including approximately 27% from China, approximately 16% from Bangladesh, approximately 16% from Vietnam and approximately 12% from Indonesia. As a result, we are subject to various risks of doing business in foreign markets and importing merchandise from abroad, such as:

- foreign governmental regulations, including but not limited to changing requirements with regard to product safety, product testing, employment, taxation and language preference in course of dealing;
- the failure of an unaffiliated manufacturer to comply with local laws or ethical business practices, including concerning labor, health and safety and environmental matters;
- financial or political instability;
- the rising cost of doing business in particular countries, including China
- fluctuation of the U.S. dollar against foreign currencies;
- pressure from non-governmental organizations;
- customer acceptance of foreign produced merchandise;
- developing countries with less infrastructure;
- new legislation relating to import quotas or other restrictions that may limit the import of our merchandise;
- changes to, or repeal of, trade agreements and/or trade legislation;
- new tariffs or imposition of duties, taxes, and other charges on imports;
- significant delays in the delivery of cargo due to port security considerations, political unrest or weather conditions;
- disruption of imports by labor disputes (e.g., including at ports in the U.S.) and local business practices;
- regulations under the United States Foreign Corrupt Practices Act; and
- increased cost of transportation.

In an attempt to mitigate the above risks within any one country, we maintain relationships with many manufacturers in various countries. In order to maintain and/or reduce the cost of our merchandise, we have reduced and will continue to reduce production in China and have moved and will continue to move production into other developing countries. We cannot predict the effect that this, or the other factors noted above, in another country from which we import products could have on our business. If any of these factors rendered the conduct of business in a particular country undesirable or impractical, or if our current foreign manufacturing sources ceased doing business with us or we cease doing business with them for any reason and we were unable to find alternative sources of supply, we could experience a material adverse effect on our business, financial position, results of operations and cash flows.

Our vendor guidelines and code of conduct promote compliance with applicable law and ethical business practices. We monitor our vendor's practices; however we do not control these independent manufacturers, their labor practices, their health and safety practices, or from where they buy their raw materials. Any violation of labor, health, environmental, safety (e.g. fire or building codes) or other laws by any of the independent manufacturers we use or any divergence of an independent manufacturer's labor practices from standards generally accepted as ethical in the United States and Canada could damage our reputation and could have a material adverse effect on our business, negatively impacting our financial position, results of operations and cash flows.

We may experience disruptions at ports used to export or import our products from Asia and other regions.

We currently ship the vast majority of our products by ocean. If a disruption occurs in the operation of ports through which our products are exported or imported, we and our vendors may have to ship some or all of our products from Asia and other regions by air freight or to alternative shipping destinations in the United States. Shipping by air is significantly more expensive than shipping by ocean and our profitability could be reduced. Similarly, shipping to alternative destinations in the United States could lead to increased costs for our products. A disruption at ports (domestic or abroad) through which our products are exported or imported could have a material adverse effect on our financial position, results of operations and cash flows.

We may suffer adverse business consequences if we are unable to anticipate, identify and respond to merchandise trends, marketing and promotional trends, changes in technology, or customer shopping patterns.

The apparel industry is subject to rapidly changing fashion trends and shifting consumer preferences. Our success depends in part on the ability of our design and merchandising team to anticipate and respond to these changes and our global sourcing team to source from vendors that produce merchandise which has a compelling quality and value proposition for our customers. Our design, manufacturing and sourcing process generally takes up to one year, during which time fashion trends and consumer preferences may further change. If we miscalculate either the demand for our merchandise or our customers' tastes or purchasing habits, we may be required to sell a significant amount of unsold inventory at below average markups over cost, or below cost, which could have a material adverse effect on our financial position, results of operation and cash flows.

Fluctuations in the prices of raw materials, labor and energy could result in increased product and/or delivery costs.

Increases in the price of raw materials, including cotton and other materials used in the production of fabric and accessories, as well as volatility and increases in labor and energy costs, could result in significant cost increases for our products as well as their distribution to our distribution centers, retail locations, international franchise partners and wholesale and retail customers. To the extent we are unable to offset any such increased costs through value engineering or price increases, such increased costs could have a material adverse effect on our net sales, financial position, results of operations and cash flows.

Profitability and our reputation could be negatively impacted if we do not adequately forecast the demand for our products and, as a result, create significant levels of excess inventory or insufficient levels of inventory.

If we do not adequately forecast demand for our products and inventory purchases, we could experience increased costs and lower selling prices due to a need to dispose of excess inventory. In addition, if we forecast demand for our products that is lower than actual demand, we may experience insufficient levels of inventory, which could have a material adverse effect on our net sales, financial position, results of operations and cash flows.

Our success depends upon the service and capabilities of our management team. Changes in management or in our organizational structure, or inadequate management, could have a material adverse effect on our business.

Our success is dependent on retaining key individuals within the organization to execute the Company's strategic plans. Leadership changes can be inherently difficult to manage and may cause disruption to our business or management team. Senior level management establishes the "tone at the top" by which an environment of ethical values, operating style and management philosophy is fostered. Changes in senior management could lead to an environment that lacks inspiration and/or a lack of commitment by our employees, which could have a material adverse effect on our business.

Product liability costs, related claims, and the cost of compliance with consumer product safety laws such as the CPSIA in the U.S. or the CCPSA in Canada or our inability to comply with such laws could have a material adverse effect on our business and reputation.

We are subject to regulation by the CPSC in the U.S., Health Canada in Canada, and similar state, provincial and international regulatory authorities. Although we test the products sold in our stores, on our website, and to our international franchise partners and our wholesale customers, concerns about product safety, including but not limited to concerns about those manufactured in developing countries, may lead us to recall selected products, either voluntarily, or at the direction of a governmental authority, or may lead to a lack of consumer acceptance or loss of consumer trust. Product safety concerns, recalls, defects or errors could result in the rejection of our products by customers, damage to our reputation, lost sales, product liability litigation and increased costs, any or all of which could harm our business and have a material adverse effect on our financial position, results of operations and cash flows.

The cost of compliance with current requirements and any future requirements of the CPSC, Health Canada or other federal, state, provincial or international regulatory authorities, consumer product safety laws, including initiatives labeled as

“green chemistry” and regulatory testing, certification, packaging, labeling and advertising and reporting requirements, or changes to existing laws could have a material adverse effect on our financial position, results of operations and cash flows. In addition, any failure to comply with such requirements could result in significant penalties, require us to recall products and harm our reputation, any or all of which could have a material adverse effect on our business, reputation, and financial position, results of operations and cash flows.

Our failure to successfully manage our e-commerce business could have a negative impact on our business.

The successful operation of our e-commerce business depends on our ability to maintain the efficient and uninterrupted operation of our online order-taking and our fulfillment operations, and on our ability to provide a shopping experience that will generate orders and return visits to our site. Risks associated with our e-commerce business include:

- risks associated with the failure of the computer systems that operate our website including, among others, inadequate system capacity, security breaches, computer viruses, human error, changes in programming, system upgrades or migration of these services to new systems;
- disruptions in telephone service or power outages;
- reliance on third parties for computer hardware and software, as well as delivery of merchandise to our customers;
- rapid technology changes;
- credit card fraud;
- the diversion of sales from our physical stores;
- natural disasters or adverse weather conditions;
- changes in applicable federal and state regulations;
- negative reviews on social media;
- liability for online content; and
- consumer privacy and information security concerns and regulation.

Problems in any one or more of these areas could have a material adverse effect on our financial position, results of operations and cash flows, and could damage our reputation and brand.

We have a single distribution center serving the U.S., a single distribution center serving Canada and a single third-party warehouse provider serving the majority of shipments for our international franchise partners. Damage to, or a prolonged interruption of operations at, any of these facilities could have a material adverse effect on our business.

Our U.S. distribution center is located in Fort Payne, Alabama. This facility handles all of our warehousing and store fulfillment activities in the U.S., as well as the fulfillment of all of our e-commerce orders in the U.S. Our Canadian distribution center is located in Mississauga, Ontario, Canada. We also use a third-party provider, also located in Mississauga, to support our Canadian e-commerce operations. These Ontario facilities handle all of our warehousing, store and e-commerce fulfillment activities in Canada. Our international franchise partners receive the majority of shipments of merchandise from our third-party warehouse provider located in Greater Asia. On occasion, we may utilize additional facilities to support our seasonal warehousing needs. Damage to, or prolonged interruption of operations at, any of these facilities due to a work stoppage, weather conditions such as a tornado, hurricane or flood, other natural disaster, or other event could have a material adverse effect on our financial condition, results of operations and cash flows.

We face significant competition in the retail industry, which could impact our ability to compete successfully against existing or future competition.

The children's apparel retail market is highly competitive and we face heightened price and promotional competition. We compete in substantially all of our markets with Target Corporation and GapKids, babyGap and Old Navy (each of which is a division of The Gap, Inc.), The Gymboree Corporation, Justice (a division of The Ascena Retail Group, Inc.), Carter's, Inc., J.C. Penney Company, Inc., Kohl's Corporation and other department stores, as well as other discount stores such as Walmart Stores, Inc. We also compete with a wide variety of specialty stores, other national and regional retail chains, catalog companies and Internet retailers. One or more of our competitors are present in virtually all of the areas in which we have stores. Internet only retailers operate at a lower cost and do not incur the geographical limitations suffered by traditional brick and mortar stores, giving Internet only retailers a competitive advantage to and imposing significant pricing pressure on brick and mortar stores. In addition, our e-commerce store may divert sales from our brick and mortar stores, cannibalizing sales results at our brick and mortar stores. Many of our competitors are larger than us and have access to significantly greater

financial, marketing and other resources than we have. Increased competition, declining birth rates, increased promotional activity and continuing economic pressure on value seeking consumers could also impact our ability to compete successfully. We may not be able to continue to compete successfully against existing or future competition.

We may be unable to protect our trademarks and other intellectual property rights.

We believe that our trademarks and service marks are important to our success and our competitive position due to their name recognition with our customers. We devote substantial resources to the establishment and protection of our trademarks and service marks on a worldwide basis, including in the countries in which we have business operations or plan to have business operations, including through foreign franchise partners. We are not aware of any material claims of infringement or material challenges to our right to use any of our trademarks in the United States or Canada. Nevertheless, the actions we have taken, including to establish and protect our trademarks and service marks, may not be adequate to prevent others from imitating our products or to prevent others from seeking to block sales of our products. Also, others may assert proprietary rights in our intellectual property and we may not be able to successfully resolve these types of conflicts to our satisfaction. In addition, the laws of certain foreign countries may not protect our proprietary rights to the same extent as do the laws of the United States and we may not be successful in attaining our trademarks in foreign countries where we plan to conduct business.

Because certain of our subsidiaries operate outside of the United States, some of our revenues, product costs and other expenses are subject to foreign economic and currency risks.

We have store operations in Canada and buying operations in various locations in Greater Asia, primarily Hong Kong, and we have plans to continue to expand our store operations internationally primarily through franchises.

The currency market has seen significant volatility in the value of the U.S. dollar against other foreign currencies. While our business is primarily conducted in U.S. dollars, we purchase virtually all of our products overseas, and we generate significant revenues in Canada in Canadian dollars. Cost increases caused by currency exchange rate fluctuations could make our products less competitive or have a material adverse effect on our profitability. Currency exchange rate fluctuations could also disrupt the business of the third party manufacturers that produce our products, or franchisees that purchase our products, by making their purchases of raw materials or products more expensive and more difficult to finance.

Changes in currency exchange rates affect the U.S. dollar value of the Canadian dollar denominated prices at which our Canadian business sells product. As a result, fluctuations in exchange rates impact the amount of our reported sales and expenses, which could have a material adverse effect on our financial position, results of operations and cash flows. Additionally, we have foreign currency denominated receivables and payables that are not hedged against foreign currency fluctuations. When settled, these receivables and payables could result in significant transaction gains or losses.

We depend on generating sufficient cash flows, together with our existing cash balances and availability under our credit facility, to fund our ongoing operations, capital expenditures, debt service requirements and share repurchase program or payment of dividends.

Our ability to fund our ongoing operations, planned capital expenditures, share repurchase programs, payment of dividends and debt service requirements will depend on our ability to generate cash flows. Our cash flows are dependent on many factors, including:

- seasonal fluctuations in our net sales and net income, which typically are lowest in the second fiscal quarter;
- the timing of inventory purchases for upcoming seasons, particularly in the second fiscal quarter as our sales are lowest and we are purchasing merchandise for the back-to-school season;
- vendor, other supplier and agent terms and related conditions, which may be less favorable to us as a smaller company in comparison to larger companies; and
- general business conditions, economic uncertainty or slowdown, including the continuing weakness in the overall economy.

Most of these factors are beyond our control. It is difficult to predict the impact that general economic conditions will continue to have on consumer spending and our financial results. However, we believe that they will continue to result in reduced spending by our target customer, which would reduce our revenues and our cash flows from operating activities from those that otherwise would have been generated. In addition, steps that we may take to limit cash outlays, such as delaying the purchase of inventory, may not be successful or could delay the arrival of merchandise for future selling seasons, which could reduce our net sales or profitability. If we are unable to generate sufficient cash flows, we may not be able to fund our ongoing operations, planned capital expenditures, share repurchase programs, payment of dividends or potential debt service requirements and we may be required to seek additional sources of liquidity.

In addition, at January 30, 2016, approximately $171.7 million, or 92%, of our cash was held in foreign subsidiaries. Because all of our earnings in these foreign subsidiaries are considered permanently reinvested, any repatriation of cash from them would require the accrual and payment of U.S. federal and certain state taxes, which would negatively impact our results of operations and/or the amount of available funds. While we currently have no intention to repatriate cash from these subsidiaries, should the need arise domestically, there is no guarantee that we could do so without material adverse tax consequences. In addition, these funds are subject to foreign currency exchange rate fluctuations, which if these rates should move unfavorably, could cause a material decrease in available funds.

A wide variety of factors can cause a decline in consumer confidence and spending which could have an adverse effect on the apparel industry and our operating results.

The apparel industry is cyclical in nature and is particularly affected by adverse trends in the general economy. Purchases of apparel and related merchandise are generally discretionary and therefore tend to decline during recessionary and weak economic periods and also may decline at other times. This is particularly true with our target customer who is a value conscious, lower to middle income mother buying for infants and children based on need rather than based on fashion, trend or impulse. High unemployment levels, increases in tax rates, declines in real estate values, availability of credit volatility in the global financial markets and the overall level of consumer confidence have negatively impacted the level of consumer spending for discretionary items. This has and continues to adversely affect our business as it is dependent on consumer demand for our products. In North America, we have experienced a decrease in customer traffic, including at shopping malls, and a highly promotional environment. If the macroeconomic environment continues to be weak or deteriorates further, there will likely be a negative effect on our revenues, operating margins and earnings which could materially adversely affect our financial position, results of operations and cash flows.

In addition to the economic environment, there are a number of other factors that could contribute to reduced customer traffic and/or reduced levels of consumer spending, such as actual or potential terrorist acts, natural disasters, and severe weather. These occurrences create significant instability and uncertainty in the United States and elsewhere in the world, causing consumers to defer purchases or to not shop in retail stores in shopping malls, or preventing our suppliers and service providers from providing required services or materials to us. These factors could materially adversely affect our financial position, results of operations and cash flows.

Our profitability may decline as a result of increasing pressure on margins.

The apparel industry is subject to significant pricing pressure caused by many factors, including intense competition, the highly promotional retail environment and changes in consumer demand. If these factors cause us to reduce our sales prices and we fail to sufficiently reduce our product costs or operating expenses, our profitability could decline. This could have a material adverse effect on our financial position, results of operations and cash flows.

Changes in federal, state or local law, our failure to comply with such laws, or litigation involving such laws could increase our expenses and expose us to legal risks and liability.

Changes in regulatory areas, such as privacy and information security, product safety, trade, consumer credit, healthcare or environmental protection, among others, could cause our expenses to increase. In addition, if we fail to comply with applicable laws and regulations, particularly wage and hour, accessibility, privacy and information security, product safety, or pricing, advertising and marketing laws, we could be subject to legal and reputational risk, including government enforcement action and class action civil litigation, which could have a material adverse effect on our financial position, results of operations and cash flows. Changes in tax laws, the interpretation of existing laws, or our failure to sustain our reporting positions on examination could adversely affect our effective tax rate and/or subject us to significant penalties and interest.

Legislative or regulatory changes that impact our relationship with our workforce, such as minimum wage requirements, could increase our expenses and adversely affect our operations. None of our employees are currently represented by a collective bargaining agreement. However, from time to time there have been efforts to organize our employees at various locations. There is no assurance that our employees will not unionize in the future.

If our landlords should suffer financial difficulty or if we are unable to successfully negotiate acceptable lease terms, it could have an adverse effect on our business and results of operations and cash flows.

Currently, approximately 62% of our stores are located in malls, approximately 21% are located in strip centers, approximately 13% are located in outlet centers and approximately 4% are located in street locations. If any of our landlords should suffer financial difficulty, it could render them unable to fulfill their duties under our lease agreements. Such duties include providing a sufficient number of mall co-tenants, common area maintenance, utilities, and payment of real estate taxes. While we have certain remedies under our lease agreements, the loss of business that could result if a shopping center should

close or if customer traffic were to significantly decline as a result of lost tenants or improper care of the facilities could have a material adverse effect on our financial position, results of operations and cash flows.

The leases for a substantial number of our retail stores are for initial terms of 10 years. If we are unable to continue to negotiate acceptable lease and renewal terms, it could have a material adverse effect on our financial position, results of operations and cash flows.

Tax matters could impact our results of operations and financial condition.

We are subject to income taxes in the United States and foreign jurisdictions, including Canada and Hong Kong. Our provision for income taxes and cash tax liability in the future could be adversely affected by numerous factors including, but not limited to, income before taxes being lower than anticipated in countries with lower statutory tax rates and higher than anticipated in countries with higher statutory tax rates, changes in the valuation of deferred tax assets and liabilities, and changes in tax laws, regulations, accounting principles or interpretations thereof, which could adversely impact our results of operations, financial condition and cash flows in future periods. In addition, we are subject to the examination of our income tax returns by the Internal Revenue Service, Canada Revenue Agency and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes. There can be no assurance that the outcomes from these continuous examinations will not have an adverse effect on our financial position, results of operations and cash flows.

Pending legal and regulatory actions are inherent in our business and could adversely affect our results of operations or financial position or harm our businesses or reputation.

We are, and in the future may be, subject to legal and regulatory actions in the ordinary course of our business. Some of these proceedings have been brought on behalf of various alleged classes of complainants. In certain of these matters, the plaintiffs are seeking large and/or indeterminate amounts, including treble, punitive or exemplary damages. Substantial legal liability in these or future legal or regulatory actions could have a material adverse effect on us or cause us reputational harm, which in turn could harm our business prospects.

Our litigation and regulatory matters are subject to many uncertainties, and given their complexity and scope, their outcome cannot be predicted. Our reserves for litigation and regulatory matters may prove to be inadequate. Litigation and regulatory matters could materially adversely affect our results of operations or cash flows. In light of the unpredictability of our litigation and regulatory matters, it is also possible that in certain cases an ultimately unfavorable resolution of one or more pending litigation or regulatory matters could have a material adverse effect on our financial position, results of operations and cash flows.

Legislative actions and new accounting pronouncements could result in us having to increase our administrative expenses to remain compliant and could have other adverse affects.

In order to comply with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, future accounting guidance or disclosure requirements by the SEC, future guidance that may come from the Public Company Accounting Oversight Board ("PCAOB"), or future changes in listing standards by the Nasdaq Global Select Market, we may be required to enhance our internal controls, hire additional personnel and utilize additional outside legal, accounting and advisory services, all of which could cause our general and administrative expenses to increase.

Changes to existing authoritative guidance and regulations may materially impact our financial statements. The FASB is continuing its convergence efforts with its international counterpart, the International Accounting Standards Board, to converge U.S. and International GAAP into one uniform set of accounting rules. The effect of changing accounting rules on our financial statements could be significant. Changes to our financial position, results of operations or cash flows could impact our debt covenant ratios or a lender's perception of our financial statements causing an adverse impact on our ability to obtain credit, or could impact investor analyses and perceptions of our business causing the market value of our stock to decrease. In addition, any changes in the current accounting rules, including legislative and other proposals, could increase the expenses we report under U.S. GAAP and have a material adverse effect on our financial position, results of operations and cash flows.

Any disruption in, or changes to, our consumer credit arrangements, including our private label credit card agreement, may adversely affect the ability of our customers to obtain consumer credit.

Credit card operations are subject to numerous federal and state laws that impose disclosure and other requirements upon the origination, servicing and enforcement of credit accounts and limitations on the maximum amount of finance charges that may be charged by a credit provider. Additionally, during periods of increasing consumer credit delinquencies, financial institutions may reexamine their lending practices and procedures. There can be no assurance that the delinquencies being

experienced by providers of consumer credit generally would not cause providers of third party credit offered by us to decrease the availability of, or increase the cost of such credit.

Any of the above risks, individually or in aggregation, could have a material adverse effect on the way we conduct business and could negatively impact our financial position, results of operations and cash flows.

Our share price may be volatile.

Our common stock is quoted on the Nasdaq Global Select Market. Stock markets in general have experienced, and are likely to continue to experience, price and volume fluctuations, which could have a material adverse effect on the market price of our common stock without regard to our operating performance. In addition, we believe that factors such as quarterly fluctuations in our financial results, our Comparable Retail Sales results, other risk factors identified here, announcements by other retailers, the overall economy and the geopolitical environment could individually or in aggregation cause the price of our common stock to fluctuate substantially.

We initiated the payment of a quarterly cash dividend in Fiscal 2014. Future declarations of quarterly cash dividends, and the establishment of future record and payment dates, are at the discretion of our Board of Directors based on a number of factors, including future financial performance, general business and market conditions, and other investment priorities. Any reduction or discontinuance by us of the payment of quarterly cash dividends could cause the market price of our common stock to decline.

Acts of terrorism, effects of war, natural disasters, other catastrophes or political unrest could have a material adverse effect on our business.

The threat or actual acts of terrorism continue to be a risk to the global economy. Terrorism and potential military responses, political unrest, natural disasters, pandemics or other health issues have disrupted and could disrupt commerce, impact our ability to operate our stores in affected areas, impact our ability to import our products from foreign countries or impact our ability to provide critical functions necessary to the operation of our business. A disruption of commerce, or an inability to recover critical functions from such a disruption, could interfere with the production, shipment or receipt of our merchandise in a timely manner or increase our costs to do so, which could have a material adverse impact on our financial position, results of operations and cash flows. In addition, any of the above disruptions could undermine consumer confidence, which could negatively impact consumer spending patterns or customer traffic, and thus have a material adverse impact on our financial position, results of operations and cash flows.

ITEM 1B.-UNRESOLVED STAFF COMMENTS

None.

ITEM 2.-PROPERTIES

We lease all of our existing store locations in the United States, Puerto Rico and Canada, with lease terms expiring through 2026. The average unexpired lease term for our stores is approximately 4.1 years in the United States (including Puerto Rico) and approximately 4.8 years in Canada. The leases for most of our existing stores are for initial terms of 10 years and provide for contingent rent based upon a percentage of sales in excess of specific minimums. We anticipate that we will be able to extend those leases which we wish to extend on satisfactory terms as they expire, or relocate to desirable locations.

The following table sets forth information with respect to our non-store locations as of January 30, 2016:

Location	Use	Approximate Sq. Footage	Current Lease Term Expiration
Fort Payne, AL (1)	Warehouse Distribution Center	700,000	Owned
Ontario, Canada (2)	Warehouse Distribution Center	95,000	4/30/2019
500 Plaza Drive, Secaucus, NJ (3)	Corporate Offices	200,000	5/31/2029
Hong Kong, China (3)	Product Support	28,000	4/30/2018
Shanghai, China (3)	Product Support	2,200	8/10/2016
Gurgaon, India (3)	Product Support	11,000	5/14/2018
Dhaka, Bangladesh (3)	Product Support	5,000	1/19/2019
Ho Chi Minh City, Vietnam (3)	Product Support	2,000	12/31/2016

(1) Supports The Children's Place U.S. stores and e-commerce business.
(2) Supports The Children's Place Canadian stores.
(3) Supports both The Children's Place U.S. stores, our e-commerce business, The Children's Place Canadian stores and our international franchisees.

During the first quarter of fiscal 2012, our management approved a plan to exit our West Coast DC and move the operations to our Southeast DC. We ceased operations at our West Coast DC in May 2012. The lease of our West Coast DC expires in March 2016 and we have subleased this facility through March 2016.

During the third quarter of fiscal 2012, our management approved a plan to close our Northeast DC and move the operations to the Company's Southeast DC. We ceased operations in our Northeast DC during the fourth quarter of fiscal 2012. The lease of our Northeast DC expires in January 2021 and we have subleased this facility through January 2021.

On occasion, we may utilize additional facilities to support seasonal warehousing needs.

ITEM 3.-LEGAL PROCEEDINGS

We are involved in various legal proceedings arising in the normal course of business. In the opinion of management, any ultimate liability arising out of these proceedings will not have a material effect on our financial position, results of operations or cash flows.

ITEM 4.-MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5.-MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is listed on the Nasdaq Global Select Market, or Nasdaq, under the symbol “PLCE.” The following table sets forth the range of high and low sales prices on Nasdaq of our common stock for the fiscal periods indicated.

	High	Low
2015		
First Quarter	$64.19	$55.69
Second Quarter	69.01	57.90
Third Quarter	61.59	53.20
Fourth Quarter	65.10	47.25
2014		
First Quarter	$55.10	$47.25
Second Quarter	51.30	45.49
Third Quarter	54.38	47.07
Fourth Quarter	63.65	47.75

On March 22, 2016, the last reported sale price of our common stock was $80.21 per share, the number of holders of record of our common stock was approximately 50 and the number of beneficial holders of our common stock was approximately 8,000.

The Company's Board of Directors has authorized the following share repurchase programs: (1) $100.0 million on November 26, 2012 (the “2012 Share Repurchase Program”); (2) $100.0 million on March 3, 2014 (the “2014 Share Repurchase Program”); (3) $100.0 million on January 7, 2015 (the “2015 Share Repurchase Program”); and (4) $250.0 million on December 8, 2015 (the “2015 $250 Million Share Repurchase Program”). The 2012 Share Repurchase Program and 2014 Share Repurchase Program have been completed. At January 30, 2016, there was approximately $270.8 million remaining on the 2015 Share Repurchase Program and the 2015 $250 Million Share Repurchase Program. Under the 2015 Share Repurchase Program and the 2015 $250 Million Share Repurchase Program, the Company may repurchase shares in the open market at current market prices at the time of purchase or in privately negotiated transactions. The timing and actual number of shares repurchased under the program will depend on a variety of factors including price, corporate and regulatory requirements, and other market and business conditions. We may suspend or discontinue the program at any time, and may thereafter reinstitute purchases, all without prior announcement.

Additionally, in March 2014, our Board of Directors instituted the payment of a quarterly cash dividend and during Fiscal 2015 and Fiscal 2014 we paid cash dividends of $12.2 million and $11.5 million, respectively. The Board of Directors authorized a quarterly cash dividend of $0.20 per share to be paid on April 28, 2016 to shareholders of record on the close of business on April 7, 2016. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the Company’s Board of Directors based on a number of factors, including business and market conditions, the Company’s future financial performance and other investment priorities.

The following table provides a summary of our cash dividends paid by quarter during Fiscal 2015:

	Fiscal Year Ended January 30, 2016				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal 2015
Cash dividends declared and paid per common share	$ 0.1500	$ 0.1500	$ 0.1500	$ 0.1500	$ 0.60
Cash dividends paid (in thousands)	$ 3,130	$ 3,069	$ 3,033	$ 2,985	$ 12,217

Pursuant to restrictions imposed by our equity plan during black-out periods, we withhold and retire shares of vesting stock awards in exchange for payments to satisfy minimum withholding tax requirements. Our payment of the withholding taxes in exchange for the shares constitutes a purchase of our common stock. Also, we acquire shares of our common stock in conjunction with liabilities owed under a deferred compensation plan, which are held in treasury. The following table summarizes our share repurchases (in thousands):

	Fiscal Year Ended			
	January 30, 2016		January 31, 2015	
	Shares	Value	Shares	Value
Share repurchases related to (1):				
2012 Share buyback program	—	—	282	14,671
2014 Share buyback program	640	39,791	1,189	60,209
2015 Share buyback program	1,338	79,274	—	—
Withholding taxes	30	1,828	22	1,249
Shares acquired and held in treasury	4	257	2	107

(1) Subsequent to January 30, 2016 and through March 22, 2016, we repurchased an additional 0.3 million shares for approximately $22.3 million.

The following table provides a month-to-month summary of our share repurchase activity during the 13 weeks ended January 30, 2016:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value (in thousands) of Shares that May Yet Be Purchased Under the Plans or Programs
11/1/15-11/28/15 (1)	114,276	$50.82	112,138	$303,335
11/29/15-1/2/16 (2)	311,672	54.01	311,650	286,504
1/3/16-1/30/16 (3)	252,691	62.29	252,485	270,776
Total	**678,639**	**$56.55**	**676,273**	**$270,776**

(1) Includes 1,008 shares acquired as treasury stock as directed by participants in the Company's deferred compensation plan and 1,130 shares withheld to cover taxes in conjunction with the vesting of a stock award.
(2) Includes 22 shares withheld to cover taxes in conjunction with the vesting of a stock award.
(3) Includes 206 shares withheld to cover taxes in conjunction with the vesting of a stock award.

Equity Plan Compensation Information

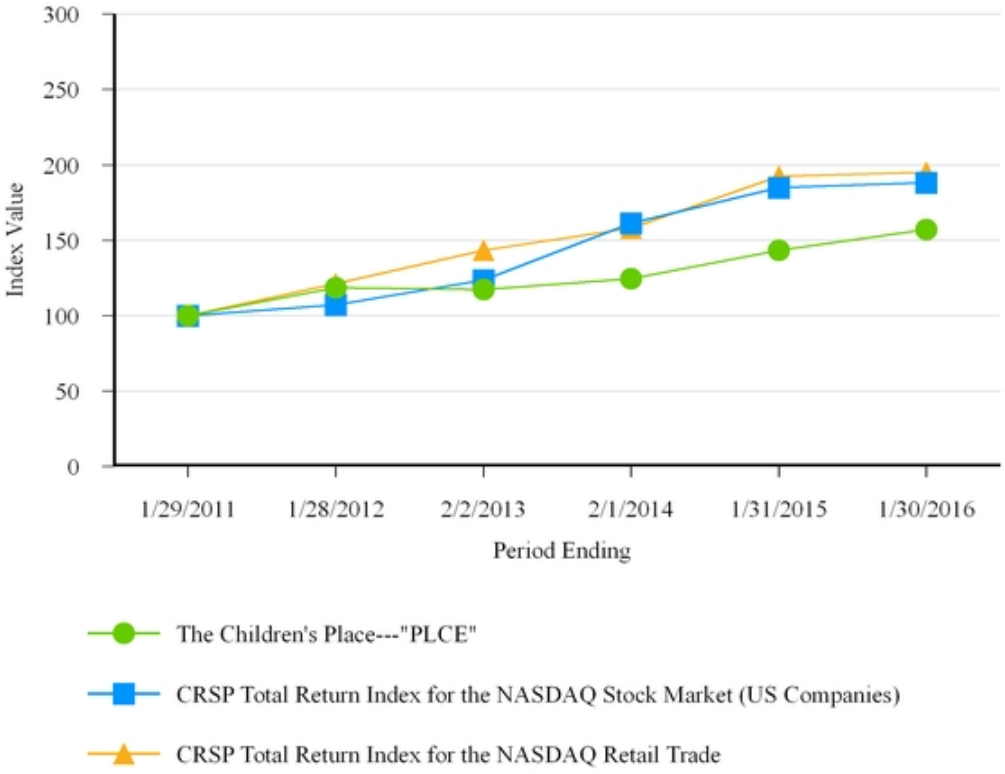
On May 20, 2011, our shareholders approved the 2011 Equity Incentive Plan (the "2011 Equity Plan"). Upon adoption of the 2011 Equity Plan, we ceased issuing awards under the 2005 Equity Incentive Plan (together with the 1997 Stock Option Plan, the "Prior Plans"). The following table provides information as of January 30, 2016, about the shares of our Common Stock that may be issued under our equity compensation plans.

	COLUMN (A)	COLUMN (B)	COLUMN (C)
Plan Category	Securities to be issued upon exercise of outstanding options (1)	Weighted average exercise price of outstanding options	Securities remaining available for future issuances under equity compensation plans (excluding securities reflected in Column (A)) (2)
Equity Compensation Plans Approved by Security Holders	15,000	$29.05	605,499
Equity Compensation Plans Not Approved by Security Holders	N/A	N/A	N/A
Total	15,000	$29.05	605,499

(1) Amount consists of 15,000 shares issuable under our 2005 Equity Incentive Plan.
(2) Includes shares forfeited or withheld to cover taxes related to awards granted under the Prior Plans, which are available for future issuances under the 2011 Equity Plan.

Performance Graph

The following graph compares the cumulative stockholder return on our common stock with the return on the CRSP Total Return Index for the NASDAQ Stock Market (US Companies) and CRSP Total Return Index for the NASDAQ Retail Trade. The graph assumes that $100 was invested on January 29, 2011 in each of our common stock, the CRSP Total Return Index for the NASDAQ Stock Market (US Companies) and the CRSP Total Return Index for the NASDAQ Retail Trade.



The table below sets forth the closing price of our Common Stock and the closing indices for the CRSP Total Return Index for the NASDAQ Stock Market (US Companies) and CRSP Total Return Index for the NASDAQ Retail Trade on the last day of each of our last six fiscal years.

	2010	2011	2012	2013	2014	2015
The Children's Place---"PLCE"	42.270	50.050	49.530	52.670	59.950	65.100
CRSP Total Return Index for the NASDAQ Stock Market (US Companies)	742.933	1,011.628	1,163.278	1,518.350	1,736.188	1,763.447
CRSP Total Return Index for the NASDAQ Retail Trade	577.479	699.415	827.442	912.911	1,111.523	1,126.735

The table below assumes that $100 was invested on January 29, 2011 in each of our common stock, CRSP Total Return Index for the NASDAQ Stock Market (US Companies) and CRSP Total Return Index for the NASDAQ Retail Trade.

	2010	2011	2012	2013	2014	2015
The Children's Place---"PLCE"	100.000	118.410	117.180	124.60	143.26	157.13
CRSP Total Return Index for the NASDAQ Stock Market (US Companies)	100.000	107.250	123.530	161.35	184.81	188.12
CRSP Total Return Index for the NASDAQ Retail Trade	100.000	121.130	143.290	158.07	192.48	195.12

ITEM 6.-SELECTED FINANCIAL DATA

We are the largest pure-play children's specialty apparel retailer in North America. As of January 30, 2016, we operated 1,069 The Children's Place stores across North America and an online store at *www.childrensplace.com.* The following table sets forth certain historical financial and operating data for the Company. The selected consolidated financial information presented below is derived from our audited Consolidated Financial Statements for each of the five years in the period ended January 30, 2016. The information contained in this table should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations, and the audited consolidated financial statements and notes thereto included elsewhere herein.

Statement of Operations Data (in thousands, except per share and square footage data):	Fiscal Year Ended (1)				
	January 30, 2016	January 31, 2015	February 1, 2014	February 2, 2013	January 28, 2012
Net sales	$1,725,777	$1,761,324	$1,765,789	$1,809,486	$1,715,862
Cost of sales	1,100,645	1,139,024	1,110,268	1,118,046	1,056,213
Gross profit	625,132	622,300	655,521	691,440	659,649
Selling, general and administrative expenses	469,898	470,686	485,653	510,918	477,425
Asset impairment charges (2)	2,371	11,145	29,633	2,284	2,208
Other costs (income) (3)	98	(68)	(906)	11,088	—
Depreciation and amortization	62,685	60,494	64,858	77,435	74,573
Operating income	90,080	80,043	76,283	89,715	105,443
Interest income (expense), net	(698)	(168)	265	(20)	(690)
Income before income taxes	89,382	79,875	76,548	89,695	104,753
Provision for income taxes	31,498	22,987	23,522	26,452	30,408
Net income	57,884	56,888	53,026	63,243	74,345
Diluted income per common share	$ 2.80	$ 2.59	$ 2.32	$ 2.61	$ 2.90
Cash dividends declared and paid per common share (4)	$ 0.60	$ 0.53	—	—	—
Selected Operating Data for Continuing Operations:					
Number of Company operated stores open at end of period	1,069	1,097	1,107	1,095	1,049
Comparable retail sales increase (decrease)	0.4%	0.4%	(2.8)%	2.0%	(2.5)%
Average net sales per store (5)	$ 1,318	$ 1,316	$ 1,354	$ 1,393	$ 1,492
Average square footage per store (6)	4,666	4,675	4,704	4,791	4,903
Average net sales per square foot (7)	$ 282	$ 280	$ 285	$ 300	$ 299
Balance Sheet Data (in thousands):					
Working capital (8)	$ 306,286	$ 334,812	$ 357,971	$ 353,729	$ 357,373
Total assets	897,948	958,618	990,630	923,410	866,252
Long-term debt	—	—	—	—	—
Stockholders' equity	527,793	589,118	616,778	620,949	624,969

(1) The period ending February 2, 2013 was a 53-week year. All other periods presented were 52-week years.
(2) Asset impairment charges generally relate to the write-off of fixed assets related to underperforming stores. In Fiscal 2013, asset impairment charges also included the write-off of obsolete systems of $9.1 million.
(3) Other costs include exit costs associated with the closures of the West Coast DC and Northeast DC in fiscal 2012 and additional sublease agreements executed in Fiscal 2013.
(4) The Company instituted its quarterly dividend program and paid its first dividend during the first quarter of Fiscal 2014.
(5) Average net sales per store represents net sales from stores open throughout the full period divided by the number of such stores.
(6) Average square footage per store represents the square footage of stores operated on the last day of the period divided by the number of such stores.
(7) Average net sales per square foot represent net sales from stores open throughout the full period divided by the square footage of such stores.
(8) Working capital is calculated by subtracting our current liabilities from our current assets.

ITEM 7.-MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our audited financial statements and notes thereto included in Part IV, Item 15.-Exhibits and Financial Statement Schedules. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed below and elsewhere in this Annual Report on Form 10-K, particularly in Part I, Item 1A-Risk Factors.

As used in this Annual Report on Form 10-K, references to the "Company", "The Children's Place", "we", "us", "our" and similar terms refer to The Children's Place, Inc. and its subsidiaries. Our fiscal year ends on the Saturday on or nearest to January 31. Other terms that are commonly used in our management's discussion and analysis of financial condition and results of operations are defined as follows:

- *Fiscal 2015 - The fifty-two weeks ended January 30, 2016*
- *Fiscal 2014 - The fifty-two weeks ended January 31, 2015*
- *Fiscal 2013 - The fifty-two weeks ended February 1, 2014*
- *Fiscal 2016 - Our next fiscal year representing the fifty-two weeks ending January 28, 2017*
- *FASB- Financial Accounting Standards Board*
- *FASB ASC - FASB Accounting Standards Codification, which serves as the source for authoritative U.S. GAAP, except that rules and interpretive releases by the SEC are also sources of authoritative U.S. GAAP for SEC registrants*
- *GAAP - U.S. Generally Accepted Accounting Principles*
- *SEC- The U.S. Securities and Exchange Commission*
- *AUR- Average unit retail price*
- *Comparable Retail Sales — Net sales, in constant currency, from stores that have been open for at least 14 consecutive months and from our e-commerce store, excluding postage and handling fees. Store closures in the current fiscal year will be excluded from Comparable Retail Sales beginning in the fiscal quarter in which the store closes. Stores that temporarily close for non- substantial remodeling will be excluded from Comparable Retail Sales for only the period that they were closed. A store is considered substantially remodeled if it has been relocated or materially changed in size and will be excluded from Comparable Retail Sales for at least 14 months beginning in the period in which the remodel occurred.*
- *Gross Margin - Gross profit expressed as a percentage of net sales*
- *SG&A - Selling, general and administrative expenses*

OVERVIEW

Our Business

We are the largest pure-play children's specialty apparel retailer in North America. We design, contract to manufacture, sell at retail and wholesale, and license to sell trend right, high-quality merchandise at value prices, the substantial majority of which is under our proprietary "The Children's Place", "Place" and "Baby Place" brand names. As of January 30, 2016, we operated 1,069 stores across North America, our e-commerce business at *www.childrensplace.com,* and had 102 international points of distribution open and operated by our six franchise partners in 16 countries.

Segment Reporting

In accordance with the "*Segment Reporting*" topic of the FASB ASC, we report segment data based on geography: The Children's Place U.S. and The Children's Place International. Each segment includes an e-commerce business located at *www.childrensplace.com*. Included in The Children's Place U.S. segment are our U.S. and Puerto Rico based stores and revenue from our U.S. based wholesale customers. Included in The Children's Place International segment are our Canadian based stores, revenue from the Company's Canada wholesale customer, as well as revenue from international franchisees. We measure our segment profitability based on operating income, defined as income before interest and taxes. Net sales and direct costs are recorded by each segment. Certain inventory procurement functions such as production and design as well as corporate overhead, including executive management, finance, real estate, human resources, legal, and information technology services are managed by The Children's Place U.S. segment. Expenses related to these functions, including depreciation and amortization, are allocated to The Children's Place International segment based primarily on net sales. The assets related to these functions are not allocated. We periodically review these allocations and adjust them based upon changes in business circumstances. Net sales to external customers are derived from merchandise sales and we have no major customers that account for more than 10% of our net sales.

Operating Highlights

Our Comparable Retail Sales increased 0.4% during Fiscal 2015. Net sales decreased by $35.5 million to $1,725.8 million during Fiscal 2015 from $1,761.3 million during Fiscal 2014. Our net sales decrease resulted from $29.9 million from unfavorable changes in the Canadian exchange rate and a $12.0 million decrease in sales due to fewer store openings, as well as other sales that did not qualify as comparable sales, partially offset by a Comparable Retail Sales increase of 0.4%, or $6.4 million. During Fiscal 2015, we opened four stores and closed 32 stores.

Gross Margin increased by $2.8 million to $625.1 million during Fiscal 2015 from $622.3 million during Fiscal 2014. Consolidated Gross Margin increased approximately 90 basis points to 36.2% during Fiscal 2015 from 35.3% during Fiscal 2014. The increase in consolidated Gross Margin resulted primarily from merchandise margin leverage, a higher AUR and fixed cost leverage resulting from positive Comparable Retail Sales partially offset by the dilutive impact on Gross Margin of channel expansion.

SG&A decreased $0.8 million to $469.9 million during Fiscal 2015 from $470.7 million during Fiscal 2014. As a percentage of net sales SG&A increased approximately 50 basis points to 27.2% during Fiscal 2015 from 26.7% during Fiscal 2014. The comparability of our SG&A was affected by costs incurred of approximately $18.1 million during Fiscal 2015 related to proxy contest costs, a class action wage and hour legal settlement, a sales tax audit and costs arising out of the restructuring of certain store and corporate operations and costs of approximately $8.1 million during Fiscal 2014 arising out of the restructuring of certain store and corporate operations. Excluding this impact, our SG&A decreased approximately $10.8 million during Fiscal 2015 from Fiscal 2014, and leveraged 10 basis points. The leverage was primarily due to a reduction in store payroll expenses partially offset by increased costs associated with our ongoing transformation initiatives and incentive compensation expenses. Managing company-wide expenses has been, and will continue to be, a key focus for the entire Company.

We continued our international expansion program with our franchise partners adding 29 additional international points of distribution (stores, shop in shops, e-commerce site) during Fiscal 2015 bringing our total count to 102, operating in 16 countries. During Fiscal 2015, in India we opened our first retail store, our first ever shop in shop location and also launched an e-commerce business with our partner Arvind Lifestyle Brands. We also announced a new partnership with El Palacio de Hierro to open free-standing stores and shop in shops in Mexico, and we opened our first shop in shop in Mexico.

We continue to evaluate our store fleet as part of our fleet optimization initiative to improve store productivity and plan to close approximately 200 underperforming stores through fiscal 2017, which includes the 32 stores we closed during Fiscal 2015, the 35 stores we closed in Fiscal 2014 and the 41 stores we closed during Fiscal 2013. Our customer segmentation analysis helps us to better understand customer shopping habits at the store level in order to understand what our ideal store portfolio should look like. These closures should ultimately result in operating margin accretion due to sales transfer and the elimination of the underperforming locations. In those markets where we have closed stores, we are seeing the neighboring stores along with the e-commerce business become more productive from both a Comparative Retail Sales and profitability perspective. These results further our commitment to executing this optimization program while dramatically slowing down new store openings.

We continue to make progress on our business transformation initiatives in an effort to improve sales and margin. The insights from the implementation of our assortment planning tool are delivering Gross Margin benefits by adding enhanced data driven analytics to our internal processes leading to a better optimization of our overall buys and a better matching of the breadth of assortment with the depth of inventory. Our new inventory allocation and replenishment tool also went live during the back-to-school Fiscal 2015 season. These initiatives have contributed to improved Gross Margin during Fiscal 2015. Additionally, our digital initiatives continue to gain traction and are focused on driving improvements in customer acquisition, retention and engagement. We also implemented a new digital order management system during Fiscal 2015 which will enable us to pilot omni-channel fulfillment capabilities in Fiscal 2016.

Due in part to these initiatives and a continued focus on inventory management, inventory was down $28.8 million, or 9.7%, as of January 30, 2016 compared to January 31, 2015.

In October 2015, we entered into an agreement with a new private label credit card provider, with the transition to the new provider expected to occur in the second half of Fiscal 2016.

We continue to be committed to returning capital to shareholders. During Fiscal 2015, we repurchased approximately 2.0 million shares for approximately $119.1 million under our share repurchase programs and paid cash dividends of $12.2 million. On December 8, 2015, the Company announced that its Board of Directors has approved an additional $250 million share repurchase program. Our first quarter 2016 dividend of $0.20 per share, which reflects a 33% increase per share, will be paid on April 28, 2016 to shareholders of record on the close of business on April 7, 2016.

We reported net income of $57.9 million during Fiscal 2015 compared to $56.9 million during Fiscal 2014, an increase of 1.8%, due to the factors discussed above. Diluted earnings per share was $2.80 in Fiscal 2015 compared to $2.59 in Fiscal 2014, an increase of 8.1%. This increase in earnings per diluted share is due to higher net income and a lower diluted weighted average number of common shares outstanding of approximately 1.2 million shares, virtually all of which is related to our share repurchase programs.

We have subsidiaries whose operating results are based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. The below table summarizes the average translation rates most impacting our operating results:

	Fiscal 2015	Fiscal 2014	Fiscal 2013
Average Translation Rates (1)			
Canadian Dollar	0.7733	0.8980	0.9647
Hong Kong Dollar	0.1290	0.1290	0.1289
China Yuan Renminbi	0.1585	0.1617	0.1630

(1) The average translation rates are the average of the monthly translation rates used during each fiscal year to translate the respective income statements. The rates represent the U.S. dollar equivalent of each foreign currency.

For Fiscal 2015, the effects of these translation rate changes on net sales, gross profit and operating income were decreases of $29.9 million, $12.4 million and $1.9 million, respectively. Net sales are affected only by the Canadian dollar translation rates. In addition to the translation rate changes, the gross profit of our Canadian subsidiary is also impacted by its inventory purchases which are priced in U.S. dollars; however, during the second quarter of Fiscal 2015 we began entering into foreign exchange forward contracts to mitigate the variability of cash flows associated with these inventory purchases.

CRITICAL ACCOUNTING POLICIES

The preparation of consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reported period. In many cases, there are alternative policies or estimation techniques that could be used. We continuously review the application of our accounting policies and evaluate the appropriateness of the estimates used in preparing our financial statements; however, estimates routinely require adjustment based on changing circumstances and the receipt of new or better information. Consequently, actual results could differ from our estimates.

The accounting policies and estimates discussed below include those that we believe are the most critical to aid in fully understanding and evaluating our financial results. Senior management has discussed the development and selection of our critical accounting policies and estimates with the Audit Committee of our Board of Directors, which has reviewed our related disclosures herein.

Inventory Valuation— We value inventory at the lower of cost or market (“LCM”), with cost determined using an average cost method. We capitalize supply chain costs in inventory and these costs are reflected in cost of sales as the inventories are sold. We review our inventory levels in order to identify slow-moving merchandise and use markdowns to clear merchandise. We record an adjustment when future estimated selling price is less than cost. Our LCM adjustment calculation requires management to make assumptions to estimate the selling price and amount of slow-moving merchandise subject to markdowns, which is dependent upon factors such as historical trends with similar merchandise, inventory aging, forecasted consumer demand, and the promotional environment. In the LCM calculation any inability to provide the proper quantity of appropriate merchandise in a timely manner, or to correctly estimate the sell-through rate, could have a material impact on our consolidated financial statements. Our historical estimates have not differed materially from actual results and a 10% difference in our LCM reserve as of January 30, 2016 would have impacted net income by approximately $0.3 million. Our reserve balance at January 30, 2016 was approximately $3.7 million compared to $1.9 million at January 31, 2015.

Additionally, we adjust our inventory based upon an annual physical inventory, which is taken during the fourth quarter of the fiscal year. Based on the results of our historical physical inventories, an estimated shrink rate is used for each successive quarter until the next annual physical inventory, or sooner if facts or circumstances should indicate differently. A 0.5% difference in our shrinkage rate as a percentage of cost of goods sold could impact each quarter's net income by approximately $0.6 million.

Stock-Based Compensation— We account for stock-based compensation according to the provisions of the "*Compensation—Stock Compensation*" topic of the FASB ASC.

Time Vesting and Performance-Based Awards

We generally grant time vesting and performance-based stock awards to employees at management levels and above. We also grant time vesting stock awards to our non-employee directors. Time vesting awards are granted in the form of restricted stock units that require each recipient to complete a service period ("Deferred Awards"). Deferred Awards granted to employees generally vest ratably over three years. Deferred Awards granted to non-employee directors generally vest after one year. Performance-based stock awards are granted in the form of restricted stock units which have a performance criteria that must be achieved for the awards to be earned in addition to a service period requirement ("Performance Awards"). With the approval of the Board's Compensation Committee, the Company may settle vested Deferred Awards and Performance Awards to the employee in shares, in a cash amount equal to the market value of such shares at the time all requirements for delivery of the award have been met, or in part shares and cash. For Performance Awards issued during Fiscal 2013, each award has a defined number of shares that an employee can earn (the "Target Shares") and based on the adjusted operating income level achieved for the three-fiscal year period, the employee can earn from 0% to 200% of their Target Shares. The fair value of these Performance Awards and all Deferred Awards` granted is based on the closing price of our common stock on the grant date. The 2013 Performance Awards cliff vest, if earned, after completion of the three year performance period. For Performance Awards issued during Fiscal 2014 and Fiscal 2015 (the "2014 and 2015 Performance Awards"), the Target Shares earned can range from 0% to 300% and depend on the achievement of adjusted earnings per share for the cumulative three-fiscal year performance period and our total shareholder return ("TSR") relative to that of companies in our peer group. 2014 and 2015 Performance Awards generally cliff vest, if earned, after the completion of the applicable three year performance period. The 2014 and 2015 Performance Awards grant date fair value was estimated using a Monte Carlo simulation covering the period from the valuation date through the end of the applicable performance period using our simulated stock price as well as the TSR of companies in our peer group. Compensation expense is recognized ratably over the related service period reduced for estimated forfeitures of those awards not expected to vest due to employee turnover. While actual forfeitures could vary significantly from those estimated, a 10% change in our estimated forfeiture rate would impact our Fiscal 2015 net income by approximately $0.3 million.

The expense for Performance Awards is based on the number of shares we estimate will vest as a result of our earnings-to-date plus our estimate of future earnings for the applicable performance periods. To the extent that actual operating results for fiscal years 2016 and 2017 differ from our estimates, future performance share compensation expense could be significantly different. For 2014 and 2015 Performance Awards for which the applicable performance periods have not concluded a 10% increase or decrease in our cumulative projected adjusted earnings per share would have caused an approximate $1.3 million increase or a $2.8 million decrease, respectively, to stock-based compensation expense for Fiscal 2015.

Stock Options

We have not issued stock options since fiscal 2008; however, certain issued stock options remain outstanding. The fair value of all outstanding stock options was estimated using the Black-Scholes option pricing model based on a Monte Carlo simulation, which requires extensive use of accounting judgment and financial estimates, including estimates of how long employees will hold their vested stock options before exercise, the estimated volatility of our common stock over the expected term, and the number of options that will be forfeited prior to the completion of vesting requirements. All exercise prices were based on the average of the high and low of the selling price of our common stock on the grant date. There is no unamortized stock compensation at January 30, 2016.

Insurance and Self-Insurance Liabilities—Based on our assessment of risk and cost efficiency, we self-insure as well as purchase insurance policies to provide for workers' compensation, general liability, and property losses, cyber-security coverage, as well as directors' and officers' liability, vehicle liability and employee medical benefits. We estimate risks and record a liability based upon historical claim experience, insurance deductibles, severity factors and other actuarial assumptions. These estimates include inherent uncertainties due to the variability of the factors involved, including type of injury or claim, required services by the providers, healing time, age of claimant, case management costs, location of the claimant, and governmental regulations. While we believe that our risk assessments are appropriate, these uncertainties or a deviation in future claims trends from recent historical patterns could result in our recording additional or reduced expenses, which may be material to our results of operations. Our historical estimates have not differed materially from actual results and

a 10% difference in our insurance reserves as of January 30, 2016 would have impacted net income by approximately $0.7 million.

Impairment of Long-Lived Assets—We periodically review our long-lived assets when events indicate that their carrying value may not be recoverable. Such events include a historical or projected trend of cash flow losses or a future expectation that we will sell or dispose of an asset significantly before the end of its previously estimated useful life. In reviewing for impairment, we group our long-lived assets at the lowest possible level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. In that regard, we group our assets into two categories: corporate-related and store-related. Corporate-related assets consist of those associated with our corporate offices, distribution centers and our information technology systems. Store-related assets consist of leasehold improvements, furniture and fixtures, certain computer equipment and lease related assets associated with individual stores.

For store-related assets, we review all stores that have been open for at least two years, or sooner if circumstances should dictate, on at least an annual basis. We believe waiting two years allows a store to reach a maturity level where a more comprehensive analysis of financial performance can be performed. For each store that shows indications of operating losses, we project future cash flows over the remaining life of the lease and compare the total undiscounted cash flows to the net book value of the related long-lived assets. If the undiscounted cash flows are less than the related net book value of the long-lived assets, they are written down to their fair market value. We primarily determine fair market value to be the discounted future cash flows associated with those assets. In evaluating future cash flows, we consider external and internal factors. External factors comprise the local environment in which the store resides, including mall traffic, competition, and their effect on sales trends. Internal factors include our ability to gauge the fashion taste of our customers, control variable costs such as cost of sales and payroll, and in certain cases, our ability to renegotiate lease costs. If external factors should change unfavorably, if actual sales should differ from our projections, or if our ability to control costs is insufficient to sustain the necessary cash flows, future impairment charges could be material. At January 30, 2016, the average net book value per store was approximately $0.1 million.

Income Taxes—We utilize the liability method of accounting for income taxes as set forth in the "*Income Taxes*" topic of the FASB ASC. Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities, as well as for net operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using currently enacted tax rates that apply to taxable income in effect for the years in which the basis differences and tax assets are expected to be realized. A valuation allowance is recorded when it is more likely than not that some of the deferred tax assets will not be realized. In determining the need for valuation allowances we consider projected future taxable income and the availability of tax planning strategies. If, in the future we determine that we would not be able to realize our recorded deferred tax assets, an increase in the valuation allowance would decrease earnings in the period in which such determination is made.

We assess our income tax positions and record tax benefits for all years subject to examination based upon our evaluation of the facts, circumstances and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in the financial statements.

Fair Value Measurement and Financial Instruments—The "*Fair Value Measurements and Disclosure*" topic of the FASB ASC provides a single definition of fair value, together with a framework for measuring it, and requires additional disclosure about the use of fair value to measure assets and liabilities.

This topic defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and establishes a three-level hierarchy, which encourages an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of the hierarchy are defined as follows:

- Level 1 - inputs to the valuation techniques that are quoted prices in active markets for identical assets or liabilities
- Level 2 - inputs to the valuation techniques that are other than quoted prices but are observable for the assets or liabilities, either directly or indirectly
- Level 3 - inputs to the valuation techniques that are unobservable for the assets or liabilities

Our cash and cash equivalents, short-term investments, accounts receivable, assets of the Company's Deferred Compensation Plan, accounts payable and credit facility are all short-term in nature. As such, their carrying amounts approximate fair value and fall within Level 1 of the fair value hierarchy. The Company stock included in the Deferred Compensation Plan is not subject to fair value measurement.

Our assets measured at fair value on a nonrecurring basis include long-lived assets. We review the carrying amounts of such assets when events indicate that their carrying amounts may not be recoverable. Any resulting asset impairment would require that the asset be recorded at its fair value. The resulting fair value measurements of the assets are considered to be Level 3 inputs.

Our derivative assets and liabilities include foreign exchange forward contracts that are measured at fair value using observable market inputs such as forward rates, our credit risk and our counterparties' credit risks. Based on these inputs, our derivative assets and liabilities are classified within Level 2 of the valuation hierarchy.

Recently Adopted Accounting Standards

In February 2016, the FASB issued guidance relating to the accounting for leases. This guidance applies a right of use model that requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. The lease term is the noncancellable period of the lease, and includes both periods covered by an option to extend the lease, if the lessee is reasonably certain to exercise that option, and periods covered by an option to terminate the lease, if the lessee is reasonably certain not to exercise that termination option. The standard is effective for the Company beginning in its fiscal year 2019, including interim periods within those fiscal years, and early adoption is permitted. We are currently reviewing the potential impact of this standard.

In November 2015, the FASB issued guidance relating to balance sheet classification of deferred taxes. Currently, entities are required to present deferred tax assets and liabilities as current and noncurrent on the balance sheet. This guidance simplifies the current guidance by requiring entities to classify all deferred tax assets and liabilities, together with any related valuation allowance, as noncurrent on the balance sheet. The standard is effective for the Company beginning in its fiscal year 2018, with early adoption permitted, and may be applied prospectively or retrospectively. The adoption is not expected to impact the Company's consolidated financial statements other than the change in presentation of deferred tax assets and liabilities within its consolidated balance sheets.

In May 2014, the FASB issued guidance relating to revenue recognition from contracts with customers. This guidance requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. In August 2015, the FASB issued guidance to defer the effective date by one year and, therefore, the standard is effective for fiscal years and interim periods within those years beginning after December 15, 2017 and is to be applied retrospectively. We are currently reviewing the potential impact of this standard.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, selected income statement data expressed as a percentage of net sales. We primarily evaluate the results of our operations as a percentage of net sales rather than in terms of absolute dollar increases or decreases by analyzing the year over year change in our business expressed as a percentage of net sales (i.e. "basis points"). For example, Gross Profit increased approximately 90 basis points to 36.2% of net sales during Fiscal 2015 from 35.3% during Fiscal 2014. Accordingly, to the extent that our sales have increased at a faster rate than our costs (i.e. "leveraging"), the more efficiently we have utilized the investments we have made in our business. Conversely, if our sales decrease or if our costs grow at a faster pace than our sales (i.e. "de-leveraging"), we have less efficiently utilized the investments we have made in our business.

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net sales	100.0%	100.0%	100.0 %
Cost of sales (exclusive of depreciation and amortization)	63.8	64.7	62.9
Gross profit	36.2	35.3	37.1
Selling, general and administrative expenses	27.2	26.7	27.5
Asset impairment charge	0.1	0.6	1.7
Other (income) costs	—	—	(0.1)
Depreciation and amortization	3.6	3.4	3.7
Operating income	5.2	4.5	4.3
Interest (expense), net	—	—	—
Income before income taxes	5.2	4.5	4.3
Provision for income taxes	1.8	1.3	1.3
Net income	3.4%	3.2%	3.0 %
Number of stores operated by the Company, end of period	1,069	1,097	1,107

Table may not add due to rounding.

The following tables set forth by segment, for the periods indicated, net sales, gross profit and Gross Margin (dollars in thousands).

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net sales:			
The Children's Place U.S.	$ 1,518,117	$ 1,528,762	$ 1,528,276
The Children's Place International (1)	207,660	232,562	237,513
Total net sales	$ 1,725,777	$ 1,761,324	$ 1,765,789

(1) Net sales from The Children's Place International are primarily derived from revenues from Canadian operations. Our foreign subsidiaries, primarily in Canada, have operating results based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. For Fiscal 2015 and Fiscal 2014, the effects of these translation rate changes on net sales was a decrease of $29.9 million and $14.7 million, respectively.

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Gross profit:			
The Children's Place U.S.	$ 539,030	$ 535,226	$ 558,156
The Children's Place International	86,102	87,074	97,365
Total gross profit	$ 625,132	$ 622,300	$ 655,521
Gross Margin:			
The Children's Place U.S.	35.5%	35.0%	36.5%
The Children's Place International	41.5%	37.4%	41.0%
Total gross margin	36.2%	35.3%	37.1%

Fiscal 2015 Compared to Fiscal 2014

Net sales decreased by $35.5 million to $1,725.8 million during Fiscal 2015 from $1,761.3 million during Fiscal 2014. Our net sales decrease resulted from $29.9 million from unfavorable changes in the Canadian exchange rate and a $12.0 million decrease in sales due to fewer store openings, as well as other sales that did not qualify as comparable sales, partially offset by a Comparable Retail Sales increase of 0.4%, or $6.4 million. Total e-commerce sales, which include postage and handling, increased to 17.1% of net sales during Fiscal 2015 from 15.9% during Fiscal 2014.

The Children's Place U.S. net sales decreased $10.7 million, or 0.7%, to $1,518.1 million during Fiscal 2015 compared to $1,528.8 million during Fiscal 2014. Our net sales decrease resulted primarily from a decrease in sales due to fewer store openings, as well as other sales that did not qualify as comparable sales. U.S. Comparable Retail Sales were flat.

The Children's Place International net sales decreased $24.9 million, or 10.7%, to $207.7 million during Fiscal 2015 compared to $232.6 million during Fiscal 2014. Our net sales decrease resulted from unfavorable changes in the Canadian exchange rate, partially offset by a Canadian Comparable Retail Sales increase of 3.1% and channel expansion growth.

During Fiscal 2015, we opened four stores, all in the United States. We closed 32 stores in Fiscal 2015, 30 in the United States and two in Canada.

Gross profit increased by $2.8 million to $625.1 million during Fiscal 2015 from $622.3 million during Fiscal 2014. Consolidated Gross Margin increased approximately 90 basis points to 36.2% during Fiscal 2015 from 35.3% during Fiscal 2014. The increase in consolidated Gross Margin resulted primarily from merchandise margin leverage, a higher AUR and fixed cost leverage resulting from positive Comparable Retail Sales.

Gross Margin at The Children's Place U.S. increased approximately 50 basis points from 35.0% in Fiscal 2014 to 35.5% in Fiscal 2015. The increase in The Children's Place U.S. Gross Margin resulted primarily from merchandise margin leverage, a higher AUR partially offset by the dilutive impact on Gross Margin of channel expansion.

Gross Margin at The Children's Place International increased approximately 410 basis points from 37.4% in Fiscal 2014 to 41.5% in Fiscal 2015. The increase in The Children's Place International Gross Margin resulted primarily from merchandise margin leverage, a higher AUR and fixed cost leverage resulting from positive Comparable Retail Sales partially offset by the dilutive impact on Gross Margin of channel expansion.

Selling, general and administrative expenses decreased $0.8 million to $469.9 million during Fiscal 2015 from $470.7 million during Fiscal 2014. As a percentage of net sales SG&A increased approximately 50 basis points to 27.2% during Fiscal 2015 from 26.7% during Fiscal 2014. The comparability of our SG&A was affected by costs incurred of approximately $18.1 million during Fiscal 2015 related to proxy contest costs, a class action wage and hour legal settlement, a sales tax audit and costs arising out of the restructuring of certain store and corporate operations and costs of approximately $8.1 million during Fiscal 2014 arising out of the restructuring of certain store and corporate operations. Excluding this impact, our SG&A decreased approximately $10.8 million during Fiscal 2015 from Fiscal 2014, and leveraged 10 basis points. The leverage was primarily due to a reduction in store payroll expenses partially offset by increased costs associated with our ongoing transformation initiatives and incentive compensation expenses.

Asset impairment charges were $2.4 million during Fiscal 2015, related to 22 stores, 10 of which were fully impaired and 12 of which were partially impaired, compared to $11.1 million during Fiscal 2014, related to 74 stores, 44 of which were fully impaired and 30 of which were partially impaired. These store impairment charges were recorded as a result of reduced cash flows from revenue and/or gross margins not meeting targeted levels and accelerated store lease termination dates.

Depreciation and amortization was $62.7 million during Fiscal 2015 compared to $60.5 million during Fiscal 2014 due primarily to the completion of certain foundational enterprise resource planning projects in Fiscal 2014.

Provision for income taxes was $31.5 million during Fiscal 2015 compared to $23.0 million during Fiscal 2014. Our effective tax rate was 35.2% and 28.8% during Fiscal 2015 and Fiscal 2014, respectively. The increase in rate for Fiscal 2015 compared to Fiscal 2014 primarily relates to a reserve for uncertain tax positions in Canada and the change in valuation allowance. The Company's foreign effective tax rates for Fiscal 2015 and Fiscal 2014 were 22.6% and 13.7%, respectively.

Net income was $57.9 million during Fiscal 2015 compared to $56.9 million during Fiscal 2014, due to the factors discussed above. Diluted earnings per share was $2.80 in Fiscal 2015 compared to $2.59 in Fiscal 2014. This increase in earnings per diluted share is due to higher net income and a lower diluted weighted average number of common shares outstanding of approximately 1.2 million shares, virtually all of which is related to our share repurchase programs.

Fiscal 2014 Compared to Fiscal 2013

Net sales decreased by $4.5 million to $1,761.3 million during Fiscal 2014 from $1,765.8 million during Fiscal 2013. Our net sales decrease resulted from $14.7 million from unfavorable changes in the Canadian exchange rate, partially offset by a Comparable Retail Sales increase of 0.4%, or $5.8 million and a $4.4 million increase in sales from new stores, as well as other sales that did not qualify as comparable sales. Our 0.4% increase in Comparable Retail Sales was primarily the result of a 0.7% increase in the average dollar transaction size, partially offset by a 0.3% decrease in the number of transactions. Total e-commerce sales, which include postage and handling, increased to 15.9% of net sales during Fiscal 2014 from 13.9% during Fiscal 2013.

The Children's Place U.S. net sales increased $0.5 million to $1,528.8 million during Fiscal 2014 compared to $1,528.3 million during Fiscal 2013. Our net sales increase resulted from a U.S. Comparable Retail Sales increase of 0.6%, partially

offset by a decrease in sales that did not qualify as comparable sales. Our 0.6% increase in U.S. Comparable Retail Sales was primarily the result of a 0.9% increase in the average dollar transaction size, partially offset by a 0.3% decrease in the number of transactions.

The Children's Place International net sales decreased $4.9 million, or 2.1%, to $232.6 million during Fiscal 2014 compared to $237.5 million during Fiscal 2013. Our net sales decrease resulted from unfavorable changes in the Canadian exchange rate and a Canadian Comparable Retail Sales decrease of 1.0%, partially offset by an increase in sales from new stores, as well as other sales that did not qualify as comparable sales. Our 1.0% decrease in Canadian Comparable Retail Sales was the result of a 0.7% decrease in the average dollar transaction size and a 0.3% decrease in the number of transactions.

During Fiscal 2014, we opened 25 stores, consisting of 23 in the United States and two in Canada. We closed 35 stores in Fiscal 2014, 34 in the United States and one in Canada.

Gross profit decreased by $33.2 million to $622.3 million during Fiscal 2014 from $655.5 million during Fiscal 2013. Consolidated Gross Margin decreased approximately 180 basis points to 35.3% during Fiscal 2014 from 37.1% during Fiscal 2013. The decrease in consolidated Gross Margin resulted primarily from an elevated promotional environment, higher supply chain costs and the accelerated sale of inventory in preparation for the planned Fiscal 2015 implementation of our new assortment planning tool.

Gross Margin at The Children's Place U.S. decreased approximately 150 basis points from 36.5% in Fiscal 2013 to 35.0% in Fiscal 2014. The decrease in U.S. Gross Margin resulted primarily from an elevated promotional environment, higher supply chain costs and the accelerated sale of inventory in preparation for the planned Fiscal 2015 implementation of our new assortment planning tool.

Gross Margin at The Children's Place International decreased approximately 260 basis points from 41.0% in Fiscal 2013 to 37.4% in Fiscal 2014. The decrease in International Gross Margin resulted primarily from a de-leverage of fixed costs due to negative Comparable Retail Sales and higher supply chain costs.

Selling, general and administrative expenses decreased $15.0 million to $470.7 million during Fiscal 2014 from $485.7 million during Fiscal 2013. As a percentage of net sales SG&A decreased approximately 80 basis points to 26.7% during Fiscal 2014 from 27.5% during Fiscal 2013 and primarily included the following variances:

- store expenses decreased approximately $13.6 million, or 70 basis points, primarily due to expense reduction initiatives in payroll, supplies and maintenance costs; and
- a decrease in administrative expenses of approximately $1.1 million, or 10 basis points, primarily related to expense reduction initiatives in payroll, corporate expenses and marketing expenses, which resulted primarily from fewer direct mailings, partially offset by increased training costs associated with our ongoing transformation initiatives.

Asset impairment charges were $11.1 million during Fiscal 2014, related to 74 stores, 44 of which were fully impaired and 30 of which were partially impaired, compared to $29.6 million during Fiscal 2013, $20.5 million of which related to 127 stores, 106 of which were fully impaired and 21 of which were partially impaired. These store impairment charges were recorded as a result of reduced cash flows from revenue and/or gross margins not meeting targeted levels and accelerated store lease termination dates. Additionally, we recorded asset impairment charges of $9.1 million during Fiscal 2013 related to a determination that certain information technology development costs previously incurred were no longer relevant and that certain information technology systems were obsolete.

Depreciation and amortization was $60.5 million during Fiscal 2014 compared to $64.9 million during Fiscal 2013.

Provision for income taxes was $23.0 million during Fiscal 2014 compared to $23.5 million during Fiscal 2013. Our effective tax rate was 28.8% and 30.7% during Fiscal 2014 and Fiscal 2013, respectively. The decrease in rate for Fiscal 2014 compared to Fiscal 2013 primarily relates to the implementation of international tax planning strategies, partially offset by the mix of income between high taxed jurisdictions (primarily U.S.) and lower taxed jurisdictions (primarily Hong Kong and Canada) as well as an increase to the unrecognized tax benefits in Fiscal 2014 compared to a reversal of unrecognized tax benefits in Fiscal 2013. The Company's foreign effective tax rates for Fiscal 2014 and Fiscal 2013 were 13.7% and 20.4%, respectively,

Net income was $56.9 million during Fiscal 2014 compared to $53.0 million during Fiscal 2013, due to the factors discussed above. Diluted earnings per share was $2.59 in Fiscal 2014 compared to $2.32 in Fiscal 2013. This increase in earnings per diluted share is due to a lower diluted weighted average number of common shares outstanding of approximately 0.9 million shares, virtually all of which is related to our share repurchase programs, and higher net income.

LIQUIDITY AND CAPITAL RESOURCES

Liquidity

Our working capital needs follow a seasonal pattern, peaking during the third fiscal quarter based on seasonal inventory purchases. Our primary uses of cash are working capital requirements, which are principally inventory purchases, and the financing of capital projects, including investments in new systems, the repurchases of our common stock, and the financing of new store openings and remodels. In March 2014, our Board of Directors instituted the payment of a quarterly cash dividend.

Our working capital decreased $28.5 million to $306.3 million at January 30, 2016 compared to $334.8 million at January 31, 2015. This decrease is primarily due to lower inventory balances and an increase in capital returned to our shareholders through higher share repurchases and dividends. During Fiscal 2015, we repurchased approximately 2.0 million shares for approximately $119.1 million under our share repurchase programs and paid cash dividends of $12.2 million. Subsequent to January 30, 2016 and through March 22, 2016, we repurchased an additional 0.3 million shares for approximately $22.3 million and announced that our Board of Directors declared a quarterly cash dividend of $0.20 per share to be paid on April 28, 2016 to shareholders of record on the close of business on April 7, 2016.

At January 30, 2016, our credit facility provided for borrowings up to the lesser of $250.0 million or our borrowing base, as defined by the credit facility agreement (see “Credit Facility” below). At January 30, 2016, we had no outstanding borrowings with our borrowing base at $211.7 million, and $204.6 million available for borrowing. In addition, at January 30, 2016, we had $7.1 million of outstanding letters of credit with an additional $42.9 million available for issuing letters of credit.

As of January 30, 2016, we had approximately $187.5 million of cash and cash equivalents, of which $171.7 million of cash and cash equivalents was held in foreign subsidiaries, of which approximately $93.4 million was in our Canadian subsidiaries, $65.6 million was in our Hong Kong subsidiaries and $12.7 million was in our other foreign subsidiaries. As of January 30, 2016 we also had short-term investments of $40.1 million in Hong Kong. Because all of our earnings in our foreign subsidiaries are permanently and fully reinvested, any repatriation of cash from these subsidiaries would require the accrual and payment of U.S. federal and certain state taxes. Due to the complexities associated with the hypothetical calculation, including the availability of foreign tax credits, we have concluded that it is not practicable to determine the unrecognized deferred tax liability related to the undistributed earnings. We currently do not intend to repatriate cash from any of these foreign subsidiaries.

We expect to be able to meet our working capital and capital expenditure requirements by using our cash on hand, cash flows from operations and availability under our credit facility.

Credit Facility

We and certain of our domestic subsidiaries maintain a credit agreement with Wells Fargo Bank, National Association (“Wells Fargo”), Bank of America, N.A., HSBC Business Credit (USA) Inc., and JPMorgan Chase Bank, N.A. as lenders (collectively, the “Lenders”) and Wells Fargo, as Administrative Agent, Collateral Agent and Swing Line Lender (the “Credit Agreement”). The Credit Agreement was amended on September 15, 2015 and the provisions below reflect the amended and extended Credit Agreement.

The Credit Agreement, which expires in September 2020, consists of a $250 million asset based revolving credit facility, with a $50 million sublimit for standby and documentary letters of credit and an uncommitted accordion feature that could provide up to $50 million of additional availability. Revolving credit loans outstanding under the Credit Agreement bear interest, at our option, at:

(i) the prime rate plus a margin of 0.50% to 0.75% based on the amount of our average excess availability under the facility; or
(ii) the London InterBank Offered Rate, or “LIBOR”, for an interest period of one, two, three or six months, as selected by us, plus a margin of 1.25% to 1.50% based on the amount of our average excess availability under the facility.

We are charged an unused line fee of 0.25% on the unused portion of the commitments. Letter of credit fees range from 0.625% to 0.750% for commercial letters of credit and range from 0.75% to 1.00% for standby letters of credit. Letter of credit fees are determined based on the amount of our average excess availability under the facility. The amount available for loans and letters of credit under the Credit Agreement is determined by a borrowing base consisting of certain credit card receivables, certain trade and franchise receivables, certain inventory and the fair market value of certain real estate, subject to certain reserves.

The outstanding obligations under the Credit Agreement may be accelerated upon the occurrence of certain events, including, among others, non-payment, breach of covenants, the institution of insolvency proceedings, defaults under other

material indebtedness and a change of control, subject, in the case of certain defaults, to the expiration of applicable grace periods. We are not subject to any early termination fees.

The Credit Agreement contains covenants, which include conditions on stock buybacks and the payment of cash dividends or similar payments. Credit extended under the Credit Agreement is secured by a first priority security interest in substantially all of our U.S. assets excluding intellectual property, software, equipment and fixtures.

As of January 30, 2016, we have capitalized an aggregate of approximately $4.3 million in deferred financing costs related to the Credit Agreement. The unamortized balance of deferred financing costs at January 30, 2016 was approximately $1.2 million. Unamortized deferred financing costs are amortized over the remaining term of the Credit Agreement. In conjunction with amending the agreement in September 2015, we paid approximately $0.3 million in additional deferred financing costs.

The table below presents the components (in millions) of our credit facility:

	January 30, 2016	January 31, 2015
Credit facility maximum	$ 250.0	$ 200.0
Borrowing base	211.7	183.2
Outstanding borrowings	—	—
Letters of credit outstanding—merchandise	—	—
Letters of credit outstanding—standby	7.1	9.1
Utilization of credit facility at end of period	7.1	9.1
Availability (1)	$ 204.6	$ 174.1
Interest rate at end of period	4.0%	3.8%

	Fiscal 2015	Fiscal 2014
Average end of day loan balance during the period	$ 28.5	$ 9.4
Highest end of day loan balance during the period	67.5	40.9
Average interest rate	2.7%	3.2%

(1) The sublimit availability for letters of credit was $42.9 million and $40.9 million at January 30, 2016 and January 31, 2015, respectively.

Cash Flows/Capital Expenditures

During Fiscal 2015, cash flows provided by operating activities were $182.7 million compared to $161.4 million during Fiscal 2014. The net increase of $21.3 million in cash from operating activities resulted primarily from operating performance. During Fiscal 2014, cash flows provided by operating activities were $161.4 million compared to $173.5 million during Fiscal 2013. The net decrease of $12.1 million in cash from operating activities resulted primarily from operating performance.

Cash flows used in investing activities were $30.6 million during Fiscal 2015 compared to $61.7 million during Fiscal 2014. This net decrease of $31.1 million was due primarily to fewer store openings and the completion of certain foundational enterprise resource planning projects in Fiscal 2014. Cash flows used in investing activities were $61.7 million during Fiscal 2014 compared to $119.7 million during Fiscal 2013. This net decrease of $58.0 million was due to a net redemption of short-term investments in Fiscal 2014 compared to a net purchase in Fiscal 2013.

During Fiscal 2015, cash flows used in financing activities were $131.4 million compared to $87.6 million during Fiscal 2014. The increase primarily resulted from a $44.8 million increase in purchases of our common stock, pursuant to our share repurchase programs during Fiscal 2015 compared to Fiscal 2014. During Fiscal 2014, cash flows used in financing activities were $87.6 million compared to $64.1 million during Fiscal 2013. The increase primarily resulted from a $10.3 million increase in purchases of our common stock pursuant to our share repurchase programs during Fiscal 2014 compared to Fiscal 2013, the payment of $11.5 million in cash dividends and a $1.4 million decrease in proceeds from the exercise of stock options.

For Fiscal 2016, we estimate that total capital expenditures will be in the range of $50 to $60 million. Our ability to meet our capital requirements in Fiscal 2016 depends on our ability to generate cash flows from operations and our available borrowings under our credit facility. Cash flow generated from operations depends on our ability to achieve our financial

plans. We believe that cash on hand, cash generated from operations and funds available to us through our credit facility will be sufficient to fund our capital and other cash flow requirements over the next 12 months.

Derivative Instruments

We are exposed to gains and losses resulting from fluctuations in foreign currency exchange rates attributable to inventory purchases denominated in a foreign currency. Specifically, our Canadian subsidiary's functional currency is the Canadian dollar, but purchases inventory from suppliers in US dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we began entering into foreign exchange forward contracts in the second quarter of Fiscal 2015. These contracts typically mature within 12 months. We do not use forward contracts to engage in currency speculation and we do not enter into derivative financial instruments for trading purposes.

All derivative instruments are presented at gross fair value on the Consolidated Balance Sheets within either prepaid expenses and other current assets or accrued expenses and other current liabilities. As of January 30, 2016 we had foreign exchange forward contracts with an aggregate notional amount of $26.5 million and the fair value of the derivative instruments was an asset of $0.8 million and a liability of $0.1 million.

CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS

The following tables summarize our contractual and commercial obligations as of January 30, 2016:

	Payment Due By Period				
Contractual Obligations (dollars in thousands)	**Total**	**1 year or less**	**1-3 years**	**3-5 years**	**More than 5 years**
Operating leases(1)	$ 774,085	$ 155,352	$ 258,747	$ 191,761	$ 168,225
Total---Contractual Obligations	$ 774,085	$ 155,352	$ 258,747	$ 191,761	$ 168,225

	Amounts of Commitment Expiration Per Period				
Other Commercial Commitments (dollars in thousands)	**Total**	**1 year or less**	**1-3 years**	**3-5 years**	**More than 5 years**
Purchase commitments(2)	335,295	335,295	—	—	—
Standby letters of credit(3)	7,100	7,100	—	—	—
Total---Other Commercial Commitments	$ 342,395	$ 342,395	$ —	$ —	$ —
Total---Contractual Obligations and Other Commercial Commitments	$ 1,116,480	$ 497,747	$ 258,747	$ 191,761	$ 168,225

(1) Certain of our operating leases include common area maintenance and other charges in our monthly rental expense. For other leases which do not include these charges in the minimum lease payments, we incur monthly charges, which are billed and recorded separately. These additional charges approximated 53% of our minimum lease payments over the last three fiscal years. Additionally, our minimum lease obligation does not include contingent rent based upon sales volume, which represented approximately 0.6% of our minimum lease payments over the last three fiscal years.

(2) Represents purchase orders for merchandise for re-sale of approximately $319.4 million and equipment, construction and other non-merchandise commitments of approximately $15.9 million.

(3) Represents letters of credit issued to landlords, banks and insurance companies.

We self-insure and purchase insurance policies to provide for workers' compensation, general liability, and property losses, as well as directors' and officers' liability, vehicle liability and employee medical benefits, as described in Note 1 of the Notes to our Consolidated Financial Statements. Insurance reserves of approximately $5.8 million are included in other long term liabilities as of January 30, 2016. The long-term portion represents the total amount estimated to be paid beyond one year. We are not able to further estimate in which periods the long-term portion will be paid.

As discussed more fully in Note 11 of the Notes to our Consolidated Financial Statements, our long-term liabilities include unrecognized tax benefits of approximately $9.7 million, which includes $1.3 million of accrued interest and penalties, at January 30, 2016. We cannot make a reasonable estimate of the amount and period of related future payments for any of this amount.

We have an employment agreement with our Chief Executive Officer, which provides for cash severance of two times the sum of base salary plus bonus, and certain other payments and benefits following any termination without cause or for "good

reason". As of January 30, 2016, these cash severance benefits approximated $6.3 million. In the event of a change in control of the Company, certain executives will receive, in the aggregate, approximately $23.7 million of cash severance benefits should they either be terminated or voluntarily terminate their employment due to a degradation of duties as defined in their agreement.

Off-Balance Sheet Arrangements

None.

QUARTERLY RESULTS AND SEASONALITY

Our quarterly results of operations have fluctuated and are expected to continue to fluctuate materially depending on a variety of factors, including overall economic conditions, the timing and number of new store openings and related pre-opening and other startup costs, the timing and number of store closures, net sales contributed by new stores, increases or decreases in Comparable Retail Sales, weather conditions (such as unseasonable temperatures or storms), shifts in timing of certain holidays, and changes in our merchandise mix and pricing strategy, including changes to address competitive factors. The combination and severity of one or more of these factors could result in material fluctuations.

The following table sets forth certain statement of operations data and selected operating data for each of our last four fiscal quarters. Quarterly information for Fiscal 2014 is included in Note 14 of the Notes to our Consolidated Financial Statements. The quarterly statement of operations data and selected operating data set forth below were derived from our unaudited consolidated financial statements and reflect, in our opinion, all adjustments (consisting only of normal recurring adjustments) necessary to fairly present the results of operations for these fiscal quarters (in thousands, except per share data) (unaudited):

	Fiscal Year Ended January 30, 2016			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Net sales	$ 404,865	$ 366,455	$ 455,913	$ 498,544
Gross profit	152,109	115,004	180,513	177,506
Selling, general and administrative expenses	114,514	118,342	105,797	131,245
Asset impairment charges	—	1,452	919	—
Other (income) costs	(3)	76	14	11
Depreciation and amortization	14,394	15,252	16,136	16,903
Operating income (loss)	23,204	(20,118)	57,647	29,347
Income (loss) before income taxes	23,028	(20,323)	57,393	29,284
Provision (benefit) for income taxes	7,421	(6,628)	18,898	11,807
Net income (loss)	15,607	(13,695)	38,495	17,477
Diluted earnings (loss) per share	$ 0.73	$ (0.67)	$ 1.88	$ 0.87
Diluted weighted average common shares outstanding	21,366	20,576	20,517	20,174
Cash dividends declared and paid per common share	$ 0.1500	$ 0.1500	$ 0.1500	$ 0.1500

ITEM 7A--QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

In the normal course of business, our financial position and results of operations are routinely subject to market risk associated with interest rate movements on borrowings and investments and currency rate movements on non-U.S. dollar denominated assets, liabilities, income and expenses. We utilize cash from operations and short-term borrowings to fund our working capital and investment needs.

Cash and Cash Equivalents

Cash and cash equivalents are normally invested in short-term financial instruments that will be used in operations within 90 days of the balance sheet date. Because of the short-term nature of these instruments, changes in interest rates would not materially affect the fair value of these financial instruments.

Short-term Investments

Short-term investments consist of investments which we expect to convert into cash within one year, including time deposits, which have original maturities greater than 90 days. Because of the short-term nature of these instruments, changes in interest rates would not materially affect the fair value of these financial instruments.

Interest Rates

Our credit facility bears interest at a floating rate equal to the prime rate or LIBOR, plus a calculated spread based on our average excess availability. As of January 30, 2016, we had no borrowings under the credit facility. A 10% change in the prime rate or LIBOR interest rates would not have had a material impact on our interest expense.

Foreign Assets and Liabilities

Assets and liabilities outside the United States are primarily located in Canada and Hong Kong. Our investments in our Canadian and Asian subsidiaries are considered to be long-term. As of January 30, 2016, net assets in our Canadian and Hong Kong subsidiaries were $100.1 million and $112.1 million, respectively. A 10% increase or decrease in the Canadian and Hong Kong Dollars would increase or decrease the corresponding net investment by $10.0 million and $11.2 million, respectively. All changes in the net investment of our foreign subsidiaries are recorded in other comprehensive income as unrealized gains or losses.

As of January 30, 2016, we had approximately $171.7 million of our cash and cash equivalents held in foreign countries, of which approximately $93.4 million was in Canada, approximately $65.6 million was in Hong Kong and approximately $12.7 million was in other foreign countries. As of January 30, 2016, we held $40.1 million of short-term investments in Hong Kong which are U.S. dollar denominated time deposits with banking institutions in Hong Kong that have six month maturity dates.

Foreign Operations

We have exchange rate exposure primarily with respect to certain revenues and expenses denominated in Canadian dollars. As a result, fluctuations in exchange rates impact the amount of our reported sales and expenses. Assuming a 10% change in foreign exchange rates, Fiscal 2015 net sales could have decreased or increased by approximately $18.0 million and total costs and expenses could have decreased or increased by approximately $21.4 million. Additionally, we have foreign currency denominated receivables and payables that when settled, result in transaction gains or losses. At January 30, 2016, we had foreign currency denominated receivables and payables, including inter-company balances, of $14.0 million and $7.2 million, respectively.

Our Canadian subsidiary’s functional currency is the Canadian dollar, but purchases inventory from suppliers in US dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we began entering into foreign exchange forward contracts in the second quarter of fiscal 2015. As of January 30, 2016 we had foreign exchange forward contracts with an aggregate notional amount of $26.5 million and the fair value of the derivative instruments was an asset of $0.8 million and a liability of $0.1 million. Assuming a 10% change in Canadian foreign exchange rates, the fair value of these instruments could have decreased by or increased by approximately $2.6 million. Any resulting changes in the fair value of the instruments would be partially offset by changes in the underlying balance sheet positions.

We import a vast majority of our merchandise from foreign countries, primarily China, Bangladesh and Vietnam. Consequently, any significant or sudden change in these countries' political, foreign trade, financial, banking or currency policies and practices, or the occurrence of significant labor unrest, could have a material adverse impact on our financial position, results of operations and cash flows.

ITEM 8.-FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this Item is incorporated herein by reference to the consolidated financial statements and supplementary data set forth in “Item 15-Exhibits and Financial Statement Schedules” of Part IV of this Annual Report on Form 10-K.

ITEM 9.-CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

Item 9A. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed only to provide "reasonable assurance" that the controls and procedures will meet their objectives. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected.

Management, including our Chief Executive Officer and President and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of January 30, 2016. Based on that evaluation, our Chief Executive Officer and President and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective at the reasonable assurance level, as of January 30, 2016, to ensure that all information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive, principal accounting and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Securities Exchange Act Rule 13a-15(f). Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected.

Under the supervision and with the participation of our management, including our Chief Executive Officer and President and our Chief Financial Officer, we conducted an evaluation of the design and effectiveness of our internal control over financial reporting based on the criteria set forth in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our evaluation under the framework in Internal Control - Integrated Framework, our management concluded that our internal control over financial reporting was effective as of January 30, 2016. Our independent registered public accounting firm that audited the consolidated financial statements included in this annual report has issued an attestation report on our internal control over financial reporting, which is included herein.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during our most recently completed fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
The Children's Place, Inc.
Secaucus, New Jersey:

We have audited The Children's Place, Inc. and subsidiaries' (the "Company") internal control over financial reporting as of January 30, 2016, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Item 9A, Management's Report on Internal Control Over Financial Reporting". Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, The Children's Place, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of January 30, 2016, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of The Children's Place, Inc. and subsidiaries as of January 30, 2016 and January 31, 2015, and the related consolidated statements of operations, comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended January 30, 2016 and our report dated March 24, 2016 expressed an unqualified opinion thereon.

/S/ BDO USA, LLP

New York, NY
March 24, 2016

ITEM 9B.-OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required to be included by Item 10 of Form 10-K will be set forth in the Company's proxy statement for its 2016 annual meeting of stockholders to be filed within 120 days after January 30, 2016 (the “Proxy Statement”) and is incorporated by reference herein.

ITEM 11. EXECUTIVE COMPENSATION

The information required to be included by Item 11 of Form 10-K will be set forth in the Proxy Statement and is incorporated by reference herein.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required to be included by Item 12 of Form 10-K will be set forth in the Proxy Statement and is incorporated by reference herein.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required to be included by Item 13 of Form 10-K will be set forth in the Proxy Statement and is incorporated by reference herein.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required to be included by Item 14 of Form 10-K will be set forth in the Proxy Statement and is incorporated by reference herein.

PART IV
ITEM 15.-EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements

The following documents are filed as part of this report:

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
The Children's Place, Inc.
Secaucus, New Jersey:

We have audited the accompanying consolidated balance sheets of The Children's Place, Inc. and subsidiaries (the "Company") as of January 30, 2016 and January 31, 2015 and the related consolidated statements of operations, comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended January 30, 2016. In connection with our audits of the financial statements, we have also audited the financial statement schedule listed in the accompanying index. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedule. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of The Children's Place, Inc. and subsidiaries at January 30, 2016 and January 31, 2015, and the results of its operations and its cash flows for each of the three years in the period ended January 30, 2016**,** in conformity with accounting principles generally accepted in the United States of America.

Also, in our opinion, the financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), The Children's Place, Inc. and subsidiaries' internal control over financial reporting as of January 30, 2016, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated March 24, 2016 expressed an unqualified opinion thereon.

/S/ BDO USA, LLP

New York, NY
March 24, 2016

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)

	January 30, 2016	January 31, 2015
ASSETS		
Current assets:		
Cash and cash equivalents	$ 187,534	$ 173,291
Short-term investments	40,100	52,000
Accounts receivable	26,315	31,928
Inventories	268,831	297,631
Prepaid expenses and other current assets	43,042	39,349
Deferred income taxes	15,486	15,080
Total current assets	581,308	609,279
Long-term assets:		
Property and equipment, net	290,980	310,301
Deferred income taxes	22,230	35,580
Other assets	3,430	3,458
Total assets	$ 897,948	$ 958,618
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES:		
Current liabilities:		
Accounts payable	$ 154,541	$ 155,323
Income taxes payable	1,611	420
Accrued expenses and other current liabilities	118,870	118,724
Total current liabilities	275,022	274,467
Long-term liabilities:		
Deferred rent liabilities	70,250	80,214
Other tax liabilities	9,713	6,446
Other long-term liabilities	15,170	8,373
Total liabilities	370,155	369,500
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDERS' EQUITY:		
Preferred stock, $1.00 par value, 1,000 shares authorized, 0 shares issued and outstanding	—	—
Common stock, $0.10 par value, 100,000 shares authorized; 19,479 and 21,075 issued; 19,440 and 21,040 outstanding	1,948	2,108
Additional paid-in capital	232,182	230,429
Treasury stock, at cost (39 and 35 shares)	(1,939)	(1,682)
Deferred compensation	1,939	1,682
Accumulated other comprehensive loss	(27,485)	(17,493)
Retained earnings	321,148	374,074
Total stockholders' equity	527,793	589,118
Total liabilities and stockholders' equity	$ 897,948	$ 958,618

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net sales	$ 1,725,777	$ 1,761,324	$ 1,765,789
Cost of sales (exclusive of depreciation and amortization)	1,100,645	1,139,024	1,110,268
Gross profit	625,132	622,300	655,521
Selling, general and administrative expenses	469,898	470,686	485,653
Asset impairment charges	2,371	11,145	29,633
Other (income) costs	98	(68)	(906)
Depreciation and amortization	62,685	60,494	64,858
Operating income	90,080	80,043	76,283
Interest (expense) income, net	(698)	(168)	265
Income before income taxes	89,382	79,875	76,548
Provision for income taxes	31,498	22,987	23,522
Net income	$ 57,884	$ 56,888	$ 53,026
Earnings per common share			
Basic	$ 2.83	$ 2.62	$ 2.35
Diluted	$ 2.80	$ 2.59	$ 2.32
Weighted average common shares outstanding			
Basic	20,438	21,681	22,537
Diluted	20,702	21,924	22,835

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net income	$ 57,884	$ 56,888	$ 53,026
Other Comprehensive Income:			
Foreign currency translation adjustment	(10,444)	(15,964)	(14,787)
Change in fair value of cash flow hedges, net of income taxes of $(223)	452	—	—
Comprehensive income	$ 47,892	$ 40,924	$ 38,239

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Additional Paid-In	Deferred	Retained	Accumulated Other Comprehensive	Treasury Stock		Total Stockholders'
	Shares	Amount	Capital	Compensation	Earnings	Income	Shares	Value	Equity
BALANCE, February 2, 2013	23,179	$ 2,318	$ 215,691	$ 1,119	$ 389,682	$ 13,258	(24)	($1,119)	$ 620,949
Exercise of stock options	49	5	1,474						1,479
Excess tax benefits from stock-based compensation			211						211
Vesting of stock awards	300	30	(30)						—
Stock-based compensation expense			21,210						21,210
Capitalized stock-based compensation			520						520
Purchase and retirement of shares	(1,298)	(130)	(12,555)		(53,145)				(65,830)
Change in cumulative translation adjustment						(14,787)			(14,787)
Deferral of common stock into deferred compensation plan				456			(9)	(456)	—
Net income					53,026				53,026
BALANCE, February 1, 2014	22,230	2,223	226,521	1,575	389,563	(1,529)	(33)	(1,575)	616,778
Exercise of stock options	2	—	55						55
Excess tax benefits from stock-based compensation			268						268
Vesting of stock awards	336	34	(34)						—
Stock-based compensation expense			17,783						17,783
Capitalized stock-based compensation			930						930
Purchase and retirement of shares	(1,493)	(149)	(15,600)		(60,380)				(76,129)
Dividends ($0.53 per share)					(11,491)				(11,491)
Unvested dividends			506		(506)				—
Change in cumulative translation adjustment						(15,964)			(15,964)
Deferral of common stock into deferred compensation plan				107			(2)	(107)	—
Net income					56,888				56,888
BALANCE, January 31, 2015	21,075	2,108	230,429	1,682	374,074	(17,493)	(35)	(1,682)	589,118
Exercise of stock options	15	2	436						438
Excess tax benefits from stock-based compensation			1,639						1,639
Vesting of stock awards	397	40	(40)						—
Stock-based compensation expense			21,119						21,119
Capitalized stock-based compensation			697						697
Purchase and retirement of shares	(2,008)	(202)	(22,643)		(98,048)				(120,893)
Dividends ($0.60 per share)					(12,217)				(12,217)
Unvested dividends			545		(545)				—
Change in cumulative translation adjustment						(10,444)			(10,444)
Change in fair value of cash flow hedges, net of income taxes of $(223)						452			452
Deferral of common stock into deferred compensation plan				257			(4)	(257)	—
Net income					57,884				57,884
BALANCE, January 30, 2016	19,479	$ 1,948	$ 232,182	$ 1,939	$ 321,148	$ (27,485)	(39)	($1,939)	$ 527,793

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	$ 57,884	$ 56,888	$ 53,026
Reconciliation of net income to net cash provided by operating activities:			
Depreciation and amortization	62,685	60,494	64,858
Stock-based compensation	21,119	17,783	21,210
Excess tax benefits from stock-based compensation	(1,639)	(268)	(211)
Asset impairment charges	2,371	11,145	29,633
Deferred taxes	12,166	5,627	(3,552)
Deferred rent expense and lease incentives	(9,519)	(8,889)	(11,999)
Other	1,216	2,208	6,891
Changes in operating assets and liabilities:			
Inventories	26,121	21,022	(58,941)
Accounts receivable and other assets	2,318	(6,268)	(6,039)
Income taxes payable, net of prepayments	1,845	(7,341)	3,441
Accounts payable and other current liabilities	(4,040)	6,049	73,609
Deferred rent and other liabilities	10,123	2,960	1,544
Total adjustments	124,766	104,522	120,444
Net cash provided by operating activities	182,650	161,410	173,470
CASH FLOWS FROM INVESTING ACTIVITIES:			
Property and equipment purchases, lease acquisition and software costs	(42,145)	(72,212)	(72,606)
Purchase of short-term investments	(99,680)	(81,000)	(97,500)
Redemption of short-term investments	111,580	91,500	50,000
Change in company-owned life insurance policies	(379)	5	406
Net cash used in investing activities	(30,624)	(61,707)	(119,700)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Borrowings under revolving credit facility	556,856	320,230	124,289
Repayments under revolving credit facility	(556,856)	(320,230)	(124,289)
Purchase and retirement of common stock, including transaction costs	(120,893)	(76,129)	(65,830)
Cash dividends paid	(12,217)	(11,491)	—
Exercise of stock options	438	55	1,479
Excess tax benefits from stock-based compensation	1,639	268	211
Deferred financing costs	(320)	(306)	—
Net cash used in financing activities	(131,353)	(87,603)	(64,140)
Effect of exchange rate changes on cash	(6,430)	(12,806)	(9,761)
Net increase (decrease) in cash and cash equivalents	14,243	(706)	(20,131)
Cash and cash equivalents, beginning of period	173,291	173,997	194,128
Cash and cash equivalents, end of period	$ 187,534	$ 173,291	$ 173,997

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
OTHER CASH FLOW INFORMATION:			
Net cash paid during the year for income taxes	$ 13,887	$ 23,598	$ 24,826
Cash paid during the year for interest	1,399	936	499
Increase (decrease) in accrued purchases of property and equipment	(462)	3,611	(5,924)

See accompanying notes to these consolidated financial statements.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business

The Children's Place, Inc. and subsidiaries (the "Company") is the largest pure-play children's specialty apparel retailer in North America. The Company provides apparel, accessories, footwear and other items for children. The Company designs, contracts to manufacture, sells at retail and wholesale, and licenses to sell trend right, high-quality merchandise at value prices, the substantial majority of which is under our proprietary "The Children's Place", "Place" and "Baby Place" brand names. As of January 30, 2016, the Company operated 1,069 The Children's Place stores throughout North America and an Internet business at *www.childrensplace.com*. As part of its merchandise procurement process, the Company maintains business operations in Asia. The Company's corporate offices are in New Jersey and it has one distribution facility in the United States and one in Canada.

The Company classifies its business into two segments: The Children's Place U.S. and The Children's Place International. Included in The Children's Place U.S. segment are the Company's U.S. and Puerto Rico based stores and revenue from its U.S. based wholesale customers. Included in The Children's Place International segment are its Canadian based stores, revenue from the Company's Canada wholesale customer, as well as revenue from international franchisees. Each segment includes an e-commerce business located at *www.childrensplace.com*. As of January 30, 2016, The Children's Place U.S. operated 937 stores and The Children's Place International operated 132 stores.

Certain reclassifications have been made to prior period financial statements to conform to the current period presentation.

Terms that are commonly used in the Company's notes to consolidated financial statements are defined as follows:

- Fiscal 2015 - The fifty-two weeks ended January 30, 2016
- Fiscal 2014 - The fifty-two weeks ended January 31, 2015
- Fiscal 2013 - The fifty-two weeks ended February 1, 2014
- Fiscal 2016 - The Company's next fiscal year representing the fifty-two weeks ending January 28, 2017
- SEC- The U.S. Securities and Exchange Commission
- GAAP - Generally Accepted Accounting Principles
- FASB- Financial Accounting Standards Board
- FASB ASC - FASB Accounting Standards Codification, which serves as the source for authoritative U.S. GAAP, except that rules and interpretive releases by the SEC are also sources of authoritative U.S. GAAP for SEC registrants

Fiscal Year

The Company's fiscal year is a 52-week or 53-week period ending on the Saturday on or nearest to January 31. All years presented were 52-week years.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and amounts of revenues and expenses reported during the period. Actual results could differ from the assumptions used and estimates made by management, which could have a material impact on the Company's financial position or results of operations.

Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated. As of January 30, 2016, the Company does not have any investments in unconsolidated affiliates. The "*Consolidation*" topic of the FASB ASC is considered when determining whether an entity is subject to consolidation.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Short-term Investments

Short-term investments consist of investments which the Company expects to convert into cash within one year, including time deposits, which have original maturities greater than 90 days. The Company classifies its investments in securities at the time of purchase as held-to-maturity and reevaluates such classifications on a quarterly basis. Held-to-maturity investments consist of securities that the Company has the intent and ability to retain until maturity. These securities are recorded at cost and adjusted for the amortization of premiums and discounts, which approximates fair value. Cash inflows and outflows related to the sale and purchase of investments are classified as investing activities in the Company's consolidated statements of cash flows. All of the Company's short-term investments are U.S. dollar denominated time deposits with banking institutions in Hong Kong that have six month maturity dates.

Revenue Recognition

The Company recognizes revenue, including shipping and handling fees billed to customers, upon purchase at the Company's retail stores or when received by the customer if the product was purchased via the Internet, net of coupon redemptions and anticipated sales returns. The Company deferred approximately $0.4 million and $0.3 million as of January 30, 2016 and January 31, 2015, respectively, for Internet sales shipped but not yet received by the customer. Sales tax collected from customers is excluded from revenue.

An allowance for estimated sales returns is calculated based upon the Company's sales return experience and is recorded in accrued expenses and other current liabilities. The allowance for estimated sales returns was approximately $1.1 million and $1.9 million as of January 30, 2016 and January 31, 2015, respectively.

The Company's policy with respect to gift cards is to record revenue as the gift cards are redeemed for merchandise. Prior to their redemption, gift cards are recorded as a liability, included in accrued expenses and other current liabilities. After one year, the Company recognizes breakage income for the estimated portion of unredeemed gift cards that is unlikely to be redeemed. Prior to Fiscal 2015 the Company recognized breakage income after two years. The impact on the Company's net income as a result of the change was $0.5 million during Fiscal 2015. The Company recognized gift card breakage income of approximately $3.3 million, $1.6 million and $1.5 million during Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively, and is recorded in selling, general and administrative expenses.

In October 2012, the Company launched a new points based customer loyalty program to replace the old program that was restricted to the Company's private label credit card customers. In this program, customers earn points based on purchases and other promotional activities. These points can be redeemed for coupons to discount future purchases. The Company has developed an estimated value of each point earned based on the awards customers can attain less a reasonable breakage rate. The value of each point earned is recorded as deferred revenue. Deferred revenue for loyalty points as of January 30, 2016 and January 31, 2015 was $5.0 million and $9.0 million, respectively, and is included in accrued expenses and other current liabilities. This change reflects the accelerated conversion of loyalty points in the current program in anticipation of transition to a new customer loyalty program in Fiscal 2016.

The Company has an international expansion program through territorial agreements with franchisees. At January 30, 2016, the Company's franchisees had a total of 102 international points of distribution. The Company generates revenues from the franchisees from the sale of product and sales royalties. The Company records gross sales and cost of goods sold on the sale of product to franchisees when the franchisor takes ownership of the product. The Company records gross sales for royalties when the franchisee sells the product to their customers. Under certain agreements the Company receives a fee from each franchisee for exclusive territorial rights. The Company records this territorial fee as deferred revenue and amortizes the fee into gross sales over the life of the territorial agreement. Deferred revenue for franchisees as of January 30, 2016 and January 31, 2015 was $1.2 million and $0.8 million, respectively.

Inventories

Inventories, which consist primarily of finished goods, are stated at the lower of cost or market, with cost determined on an average cost basis. The Company capitalizes supply chain costs in inventory and these costs are reflected in cost of sales as the inventories are sold. Inventory includes items that have been marked down to the Company's best estimate of their lower of cost or market value and an estimate for inventory shrinkage. The Company bases its decision to mark down merchandise upon its current rate of sale, the season and the expected sell-through of the item. The Company adjusts its inventory based upon an annual

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

physical inventory and shrinkage is estimated in interim periods based upon the historical results of physical inventories in the context of current year facts and circumstances.

Cost of Sales (exclusive of depreciation and amortization)

In addition to the cost of inventory sold, the Company includes buying, design and distribution expenses, shipping and handling costs on merchandise sold directly to customers, and letter of credit fees in its cost of sales. The Company records all occupancy costs in its cost of sales, except administrative office buildings, which are recorded in selling, general and administrative expenses. All depreciation is reported on a separate line on the Company's consolidated statements of operations.

Stock-based Compensation

The Company's stock-based compensation plans are administered by the Compensation Committee of the Board of Directors (the "Board"). The Compensation Committee is comprised of independent members of the Board. Effective May 20, 2011, the shareholders approved the 2011 Equity Incentive Plan (the "Equity Plan"). Upon adoption of the Equity Plan, the Company ceased granting awards under its 2005 Equity Incentive Plan. The Equity Plan allows the Compensation Committee to grant multiple forms of stock-based compensation such as stock options, stock appreciation rights, restricted stock awards, deferred stock awards and performance stock awards.

The Company accounts for its stock-based compensation in accordance with the provisions of the "Compensation-Stock Compensation" topic of the FASB ASC. These provisions require, among other things: (a) the fair value of all stock awards be expensed over their respective vesting periods; (b) the amount of cumulative compensation cost recognized at any date must at least be equal to the portion of the grant-date value of the award that is vested at that date and (c) that compensation expense include a forfeiture estimate for those shares not expected to vest. Also in accordance with these provisions, for those awards with multiple vest dates, the Company recognizes compensation cost on a straight-line basis over the requisite service period for the entire award.

Earnings per Common Share

The Company reports its earnings (loss) per share in accordance with the "*Earnings Per Share*" topic of the FASB ASC, which requires the presentation of both basic and diluted earnings (loss) per share on the statements of operations. The diluted weighted average common shares includes adjustments for the potential effects of outstanding stock options, Deferred Awards and Performance Awards (as both terms are used in Note 3 to these consolidated financial statements), but only in the periods in which such effect is dilutive under the treasury stock method. Included in our basic and diluted weighted average common shares are those shares due to participants in the deferred compensation plan, which are held in treasury stock. Antidilutive stock awards are comprised of stock options and unvested deferred, restricted and performance shares which would have been antidilutive in the application of the treasury stock method in accordance with "Earnings Per Share" topic of FASB ASC.

In accordance with this topic, the following table reconciles income and share amounts utilized to calculate basic and diluted net income per common share (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net income	$ 57,884	$ 56,888	$ 53,026
Basic weighted average common shares	20,438	21,681	22,537
Dilutive effect of stock awards	264	243	298
Diluted weighted average common shares	20,702	21,924	22,835
Antidilutive stock awards	—	—	32

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Accounts Receivable

Accounts receivable consists of credit and debit card receivables, franchisee and wholesale receivables, landlord construction allowance receivables and other miscellaneous items. Credit and debit card receivables represent credit and debit card sales for which the respective third party service company has yet to remit the cash. The unremitted balance approximates the last few days of related sales for each reporting period. Bad debt associated with these sales is not material. Franchisee and wholesale receivables represent product sales and sale royalties in which cash has not yet been remitted from our partners. Landlord construction allowance receivables represent landlord contributions to our construction costs of building out the related real estate, primarily new and remodeled stores. Total construction costs are capitalized as property and equipment and the landlord construction allowances are recorded as a lease incentive, a component of deferred rent, which is amortized as a reduction of rent expense over the lease term.

Insurance and Self-Insurance Reserves

The Company self-insures and purchases insurance policies to provide for workers' compensation, general liability and property losses, cyber-security coverage, as well as director and officer's liability, vehicle liability and employee medical benefits. The Company estimates risks and records a liability based on historical claim experience, insurance deductibles, severity factors and other actuarial assumptions. The Company records the current portions of employee medical benefits, workers compensation and general liability reserves in accrued expenses and other current liabilities. As of January 30, 2016 and January 31, 2015, the current portions of these reserves were approximately $7.0 million and $6.5 million, respectively. The Company records the long-term portions of employee medical benefits, workers' compensation and general liability reserves in other long-term liabilities. As of January 30, 2016 and January 31, 2015, the long-term portions of these reserves were approximately $5.8 million and $6.5 million, respectively.

Property and Equipment

Property and equipment are stated at cost. Leasehold improvements are depreciated on a straight-line basis over the shorter of the life of the lease or the estimated useful life of the asset. All other property and equipment is depreciated on a straight-line basis based upon their estimated useful lives, which generally range from three to twenty-five years. Repairs and maintenance are expensed as incurred.

The Company accounts for internally developed software intended for internal use in accordance with provisions of the "*Intangibles-Goodwill and Other*" topic of the FASB ASC. The Company capitalizes development-stage costs such as direct external costs and direct payroll related costs. When development is substantially complete, the Company amortizes the cost of the software on a straight-line basis over the expected life of the software. Preliminary project costs and post-implementation costs such as training, maintenance and support are expensed as incurred.

Accounting for Impairment of Long-Lived Assets

The Company periodically reviews its long-lived assets when events indicate that their carrying value may not be recoverable. Such events include a history trend or projected trend of cash flow losses or a future expectation that the Company will sell or dispose of an asset significantly before the end of its previously estimated useful life. In reviewing for impairment the Company groups its long-lived assets at the lowest possible level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. In that regard, the Company groups its assets into two categories: corporate-related and store-related. Corporate-related assets consist of those associated with the Company's corporate offices, distribution centers and its information technology systems. Store-related assets consist of leasehold improvements, furniture and fixtures, certain computer equipment and lease related assets associated with individual stores.

For store-related assets, the Company reviews all stores that have been open or not remodeled for at least two years, or sooner if circumstances should dictate, on at least an annual basis. The Company believes waiting two years allows a store to reach a maturity level where a more comprehensive analysis of financial performance can be performed. For each store that shows indications of operating losses, the Company projects future cash flows over the remaining life of the lease and compares the total undiscounted cash flows to the net book value of the related long-lived assets. If the undiscounted cash flows are less than the related net book value of the long-lived assets, they are written down to their fair market value. The Company primarily determines fair market value to be the discounted future cash flows associated with those assets. In evaluating future

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

cash flows, the Company considers external and internal factors. External factors comprise the local environment in which the store resides, including mall traffic, competition, and their effect on sales trends. Internal factors include the Company's ability to gauge the fashion taste of its customers, control variable costs such as cost of sales and payroll, and in certain cases, its ability to renegotiate lease costs.

Exit or Disposal Cost Obligations

In accordance with the "*Exit or Disposal Cost Obligations*" topic of the FASB ASC, the Company records its exit and disposal costs at fair value to terminate an operating lease or contract when termination occurs before the end of its term, or when costs will be incurred without future economic benefit to the Company, on the date the Company ceased using the leased property. In cases of employee termination benefits, the Company recognizes an obligation only when all of the following criteria are met:

- management, having the authority to approve the action, commits to a plan of termination;
- the plan identifies the number of employees to be terminated, their job classifications or functions and their locations, and the expected completion date;
- the plan establishes the terms of the benefit arrangement, including the benefits that employees will receive upon termination (including but not limited to cash payments), in sufficient detail to enable employees to determine the type and amount of benefits they will receive if they are involuntarily terminated; and
- actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn.

During the first quarter of Fiscal 2012, management approved a plan to exit its distribution center in Ontario, California (the "West Coast DC") and move the operations to its distribution center in Fort Payne, Alabama (the "Southeast DC"). The Company ceased operations at the West Coast DC in May 2012. The lease of the West Coast DC expires in March 2016 and the Company has subleased this facility through March 2016.

During the third quarter of Fiscal 2012, management approved a plan to close the Company's distribution center in Dayton, New Jersey ("Northeast DC") and move the operations to its Southeast DC. The Company ceased operations in the Northeast DC during the fourth quarter of fiscal 2012. The lease of its Northeast DC expires in January 2021 and the Company has subleased this facility through January 2021.

The following table provides details of the remaining accruals for the West Coast DC and Northeast DC, of which approximately $0.5 million was included in accrued expenses and other current liabilities and approximately $0.3 million was included in other long-term liabilities (dollars in thousands):

	Lease Termination Costs	Other Associated Costs	Total
Balance at February 1, 2014	$ 2,679	$ —	$ 2,679
Restructuring costs	(222)	154	(68)
Payments and other adjustments	(949)	(154)	(1,103)
Balance at January 31, 2015	1,508	—	1,508
Restructuring costs	62	36	98
Payments and other adjustments	(800)	(36)	(836)
Balance at January 30, 2016	$ 770	$ —	$ 770

Deferred Financing Costs

The Company capitalizes costs directly associated with acquiring third party financing. Deferred financing costs are included in other assets and are amortized as interest expense over the term of the related indebtedness. At January 30, 2016, deferred financing costs, net of accumulated amortization of $3.1 million, were approximately $1.2 million. At January 31, 2015, deferred financing costs, net of accumulated amortization of $2.7 million, were approximately $1.2 million.

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Treasury Stock

Treasury stock is recorded at acquisition cost. Gains and losses on disposition are recorded as increases or decreases to additional paid-in capital with losses in excess of previously recorded gains charged directly to retained earnings. When treasury shares are retired and returned to authorized but unissued status, the carrying value in excess of par is allocated to additional paid-in capital and retained earnings on a pro rata basis.

Pre-opening Costs

Store pre-opening costs consist primarily of occupancy costs, payroll, supply, and marketing expenses, and are expensed as incurred in selling, general and administrative expenses. Pre-opening costs were $0.3 million, $1.4 million and $3.3 million for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively.

Advertising and Marketing Costs

The Company expenses the cost of advertising over the period the advertising is run or displayed. Included in selling, general and administrative expenses for Fiscal 2015, Fiscal 2014 and Fiscal 2013 are advertising and other marketing costs of approximately $27.9 million, $30.9 million and $33.8 million, respectively.

Rent Expense and Deferred Rent

Rent expense and lease incentives, including landlord construction allowances, are recognized on a straight-line basis over the lease term, commencing generally on the date the Company takes possession of the leased property. The Company records rent expense and the impact of lease incentives for its stores and distribution centers as a component of cost of sales. The unamortized portion of deferred rent is included in deferred rent liabilities.

Income Taxes

We utilize the liability method of accounting for income taxes as set forth in the "Income Taxes" topic of the FASB ASC. Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities, as well as for net operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using currently enacted tax rates that apply to taxable income in effect for the years in which the basis differences and tax assets are expected to be realized. A valuation allowance is recorded when it is more likely than not that any of the deferred tax assets will not be realized. In determining the need for valuation allowances we consider projected future taxable income and the availability of tax planning strategies. If in the future we determine that we would not be able to realize our recorded deferred tax assets, an increase in the valuation allowance would decrease earnings in the period in which such determination is made.

We assess our income tax positions and record tax benefits for all years subject to examination based upon our evaluation of the facts, circumstances and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in the financial statements.

Accumulated Other Comprehensive Income

Accumulated other comprehensive income primarily consists of cumulative translation adjustments.

Foreign Currency Translation

The Company has determined that the local currencies of its Canadian and Asian subsidiaries are their functional currencies. In accordance with the "*Foreign Currency Matters*" topic of the FASB ASC, the assets and liabilities denominated in foreign currency are translated into U.S. dollars at the current rate of exchange existing at period-end and revenues and expenses are translated at average monthly exchange rates. Related translation adjustments are reported as a separate component of stockholders' equity. The Company also transacts certain business in foreign denominated currencies primarily with its Canadian subsidiary purchasing inventory in U.S. Dollars, and there are intercompany charges between various

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

subsidiaries. In Fiscal 2015, Fiscal 2014 and Fiscal 2013, the Company recorded realized and unrealized gains (losses) on such transactions of approximately $0.1 million, $(0.5) million and $0.5 million, respectively.

Derivative Instruments

The Company is exposed to gains and losses resulting from fluctuations in foreign currency exchange rates attributable to inventory purchases denominated in a foreign currency. Specifically, its Canadian subsidiary's functional currency is the Canadian dollar, but purchases inventory from suppliers in US dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, the Company began entering into foreign exchange forward contracts in the second quarter of fiscal 2015. These contracts typically mature within 12 months. The Company does not use forward contracts to engage in currency speculation and we do not enter into derivative financial instruments for trading purposes.

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of Other Comprehensive Income ("OCI") and reclassified into earnings within cost of sales (exclusive of depreciation and amortization) in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing hedge ineffectiveness are recognized in earnings within selling, general & administrative expenses, consistent with where the Company records realized and unrealized foreign currency gains and losses on transactions in foreign denominated currencies.

All derivative instruments are presented at gross fair value on the Consolidated Balance Sheets within either prepaid expenses and other current assets or accrued expenses and other current liabilities. As of January 30, 2016 the Company had foreign exchange forward contracts with an aggregate notional amount of $26.5 million and the fair value of the derivative instruments was an asset of $0.8 million and a liability of $0.1 million.

Legal Contingencies

The Company reserves for the outcome of litigation and contingencies when it determines an adverse outcome is probable and can estimate losses. Estimates are adjusted as facts and circumstances require. The Company expenses the costs to resolve litigation as incurred, net of amounts, if any, recovered through our insurance coverage.

Retained Earnings

There are no restrictions on the Company's retained earnings.

Fair Value Measurement and Financial Instruments

The "*Fair Value Measurements and Disclosure*" topic of the FASB ASC provides a single definition of fair value, together with a framework for measuring it, and requires additional disclosure about the use of fair value to measure assets and liabilities.

This topic defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and establishes a three-level hierarchy, which encourages an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of the hierarchy are defined as follows:

- Level 1 - inputs to the valuation techniques that are quoted prices in active markets for identical assets or liabilities
- Level 2 - inputs to the valuation techniques that are other than quoted prices but are observable for the assets or liabilities, either directly or indirectly
- Level 3 - inputs to the valuation techniques that are unobservable for the assets or liabilities

The Company's cash and cash equivalents, short-term investments, assets of the Company's Deferred Compensation Plan, accounts receivable, accounts payable and credit facility are all short-term in nature. As such, their carrying amounts approximate fair value and fall within Level 1 of the fair value hierarchy. The Company stock included in the Deferred Compensation Plan is not subject to fair value measurement.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Our derivative assets and liabilities include foreign exchange forward contracts that are measured at fair value using observable market inputs such as forward rates, our credit risk and our counterparties' credit risks. Based on these inputs, our derivative assets and liabilities are classified within Level 2 of the valuation hierarchy.

The Company's assets measured at fair value on a nonrecurring basis include long-lived assets. The Company reviews the carrying amounts of such assets when events indicate that their carrying amounts may not be recoverable. Any resulting asset impairment would require that the asset be recorded at its fair value. The resulting fair value measurements of the assets are considered to be Level 3 inputs. Long-lived assets, primarily comprised of property and equipment, held and used with a carrying amount of $4.6 million were written down to their fair value, resulting in an impairment charge of $2.4 million, which was included in earnings for Fiscal 2015. For Fiscal 2014, long-lived assets held and used with a carrying amount of $15.9 million were written down to their fair value, resulting in an impairment charge of $11.1 million, which was included in earnings for Fiscal 2014. For Fiscal 2013, long-lived assets held and used with a carrying amount of $44.4 million were written down to their fair value, resulting in an impairment charge of $29.6 million, which was included in earnings for Fiscal 2013.

Recently Issued Accounting Updates

In February 2016, the FASB issued guidance relating to the accounting for leases. This guidance applies a right of use model that requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. The lease term is the noncancellable period of the lease, and includes both periods covered by an option to extend the lease, if the lessee is reasonably certain to exercise that option, and periods covered by an option to terminate the lease, if the lessee is reasonably certain not to exercise that termination option. The standard is effective for the Company beginning in its fiscal year 2019, including interim periods within those fiscal years, and early adoption is permitted. We are currently reviewing the potential impact of this standard.

In November 2015, the FASB issued guidance relating to balance sheet classification of deferred taxes. Currently, entities are required to present deferred tax assets and liabilities as current and noncurrent on the balance sheet. This guidance simplifies the current guidance by requiring entities to classify all deferred tax assets and liabilities, together with any related valuation allowance, as noncurrent on the balance sheet. The standard is effective for the Company beginning in its fiscal year 2018, with early adoption permitted, and may be applied prospectively or retrospectively. The adoption is not expected to impact the Company's consolidated financial statements other than the change in presentation of deferred tax assets and liabilities within its consolidated balance sheets.

In May 2014, the FASB issued guidance relating to revenue recognition from contracts with customers. This guidance requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. In August 2015, the FASB issued guidance to defer the effective date by one year and, therefore, the standard is effective for fiscal years and interim periods within those years beginning after December 15, 2017 and is to be applied retrospectively. We are currently reviewing the potential impact of this standard.

2. STOCKHOLDERS' EQUITY

The Company's Board of Directors has authorized the following share repurchase programs: (1) $100.0 million on November 26, 2012 (the "2012 Share Repurchase Program"); (2) $100.0 million on March 3, 2014 (the "2014 Share Repurchase Program"); (3) $100.0 million on January 7, 2015 (the "2015 Share Repurchase Program"); and (4) $250.0 million on December 8, 2015 (the "2015 $250 Million Share Repurchase Program"). The 2012 Share Repurchase Program and 2014 Share Repurchase Program have been completed. At January 30, 2016, there was approximately $270.8 million remaining on the 2015 Share Repurchase Program and the 2015 $250 Million Share Repurchase Program. Under the 2015 Share Repurchase Program and the 2015 $250 Million Share Repurchase Program, the Company may repurchase shares in the open market at current market prices at the time of purchase or in privately negotiated transactions. The timing and actual number of shares repurchased under the program will depend on a variety of factors including price, corporate and regulatory requirements, and other market and business conditions. We may suspend or discontinue the program at any time, and may thereafter reinstitute purchases, all without prior announcement.

Pursuant to restrictions imposed by the Company's equity plan during black-out periods, the Company withholds and retires shares of vesting stock awards in exchange for payments to satisfy minimum withholding tax requirements. The Company's payment of the withholding taxes in exchange for the shares constitutes a purchase of its common stock.

The Company acquires shares of its common stock in conjunction with liabilities owed under a deferred compensation plan, which are held in treasury. The following table summarizes the Company's share repurchases (in thousands):

	Fiscal Year Ended					
	January 30, 2016		January 31, 2015		February 1, 2014	
	Shares	Value	Shares	Value	Shares	Value
Share repurchases related to (1):						
2012 Share buyback program	—	—	282	14,671	1,296	65,691
2014 Share buyback program	640	39,791	1,189	60,209	—	—
2015 Share buyback program	1,338	79,274	—	—	—	—
Withholding taxes and other	30	1,828	22	1,249	2	139
Shares acquired and held in treasury	4	257	2	107	9	456

(1) Subsequent to January 30, 2016 and through March 22, 2016, the Company repurchased an additional 0.3 million shares for approximately $22.3 million.

In accordance with the “Equity” topic of the FASB ASC, the par value of the shares retired is charged against common stock and the remaining purchase price is allocated between additional paid-in capital and retained earnings. The portion charged against additional paid-in capital is done using a pro rata allocation based on total shares outstanding. Related to all shares retired for Fiscal 2015, Fiscal 2014 and Fiscal 2013, approximately $98.0 million, $60.4 million and $53.1 million was charged to retained earnings, respectively.

Related to Fiscal 2015 dividends, $12.8 million was charged to retained earnings, of which $12.2 million related to cash dividends paid and $0.6 million related to dividend share equivalents on unvested Deferred Awards and Performance Awards. Related to Fiscal 2014 dividends, $12.0 million was charged to retained earnings, of which $11.5 million related to cash dividends paid and $0.5 million related to dividend share equivalents on unvested Deferred Awards and Performance Awards. On February 12, 2016, the Board of Directors authorized a quarterly cash dividend of $0.20 per share to be paid on April 28, 2016 to shareholders of record on the close of business on April 7, 2016. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the Company’s Board of Directors based on a number of factors, including business and market conditions, the Company’s future financial performance and other investment priorities.

3. STOCK-BASED COMPENSATION

The following table summarizes the Company’s stock-based compensation expense (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Deferred Awards	$ 10,653	$ 10,529	$ 12,873
Performance Awards	10,466	7,254	8,337
Total stock-based compensation expense (1)	$ 21,119	$ 17,783	$ 21,210

(1) A portion of stock-based compensation is included in cost of sales. Approximately $2.5 million, $1.6 million and $2.8 million in Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively, were included in cost of sales. All other stock-based compensation is included in selling, general & administrative expense.

The Company recognized a tax benefit related to stock-based compensation expense of $8.3 million, $7.0 million and $8.5 million for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively.

The Company generally grants time vesting stock awards ("Deferred Awards") and performance-based stock awards ("Performance Awards") to employees at management levels. The Company also grants Deferred Awards to its non-employee

directors. Deferred Awards are granted in the form of restricted stock units that require each recipient to complete a service period. Deferred Awards generally vest ratably over three years, except for those granted to non-employee directors, which generally vest over one year. Performance Awards are granted in the form of restricted stock units which have performance criteria that must be achieved for the awards to vest in addition to a service period requirement. With the approval of the Board's Compensation Committee, the Company may settle vested Deferred Awards and Performance Awards to the employee in shares, in a cash amount equal to the market value of such shares at the time all requirements for delivery of the award have been met, or in part shares and cash.

For Performance Awards issued during Fiscal 2013 each award has a defined number of shares that an employee can earn (the "Target Shares"), and based on the adjusted operating income level achieved for the three-fiscal year period, the employee can earn from 0% to 200% of their Target Shares. The fair value of these Performance Awards and all Deferred Awards granted is based on the closing price of our common stock on the grant date. The Fiscal 2013 Performance Awards cliff vest, if earned, after completion of the three year performance period. For Performance Awards issued during Fiscal 2014 and Fiscal 2015 (the "2014 and 2015 Performance Awards"), the Target Shares earned can range from 0% to 300% and depend on the achievement of adjusted earnings per share for the three-fiscal year performance period and our total shareholder return ("TSR") relative to that of companies in our peer group for the same period. The 2014 and 2015 Performance Awards cliff vest, if earned, after a three year service period. The 2014 and 2015 Performance Awards grant date fair value was estimated using a Monte Carlo simulation covering the period from the valuation date through the end of the performance period using our simulated stock price as well as the TSR of companies in our peer group. Stock-based compensation expense is recognized ratably over the related service period reduced for estimated forfeitures of those awards not expected to vest due to employee turnover. Stock-based compensation expense, as it relates to Performance Awards, is also adjusted based on the Company's estimate of the percentage of the aggregate Target Shares expected to be earned.

At January 30, 2016, the Company had 605,499 shares available for grant under the Equity Plan.

Changes in the Company's Unvested Stock Awards during Fiscal 2015, Fiscal 2014 and Fiscal 2013

Deferred Awards

	Fiscal Year Ended					
	January 30, 2016		January 31, 2015		February 1, 2014	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
	(in thousands)		(in thousands)		(in thousands)	
Unvested Deferred Awards at beginning of year	592	$ 49.02	691	$ 49.27	560	$ 49.53
Granted	196	64.62	273	48.50	395	48.93
Vested (1)	(250)	49.02	(229)	48.97	(205)	49.46
Forfeited	(65)	55.35	(143)	49.31	(59)	48.82
Unvested Deferred Awards at end of year	473	$ 54.62	592	$ 49.02	691	$ 49.27

(1) In Fiscal 2015, Fiscal 2014 and Fiscal 2013, the Company withheld shares of 29,654, 21,788 and 2,089, respectively, to satisfy minimum withholding tax requirements. These shares were immediately retired.

Total unrecognized stock-based compensation expense related to unvested Deferred Awards approximated $13.3 million as of January 30, 2016, which will be recognized over a weighted average period of approximately 1.9 years.

The fair value of Deferred Awards held by the Company's employees that vested during Fiscal 2015, Fiscal 2014 and Fiscal 2013 was approximately $15.5 million, $11.4 million and $9.8 million, respectively.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Performance Awards

	Fiscal Year Ended					
	January 30, 2016		January 31, 2015		February 1, 2014	
	Number of Performance Shares (1)	Weighted Average Grant Date Fair Value	Number of Performance Shares (1)	Weighted Average Grant Date Fair Value	Number of Performance Shares (1)	Weighted Average Grant Date Fair Value
	(in thousands)		(in thousands)		(in thousands)	
Unvested Performance Awards at beginning of year	345	$ 50.18	267	$ 47.67	172	$ 48.59
Granted	195	70.91	245	50.91	204	47.89
Vested shares	(147)	48.02	(107)	46.34	(95)	49.84
Forfeited	(18)	59.49	(60)	48.87	(14)	47.55
Unvested Performance Awards at end of year	375	$ 61.37	345	$ 50.18	267	$ 47.67

(1) For those awards in which the performance period is complete, the number of unvested shares is based on actual shares that will vest upon completion of the service period.

For those awards in which the performance period is not yet complete, the number of unvested shares in the table above is based on the participants earning their Target Shares at 100%; however, the cumulative expense recognized reflects changes in estimated adjusted operating income and adjusted earnings per share as they occur. Based on the current number of Performance Awards expected to be earned, the total unrecognized stock-based compensation expense related to unvested Performance Awards approximated $15.4 million as of January 30, 2016, which will be recognized over a weighted average period of approximately 2.1 years.

The fair value of Performance Awards held by the Company's employees that vested during Fiscal 2015, Fiscal 2014 and Fiscal 2013 was approximately $2.3 million, $5.5 million and $5.0 million, respectively.

Stock Options

No stock options were issued during Fiscal 2015, Fiscal 2014 and Fiscal 2013 and at January 30, 2016, there were no unvested stock options.

Outstanding Stock Options

Changes in the Company's outstanding stock options for Fiscal 2015 were as follows:

	Fiscal Year Ended					
	January 30, 2016		January 31, 2015		February 1, 2014	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
	(in thousands)		(in thousands)		(in thousands)	
Options outstanding at beginning of year	30	$ 29.05	34	$ 28.77	84	$ 30.08
Granted	—	—	—	—	—	—
Exercised (1)	(15)	29.05	(2)	24.54	(49)	31.06
Forfeited	—	—	(2)	29.54	(1)	27.11
Options outstanding at end of year (2)	15	$ 29.05	30	$ 29.05	34	$ 28.77
Options exercisable at end of year (2)	15	$ 29.05	30	$ 29.05	34	$ 28.77

(1) The aggregate intrinsic value of options exercised was approximately $0.5 million, $0.1 million and $0.9 million for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively.

(2) The aggregate intrinsic value of options outstanding and exercisable at the end of Fiscal 2015, Fiscal 2014 and Fiscal 2013 was approximately $0.5 million, $0.9 million and $0.8 million, respectively.

The following table summarizes information regarding options outstanding at January 30, 2016:

		Options Outstanding and Exercisable		
Range of Exercise Prices		Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
$22.02	$31.63	15	29.05	2.3

4. PROPERTY AND EQUIPMENT

Property and equipment consist of the following (in thousands):

	Asset Life	January 30, 2016	January 31, 2015
Property and equipment:			
Land and land improvements	—	$ 3,403	$ 3,403
Building and improvements	20-25 yrs	35,548	35,548
Material handling equipment	10-15 yrs	48,345	48,479
Leasehold improvements	3-15 yrs	317,410	339,474
Store fixtures and equipment	3-10 yrs	218,566	231,797
Capitalized software	3-10 yrs	177,849	120,054
Construction in progress	—	8,357	24,644
		809,478	803,399
Less accumulated depreciation and amortization		(518,498)	(493,098)
Property and equipment, net		$ 290,980	$ 310,301

The Company conducted a review of its store portfolio using business hurdles management designed to enhance profitability and improve overall operating results. Based on this review, the Company compiled a list of underperforming stores targeted for closure (the "Disposition List"). As a result of this review the Company closed 32 stores in Fiscal 2015, 35 stores in Fiscal 2014 and 41 stores in Fiscal 2013. The Company also identified additional underperforming stores for which the Company will review its options for improving their financial performance, including but not limited to negotiating occupancy relief, in order to achieve the business hurdles. If these stores are unable to do so, then the Company will move them to the Disposition List.

At January 30, 2016, the Company performed impairment testing on 1,069 stores with a total net book value of $114.5 million. During Fiscal 2015, the Company recorded $2.4 million of impairment charges primarily related to 22 underperforming stores, of which 10 were fully impaired and 12 were partially impaired. Of the 22 underperforming stores 17 were in the U.S. and five were in Canada. As of January 30, 2016, the aggregate net book value of the stores that were partially impaired was approximately $1.2 million, which the Company determined to be recoverable based on an estimate of discounted future cash flows. Consistent with its impairment policy, the Company concluded that changes in circumstances affecting the carrying value of stores included on the Disposition List required the Company to review all stores included on the Disposition List regardless of whether the store had been open for at least two years. Impairment charges for all stores were recorded as a result of revenue and/or gross margins not meeting targeted levels and accelerated store lease termination dates.

At January 31, 2015, the Company performed impairment testing on 1,063 stores with a total net book value of $138.9 million. During Fiscal 2014, the Company recorded $11.1 million of impairment charges primarily related to 74 underperforming stores, of which 44 were fully impaired and 30 were partially impaired. Of the 74 underperforming stores 69 were in the U.S. and five were in Canada.

4. PROPERTY AND EQUIPMENT (Continued)

At February 1, 2014, the Company performed impairment testing on 1,066 stores with a total net book value of $156.9 million. During Fiscal 2013, the Company recorded $20.5 million of store impairment charges primarily related to 127 underperforming stores, of which 106 were fully impaired and 21 were partially impaired. Of the 127 underperforming stores 109 were in the U.S. and 18 were in Canada.

Company management continues to believe that making progress on its systems implementations will be one of the key drivers to improve its operations and strengthen its financial performance. During the second quarter of Fiscal 2013 the Company established a strategic long term systems plan. As part of this plan, the Company concluded that certain development costs previously incurred were no longer relevant and deemed certain systems to be obsolete and needed to be replaced by enhanced capabilities in order to incorporate industry best practices as well as service our international franchisees and wholesale business partners. Accordingly, the Company recorded asset impairment charges of $9.1 million and incurred $1.2 million of selling, general and administrative expenses related to the write-down of some previously capitalized development costs and obsolete systems.

During Fiscal 2015, the Company capitalized approximately $28.4 million of external software costs and approximately $13.0 million of internal programming and development costs, of which $0.7 million was related to stock-based compensation. During Fiscal 2014, the Company capitalized approximately $42.4 million of external software costs and approximately $11.6 million of internal programming and development costs, of which $0.9 million was related to stock-based compensation. During Fiscal 2013, the Company capitalized approximately $19.5 million of external software costs and approximately $8.7 million of internal programming and development costs, of which $0.5 million was related to stock-based compensation. Amortization expense of capitalized software was approximately $20.1 million, $11.1 million and $7.0 million in Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively.

As of January 30, 2016, the Company had approximately $6.1 million in property and equipment for which payment had not been made, which was included in accrued expenses and other current liabilities.

5. CREDIT FACILITY

The Company and certain of its domestic subsidiaries maintain a credit agreement with Wells Fargo Bank, National Association ("Wells Fargo"), Bank of America, N.A., HSBC Business Credit (USA) Inc., and JPMorgan Chase Bank, N.A. as lenders (collectively, the "Lenders") and Wells Fargo, as Administrative Agent, Collateral Agent and Swing Line Lender (the "Credit Agreement"). The Credit Agreement was amended on September 15, 2015 and the provisions below reflect the amended and extended Credit Agreement.

The Credit Agreement, which expires in September 2020, consists of a $250 million asset based revolving credit facility, with a $50 million sublimit for standby and documentary letters of credit and an uncommitted accordion feature that could provide up to $50 million of additional availability. Revolving credit loans outstanding under the Credit Agreement bear interest, at the Company's option, at:

(i) the prime rate plus a margin of 0.50% to 0.75% based on the amount of the Company's average excess availability under the facility; or
(ii) the London InterBank Offered Rate, or "LIBOR", for an interest period of one, two, three or six months, as selected by the Company, plus a margin of 1.25% to 1.50% based on the amount of the Company's average excess availability under the facility.

The Company is charged an unused line fee of 0.25% on the unused portion of the commitments. Letter of credit fees range from 0.625% to 0.750% for commercial letters of credit and range from 0.75% to 1.00% for standby letters of credit. Letter of credit fees are determined based on the amount of the Company's average excess availability under the facility. The amount available for loans and letters of credit under the Credit Agreement is determined by a borrowing base consisting of certain credit card receivables, certain trade and franchise receivables, certain inventory and the fair market value of certain real estate, subject to certain reserves.

The outstanding obligations under the Credit Agreement may be accelerated upon the occurrence of certain events, including, among others, non-payment, breach of covenants, the institution of insolvency proceedings, defaults under other material indebtedness and a change of control, subject, in the case of certain defaults, to the expiration of applicable grace periods. The Company is not subject to any early termination fees.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Credit Agreement contains covenants, which include conditions on stock buybacks and the payment of cash dividends or similar payments. Credit extended under the Credit Agreement is secured by a first priority security interest in substantially all of the Company's U.S. assets excluding intellectual property, software, equipment and fixtures.

As of January 30, 2016, the Company has capitalized an aggregate of approximately $4.3 million in deferred financing costs related to the Credit Agreement. The unamortized balance of deferred financing costs at January 30, 2016 was approximately $1.2 million. Unamortized deferred financing costs are amortized over the remaining term of the Credit Agreement. In conjunction with amending the agreement in September 2015, we paid approximately $0.3 million in additional deferred financing costs.

The table below presents the components (in millions) of the Company's credit facility:

	January 30, 2016	January 31, 2015
Credit facility maximum	$ 250.0	$ 200.0
Borrowing base	211.7	183.2
Outstanding borrowings	—	—
Letters of credit outstanding—merchandise	—	—
Letters of credit outstanding—standby	7.1	9.1
Utilization of credit facility at end of period	7.1	9.1
Availability (1)	$ 204.6	$ 174.1
Interest rate at end of period	4.0%	3.8%

	Fiscal 2015	Fiscal 2014
Average end of day loan balance during the period	$ 28.5	$ 9.4
Highest end of day loan balance during the period	67.5	40.9
Average interest rate	2.7%	3.2%

(1) The sublimit availability for letters of credit was $42.9 million and $40.9 million at January 30, 2016 and January 31, 2015, respectively.

6. INTEREST (EXPENSE) INCOME, NET

The following table presents the components of the Company's interest expense, net (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Interest income	$ 1,019	$ 1,120	$ 1,123
Less:			
Interest expense – revolver	789	313	—
Interest expense – credit facilities	68	92	120
Unused line fee	463	447	305
Amortization of deferred financing fees	318	352	364
Other interest and fees	79	84	69
Total interest expense	1,717	1,288	858
Interest (expense) income, net	$ (698)	$ (168)	$ 265

7. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets are comprised of the following (in thousands):

	January 30, 2016	January 31, 2015
Prepaid property expense	$ 20,148	$ 20,781
Prepaid income taxes	11,458	10,289
Prepaid marketing	3,898	1,385
Prepaid maintenance contracts	3,411	3,664
Prepaid insurance	2,279	2,393
Other	1,848	837
Prepaid expenses and other current assets	$ 43,042	$ 39,349

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities are comprised of the following (in thousands):

	January 30, 2016	January 31, 2015
Accrued salaries and benefits	$ 36,108	$ 33,633
Customer liabilities	24,357	32,794
Accrued professional fees	12,647	7,802
Sales taxes and other taxes payable	6,193	6,369
Accrued marketing	5,350	5,794
Accrued store expenses	4,742	4,573
Accrued construction-in-progress	4,736	3,631
Accrued freight	4,581	6,622
Accrued insurance	4,224	3,759
Accrued real estate expenses	2,258	3,717
Accrued short-term restructuring costs	475	798
Other	13,199	9,232
Accrued expenses and other current liabilities	$ 118,870	$ 118,724

9. COMMITMENTS AND CONTINGENCIES

Operating Lease Commitments

The Company leases all of its stores, offices and distribution facilities (except the Ft. Payne, Alabama distribution center which the Company owns), and certain office equipment, store fixtures and automobiles, under operating leases expiring through 2026. The leases require fixed minimum annual rental payments plus, under the terms of certain leases, additional payments for taxes, other expenses and additional rent based upon sales.

Store, office and distribution facilities minimum rent, contingent rent and sublease income are as follows (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Minimum rentals	159,641	164,510	168,112
Additional rent based upon sales	751	797	943
Sublease income	(2,766)	(2,967)	(1,138)

9. COMMITMENTS AND CONTINGENCIES (Continued)

Future minimum annual lease payments under the Company's operating leases at January 30, 2016 were as follows (in thousands):

	Minimum Operating Lease Payments
2016	$ 155,352
2017	139,682
2018	119,065
2019	103,482
2020	88,279
Thereafter	168,225
Total minimum lease payments	$ 774,085

Purchase Commitments

As of January 30, 2016, the Company has entered into various purchase commitments for merchandise for re-sale of approximately $319.4 million and approximately $15.9 million for equipment, construction and other non-merchandise commitments.

Employment Agreements

The Company has an employment agreement with its President and Chief Executive Officer, which provides for severance of two times the sum of base salary plus bonus, and certain other payments and benefits following any termination without cause or for "good reason". As of January 30, 2016, these cash severance benefits approximated $6.3 million. In the event of a change in control of the Company, certain executives will receive, in the aggregate, approximately $23.7 million of cash severance benefits should they either be terminated or voluntarily terminate their employment due to a degradation of duties as defined in their change in control agreements.

10. LEGAL AND REGULATORY MATTERS

The Company is involved in various legal proceedings arising in the normal course of business. In the opinion of management, any ultimate liability arising out of these proceedings will not have a material effect on the Company's financial position, results of operations or cash flows.

11. INCOME TAXES

The components of income before taxes are as follows (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
U.S.	$ 46,053	$ 47,888	$ 36,487
Foreign	43,329	31,987	40,061
Total	$ 89,382	$ 79,875	$ 76,548

11. INCOME TAXES (Continued)

The components of the Company's provision for income taxes consisted of the following (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Current -			
Federal	$ 7,248	$ 8,212	$ 13,240
State	2,275	3,691	4,371
Foreign	9,809	5,457	9,463
Total current	19,332	17,360	27,074
Deferred -			
Federal	9,649	5,260	(1,513)
State	2,548	1,426	(731)
Foreign	(31)	(1,059)	(1,308)
Total deferred	12,166	5,627	(3,552)
Tax provision as shown on the consolidated statements of operations	$ 31,498	$ 22,987	$ 23,522
Effective tax rate	35.2%	28.8%	30.7%

A reconciliation between the calculated tax provision on income based on statutory rates in effect and the effective tax rate for is as follows (in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Calculated income tax provision at federal statutory rate	$ 31,284	$ 27,956	$ 26,792
State income taxes, net of federal benefit	3,052	3,326	2,366
Foreign tax rate differential (1)	(9,744)	(8,849)	(7,224)
Nondeductible expenses	2,729	1,685	1,792
Unrecognized tax benefit	3,892	807	(1,347)
Change in valuation allowance	399	(1,472)	447
Other	(114)	(466)	696
Total tax provision	$ 31,498	$ 22,987	$ 23,522

(1) The foreign tax rate differential is due to the Company having a lower foreign effective tax rate as compared to its U.S. federal statutory tax rate of 35%. The Company has substantial operations in both Hong Kong and Canada which have lower statutory income tax rates as compared to the U.S. The Company's foreign effective tax rates for Fiscal 2015, Fiscal 2014 and Fiscal 2013 were 22.6%, 13.7% and 20.4%, respectively. This rate will fluctuate from year to year in response to changes in the mix of pre-tax earnings by country as well as changes in foreign jurisdiction tax laws.

11. INCOME TAXES (Continued)

The tax effects of temporary differences which give rise to deferred tax assets and liabilities are as follows (in thousands):

	January 30, 2016	January 31, 2015
Current –		
Assets		
Inventory	4,472	4,128
Reserves	15,965	15,169
Hedging transactions	(223)	—
Total current assets	20,214	19,297
Liabilities-prepaid expenses	(4,728)	(4,217)
Total current, net	15,486	15,080
Noncurrent –		
Property and equipment	(6,855)	7,654
Deferred rent	14,548	14,830
Equity compensation	9,757	7,101
Reserves and other	4,780	5,995
Net operating loss carryover and other tax credits	2,293	1,930
Total noncurrent, gross	24,523	37,510
Valuation allowance	(2,293)	(1,930)
Net noncurrent	22,230	35,580
Total deferred tax asset, net	$ 37,716	$ 50,660

As of January 30, 2016, the Company has not provided Federal taxes on approximately $268.6 million of unremitted earnings of its foreign subsidiaries. The Company intends to reinvest these earnings to fund expansion in these and other markets outside the U.S. Accordingly, the Company has not provided any provision for income tax expense in excess of foreign jurisdiction income tax requirements relative to such unremitted earnings in the accompanying financial statements. Due to the complexities associated with the hypothetical calculation, including the availability of foreign tax credits, the Company has concluded it is not practicable to determine the unrecognized deferred tax liability related to the undistributed earnings.

The Company has foreign net operating loss carryforwards of approximately $5.9 million which do not expire. The Company also has an Alternative Minimum Tax credit ("AMT") in Puerto Rico of approximately $0.8 million which does not expire.

Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in assessing the need for a valuation allowance. The Company has concluded that it is more likely than not that certain deferred tax assets cannot be used in the foreseeable future, principally the foreign net operating loss carryforwards and the AMT credit in Puerto Rico. Accordingly, a valuation allowance has been established for these tax benefits. However, to the extent that tax benefits related to these are realized in the future, the reduction of the valuation allowance will reduce income tax expense accordingly.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become realizable.

The Company's income taxes payable have been reduced by the tax benefits from employee stock plan awards. For stock options, the Company receives an income tax benefit calculated as the tax effect of the difference between the fair market value of the stock issued at the time of the exercise and the exercise price. For Deferred Awards and Performance Awards, the

11. INCOME TAXES (Continued)

Company receives an income tax benefit upon the award's vesting equal to the tax effect of the underlying stock's fair market value.

Uncertain Tax Positions

Tax positions are evaluated in a two step process. The Company first determines whether it is more-likely-than-not that a tax position will be sustained upon examination. If a tax position meets the more-likely-than-not recognition threshold it is measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely to be realized upon ultimate settlement.

A reconciliation of the gross amounts of unrecognized tax benefits, excluding accrued interest and penalties, is as follows (in thousands):

	January 30, 2016	January 31, 2015
Beginning Balance	$ 5,479	$ 4,412
Additions for current year tax positions	3,800	833
Additions for prior year tax positions	—	1,070
Reductions for prior year tax positions	(242)	(156)
Settlements	(60)	(43)
Reductions due to a lapse of the applicable statute of limitations	(596)	(637)
	$ 8,381	$ 5,479

Approximately $8.7 million of unrecognized tax benefits at January 30, 2016 would affect the Company's effective tax rate if recognized. The Company believes it is reasonably possible that there may be a reduction of approximately $2.1 million of unrecognized tax benefits in the next 12 months as a result of settlements with taxing authorities and statute of limitations expirations.

The Company accrued interest and penalties related to unrecognized tax benefits as part of the provision for income taxes. At January 30, 2016 and January 31, 2015 accrued interest and penalties included in unrecognized tax benefits were approximately $1.3 million and $1.0 million, respectively. Interest, penalties and reversals, thereof, net of taxes, was a benefit of $0.4 million in each of Fiscal 2015, Fiscal 2014 and Fiscal 2013.

The Company is subject to tax in the United States and foreign jurisdictions, including Canada and Hong Kong. The Company, joined by its domestic subsidiaries, files a consolidated income tax return for Federal income tax purposes. The Company, with certain exceptions, is no longer subject to income tax examinations by U.S. Federal, state and local or foreign tax authorities for tax years fiscal 2011 and prior.

12. RETIREMENT AND SAVINGS PLANS

401(k) Plan

The Company has adopted The Children's Place 401(k) Savings Plan (the "401(k) Plan"), which qualifies under Section 401(k) of the Internal Revenue Code of 1986, as amended (the "Code"). The 401(k) Plan is a defined contribution plan established to provide retirement benefits for employees. The 401(k) Plan is employee funded up to an elective annual deferral and also provides for Company matching contributions up to a certain percentage amount of the employee's salary.

The 401(k) Plan is available for all U.S. employees who have completed 90 days of service with the Company. Following guidance in IRS Notice 98-52 related to the design-based alternative, or "safe harbor," 401(k) plan method, the Company modified its 401(k) Plan for Company match contributions for non-highly compensated associates, as defined in the Code. For non-highly compensated associates, the Company matches the first 3% of the participant's contribution and 50% of the next 2% of the participant's contribution and the Company match contribution vests immediately. For highly compensated associates, the Company has the discretion to match the lesser of 50% of the participant's contribution or 2.5% of the participant's covered compensation and the Company match contribution vests over 5 years. The Company's matching contributions were approximately $2.2 million, in each of Fiscal 2015, Fiscal 2014 and Fiscal 2013.

Deferred Compensation Plan

The Company has a deferred compensation plan (the "Deferred Compensation Plan"), which is a nonqualified, unfunded plan, for eligible senior level employees. Under the plan, participants may elect to defer up to 80% of his or her base salary and/or up to 100% of his or her bonus to be earned for the year following the year in which the deferral election is made. The Deferred Compensation Plan also permits members of the Board of Directors to elect to defer payment of all or a portion of their retainer and other fees to be earned for the year following the year in which a deferral election is made. In addition, eligible employees and directors of the Company may also elect to defer payment of any shares of Company stock that is earned with respect to deferred stock awards. The Company may, but is not required to, credit participants with additional Company contribution amounts. Deferred amounts are not subject to forfeiture and are deemed invested among investment funds offered under the Deferred Compensation Plan, as directed by each participant. Payments of deferred amounts (as adjusted for earnings and losses) are payable following separation from service or at a date or dates elected by the participant at the time the deferral is elected. Payments of deferred amounts are generally made in either a lump sum or in annual installments over a period not exceeding 15.0 years. During fiscal 2010, the Deferred Compensation Plan was amended to allow for cash deferrals made by members of the Board of Directors to be invested in shares of the Company's common stock. Such elections are irrevocable and will be settled in shares of common stock. All other deferred amounts are payable in the form in which they were made; cash deferrals are payable in cash and stock deferrals are payable in stock. Earlier distributions are not permitted except in the case of an unforeseen hardship.

The Company has established a rabbi trust that serves as an investment to shadow the Deferred Compensation Plan liability; however, the assets of the rabbi trust are general assets of the Company and as such, would be subject to the claims of creditors in the event of bankruptcy or insolvency. The investments of the rabbi trust consist of mutual funds and Company stock. The Deferred Compensation Plan liability, excluding Company stock, is included in other long-term liabilities and changes in the balance are recognized as compensation expense. The values of the mutual funds are included in other assets and related earnings and losses are recognized as investment income or loss, which is included in selling, general and administrative expenses. Company stock deferrals are included in the equity section of the Company's consolidated balance sheet as treasury stock and as a deferred compensation liability. Deferred stock is recorded at fair market value at the time of deferral and any subsequent changes in fair market value are not recognized.

The Deferred Compensation Plan liability, excluding Company stock, at fair value, was approximately $0.7 million and $0.5 million at January 30, 2016 and January 31, 2015, respectively. The value of the Deferred Compensation Plan assets was approximately $0.7 million and $0.3 million at January 30, 2016 and January 31, 2015, respectively. Company stock was $1.9 million and $1.7 million at January 30, 2016 and January 31, 2015, respectively.

Other Plans

Under statutory requirements, the Company contributes to retirement plans for its Canadian, Puerto Rican and Asian operations. Contributions under these plans were approximately $0.4 million in Fiscal 2015 and $0.3 million in Fiscal 2014 and Fiscal 2013.

13. SEGMENT INFORMATION

In accordance with the "*Segment Reporting*" topic of the FASB ASC, the Company reports segment data based on geography: The Children's Place U.S. and The Children's Place International. Each segment includes an e-commerce business located at *www.childrensplace.com*. Included in The Children's Place U.S. segment are the Company's U.S. and Puerto Rico based stores and U.S. revenue from the Company's wholesale customers. Included in The Children's Place International segment are the Company's Canadian based stores, revenue from the Company's Canada wholesale customer and revenue from international franchisees. The Company measures its segment profitability based on operating income, defined as income before interest and taxes. Net sales and direct costs are recorded by each segment. Certain inventory procurement functions such as production and design as well as corporate overhead, including executive management, finance, real estate, human resources, legal, and information technology services are managed by The Children's Place U.S. segment. Expenses related to these functions, including depreciation and amortization, are allocated to The Children's Place International segment based primarily on net sales. The assets related to these functions are not allocated. The Company periodically reviews these allocations and adjusts them based upon changes in business circumstances. Net sales from external customers are derived from merchandise sales and the Company has no major customers that account for more than 10% of its net sales. As of January 30, 2016, The Children's Place U.S. operated 937 stores and The Children's Place International operated 132 stores. As of January 31, 2015, The Children's Place U.S. operated 963 stores and The Children's Place International operated 134 stores.

The following tables provide segment level financial information for Fiscal 2015, Fiscal 2014 and Fiscal 2013 (dollars in thousands):

	Fiscal Year Ended		
	January 30, 2016	January 31, 2015	February 1, 2014
Net sales:			
The Children's Place U.S.	$ 1,518,117	$ 1,528,762	$ 1,528,276
The Children's Place International (1)	207,660	232,562	237,513
Total net sales	$ 1,725,777	$ 1,761,324	$ 1,765,789
Gross profit:			
The Children's Place U.S.	$ 539,030	$ 535,226	$ 558,156
The Children's Place International	86,102	87,074	97,365
Total gross profit	$ 625,132	$ 622,300	$ 655,521
Gross Margin:			
The Children's Place U.S.	35.5%	35.0%	36.5%
The Children's Place International	41.5%	37.4%	41.0%
Total gross margin	36.2%	35.3%	37.1%
Operating income:			
The Children's Place U.S. (2)	$ 65,221	$ 63,586	$ 60,267
The Children's Place International (3)	24,859	16,457	16,016
Total operating income	$ 90,080	$ 80,043	$ 76,283
Operating income as a percent of net sales:			
The Children's Place U.S.	4.3%	4.2%	3.9%
The Children's Place International	12.0%	7.1%	6.7%
Total operating income	5.2%	4.5%	4.3%
Depreciation and amortization:			
The Children's Place U.S.	$ 55,937	$ 52,565	$ 55,595
The Children's Place International	6,748	7,929	9,263
Total depreciation and amortization	$ 62,685	$ 60,494	$ 64,858
Capital expenditures:			
The Children's Place U.S.	$ 41,304	$ 68,847	$ 64,486
The Children's Place International	841	3,365	8,120
Total capital expenditures	$ 42,145	$ 72,212	$ 72,606

13. SEGMENT INFORMATION (Continued)

(1) Net sales from The Children's Place International are primarily derived from revenues from Canadian operations. Our foreign subsidiaries, primarily in Canada, have operating results based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. For Fiscal 2015, the effects of these translation rate changes on net sales was a decrease of $29.9 million.

(2) Includes exit costs (income) associated with the closures of the West Coast DC and Northeast DC of approximately $0.1 million, $(0.1) million and $(0.9) million for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively. Also includes a $1.7 million, $10.5 million and a $25.4 million asset impairment charge for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively. Also includes additional costs incurred related to corporate severance and reorganizations of approximately $6.0 million, $7.1 million and $4.2 million for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively. Fiscal 2015 also includes costs incurred related to a class action wage and hour legal settlement, proxy contest costs and a sales tax audit of approximately $12.1 million.

(3) Our foreign subsidiaries, primarily in Canada, have operating results based in foreign currencies and are thus subject to the fluctuations of the corresponding translation rates into U.S. dollars. For Fiscal 2015, the effects of these translation rate changes on operating income was a decrease of $1.9 million. Includes a $0.7 million, $0.6 million and $4.2 million asset impairment charge for Fiscal 2015, Fiscal 2014 and Fiscal 2013, respectively.

	January 30, 2016	January 31, 2015
Total assets:		
The Children's Place U.S.	$ 748,975	$ 805,462
The Children's Place International	148,973	153,156
Total assets	$ 897,948	$ 958,618

Geographic Information

The Company's long-lived assets are located in the following countries:

	January 30, 2016	January 31, 2015
Long-lived assets (1):		
United States	$ 276,612	$ 289,820
Canada	16,212	22,697
Asia	1,586	1,242
Total long-lived assets	$ 294,410	$ 313,759

(1) The Company's long-lived assets are comprised of net property and equipment and other assets.

14. QUARTERLY FINANCIAL DATA (UNAUDITED)

In the opinion of management, the unaudited consolidated financial statements presented below contain all material adjustments, consisting of normal recurring accruals, necessary to present fairly the Company's financial position and results of operations and have been prepared in a manner consistent with the audited financial statements contained herein. Due to the seasonal nature of the Company's business, the results of operations in any given interim period are not indicative of operating results for a full fiscal year.

14. QUARTERLY FINANCIAL DATA (UNAUDITED) (Continued)

The following tables reflect quarterly consolidated statements of income for the periods indicated (unaudited):

	Fiscal Year Ended January 30, 2016			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter (1)
Net sales	$ 404,865	$ 366,455	$ 455,913	$ 498,544
Gross profit	152,109	115,004	180,513	177,506
Selling, general and administrative expenses	114,514	118,342	105,797	131,245
Asset impairment charges	—	1,452	919	—
Other costs (income)	(3)	76	14	11
Depreciation and amortization	14,394	15,252	16,136	16,903
Operating income (loss)	23,204	(20,118)	57,647	29,347
Income (loss) before income taxes	23,028	(20,323)	57,393	29,284
Provision (benefit) for income taxes	7,421	(6,628)	18,898	11,807
Net income (loss)	15,607	(13,695)	38,495	17,477
Diluted earnings (loss) per share	$ 0.73	$ (0.67)	$ 1.88	$ 0.87
Diluted weighted average common shares outstanding	21,366	20,576	20,517	20,174
Cash dividends declared and paid per common share	$ 0.1500	$ 0.1500	$ 0.1500	$ 0.1500

(1) Items impacting the fourth quarter of Fiscal 2015 include approximately $4.4 million of additional costs related to corporate severance and reorganizations partially offset by approximately $2.8 million of income related to the accelerated conversion of loyalty points in the Company's current loyalty program in anticipation of transition to a new customer loyalty program in Fiscal 2016.

	Fiscal Year Ended January 31, 2015			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter (1)
Net sales	$ 410,149	$ 384,628	$ 487,304	$ 479,243
Gross profit	148,261	119,118	190,111	164,810
Selling, general and administrative expenses	113,720	117,111	116,120	123,735
Asset impairment charges	—	3,045	3,306	4,794
Other costs (income)	231	(98)	(286)	85
Depreciation and amortization	14,227	15,557	15,168	15,542
Operating income (loss)	20,083	(16,497)	55,803	20,654
Income (loss) before income taxes	20,102	(16,557)	55,721	20,609
Provision (benefit) for income taxes	6,506	(5,870)	18,779	3,572
Net income (loss)	13,596	(10,687)	36,942	17,037
Diluted earnings (loss) per share	$ 0.61	$ (0.49)	$ 1.70	$ 0.79
Diluted weighted average common shares outstanding	22,419	21,837	21,756	21,512
Cash dividends declared and paid per common share	$ 0.1325	$ 0.1325	$ 0.1325	$ 0.1325

14. QUARTERLY FINANCIAL DATA (UNAUDITED) (Continued)

(1) Items impacting the fourth quarter of Fiscal 2014 include approximately $4.8 million of asset impairment charges and $3.2 million of additional costs related to corporate severance and reorganizations.

15. DERIVATIVE INSTRUMENTS

The Company is exposed to gains and losses resulting from fluctuations in foreign currency exchange rates attributable to inventory purchases denominated in a foreign currency. Specifically, our Canadian subsidiary's functional currency is the Canadian dollar, but purchases inventory from suppliers in US dollars. In order to mitigate the variability of cash flows associated with certain of these forecasted inventory purchases, we began entering into foreign exchange forward contracts in the second quarter of Fiscal 2015. These contracts typically mature within 12 months. We do not use forward contracts to engage in currency speculation and we do not enter into derivative financial instruments for trading purposes.

The Company accounts for all of its derivatives and hedging activity under the "Derivatives and Hedging" topic of the FASB ASC.

Under the Company's risk management policy and in accordance with guidance under the topic, in order to qualify for hedge accounting treatment, a derivative must be considered highly effective at offsetting changes in either the hedged item's cash flows or fair value. Additionally, the hedge relationship must be documented to include the risk management objective and strategy, the hedging instrument, the hedged item, the risk exposure, and how hedge effectiveness will be assessed prospectively and retrospectively. The Company formally measures effectiveness of its hedging relationships both at the hedge inception and on an ongoing basis. The Company would discontinue hedge accounting under a foreign exchange forward contract prospectively (i) if management determines that the derivative is no longer highly effective in offsetting changes in the cash flows of a hedged item, (ii) when the derivative expires or is terminated, (iii) if the forecasted transaction being hedged by the derivative is no longer probable of occurring, or (iv) if management determines that designation of the derivative as a hedge instrument is no longer appropriate.

All derivative instruments are presented at gross fair value on the Consolidated Balance Sheets within either prepaid expenses and other current assets or accrued expenses and other current liabilities. As of January 30, 2016 the Company had foreign exchange forward contracts with an aggregate notional amount of $26.5 million and the fair value of the derivative instruments was an asset of $0.8 million and a liability of less than $0.1 million. As these foreign exchange forward contracts are measured at fair value using observable market inputs such as forward rates, the Company's credit risk and our counterparties' credit risks, they are classified within Level 2 of the valuation hierarchy. Cash settlements related to these forward contracts are recorded in Cash Flows from Operating Activities within the Consolidated Statements of Cash Flows.

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of Other Comprehensive Income ("OCI") and reclassified into earnings within cost of sales (exclusive of depreciation and amortization) in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing hedge ineffectiveness are recognized in earnings within selling, general & administrative expenses, consistent with where the Company records realized and unrealized foreign currency gains and losses on transactions in foreign denominated currencies. Gains related to hedge effectiveness during Fiscal 2015 were approximately $0.3 million and recognized in earnings within selling, general & administrative expenses. During Fiscal 2015 approximately $0.5 million of the effective portion of the gain on the derivative was reclassified into earnings within cost of sales. As of January 30, 2016 the gross value related to hedges of these transactions in OCI was approximately $0.7 million. Assuming January 30, 2016 exchange rates remain constant, $0.5 million of gains, net of tax, related to hedges of these transactions are expected to be reclassified from OCI into earnings over the next 12 months. Changes in fair value associated with derivatives that are not designated and qualified as cash flow hedges are recognized in earnings within selling, general & administrative expenses.

The Company enters into foreign exchange forward contracts with major banks and has risk exposure in the event of nonperformance by either party. However, based on our assessment, the Company believes that obligations under the contracts will be fully satisfied. Accordingly, there was no requirement to post collateral or other security to support the contracts as of January 30, 2016.

16. SUBSEQUENT EVENTS

Subsequent to January 30, 2016 and through March 22, 2016, the Company repurchased an additional 0.3 million shares for approximately $22.3 million, which completed the 2015 Share Repurchase Program and brought the total under the 2015 $250 Million Share Repurchase Program to approximately $1.6 million.

On February 12, 2016, the Company's Board of Directors authorized a quarterly cash dividend of $0.20 per share to be paid April 28, 2016 for shareholders of record on the close of business on April 7, 2016. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the Company's Board of Directors based on a number of factors, including business and market conditions, the Company's future financial performance and other investment priorities.

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES
SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS
(in thousands)

Column A	Column B	Column C	Column D	Column E
	Balance at beginning of year	Charged to expense	Deductions	Balance at end of year
Lower of cost or market reserve (1)				
Fiscal year ended January 30, 2016	$ 1,925	$ 2,356	$ (585)	$ 3,696
Fiscal year ended January 31, 2015	$ 4,268	$ —	$ (2,343)	$ 1,925
Fiscal year ended February 1, 2014	$ 2,413	$ 1,881	$ (26)	$ 4,268

(1) Reflects adjustment of out-of-season merchandise inventories to realizable value. Column C represents increases to the reserve and Column D represents decreases to the reserve based on quarterly assessments of the reserve.

(a)(3) Exhibits.

Exhibit	Description
3.1	Amended and Restated Certificate of Incorporation of the Company dated June 14, 2014 filed as Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on June 12, 2014 is incorporated by reference herein.
3.2	Fourth Amended and Restated By-Laws of the Company filed as Exhibit 3.1 to the registrant's Form 8-K filed on June 9, 2009, is incorporated by reference herein.
3.3	First Amendment to the Fourth Amended and Restated Bylaws of the Company filed as Exhibit 3.2 to the registrant's Current Report on Form 8-K filed on June 12, 2014, is incorporated by reference herein.
3.4(+)	Fifth Amended and Restated Bylaws of the Company.
4.1(1)	Form of Certificate for Common Stock of the Company filed as an exhibit to the registrant's Registration Statement No. 333-31535 on Form S-1, is incorporated by reference herein.
10.1(1)(*)	1997 Stock Option Plan of the Company filed as an exhibit to the registrant's Registration Statement No. 333-31535 on Form S-1, is incorporated by reference herein.
10.2(*)	Amended and Restated 2005 Equity Incentive Plan of the Company, filed as Exhibit 10.3 to the registrant's Annual Report on Form 10-K for the period ended January 31, 2009, is incorporated by reference herein.
10.3(*)	2011 Equity Incentive Plan, filed as Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 23, 2011, is incorporated by reference herein.
10.4	Lease Agreement as of August 12, 2003 between Orlando Corporation and The Children's Place (Canada), LP, together with Indemnity Agreement as of August 12, 2003 between the Company and Orlando Corporation, together with Surrender of Lease as of August 12, 2003 between the Company and Orlando Corporation and Orion Properties Ltd. (Canadian Distribution Center) filed as Exhibit 10.2 to the registrant's Quarterly Report on Form 10-Q for the period ended November 1, 2003, is incorporated by reference herein.
10.5	Lease Agreement between the Company and Turnpike Crossing I, LLC (Dayton New Jersey Distribution Center), dated as of July 14, 2004 filed as Exhibit 10.2 to registrant's Quarterly Report on Form 10-Q for the period ended July 31, 2004, is incorporated by reference herein.
10.6	Form of Indemnity Agreement between the Company and certain members of management and the Board of Directors filed as Exhibit 10.7 to registrant's Quarterly Report on Form 10-Q for the period ended August 2, 2008, is incorporated by reference herein.
10.7	Lease Agreement between The Children's Place Services Company, LLC and 500 Plaza Drive Corp. effective as of March 12, 2009 (500 Plaza Drive), Secaucus, New Jersey filed as Exhibit 10.67 to the registrant's Annual Report on Form 10-K for the period ended January 31, 2009, is incorporated by reference herein.
10.8	Guaranty between the Company and 500 Plaza Drive Corp. effective as of March 12, 2009 filed as Exhibit 10.68 to the registrant's Annual Report on Form 10-K for the period ended January 31, 2009, is incorporated by reference herein.
10.9	The First Lease Modification Agreement, dated as of August 27, 2009, between The Children's Place Services Company, LLC and 500 Plaza Drive Corp. filed as Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 1, 2009, is incorporated by reference herein.
10.10	The Company Nonqualified Deferred Compensation Plan effective January 1, 2010 filed as Exhibit 10.82 to the registrant's Annual Report on Form 10-K for the period ended January 30, 2010, is incorporated by reference herein.
10.11(*)	Amended and Restated Employment Agreement, dated as of March 28, 2011, by and between the Company and Jane T. Elfers filed as Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 30, 2011, is incorporated by reference herein.
10.12(*)	Amendment No. 1 as of March 23, 2012 to Amended and Restated Employment Agreement dated as of March 28, 2011, by and between the Company and Jane T. Elfers filed as Exhibit 10.31 to the Registrant's Annual Report on Form 10-K for the period ended January 28, 2012, is incorporated by reference herein.
10.13(*)	Deferred Stock Award Agreement, dated as of January 4, 2010, by and between the Company and Jane T. Elfers filed as Exhibit 10.84 to the registrant's Annual Report on Form 10-K for the period ended January 30, 2010, is incorporated by reference herein.
10.14(*)	Form of Time-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan, filed as Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on May 23, 2011, is incorporated by reference herein.

Exhibit	Description
10.15(*)	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan, filed as Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on May 23, 2011, is incorporated by reference herein.
10.16(*)	Form of Deferred Stock Award Agreement under the Company's Amended and Restated 2005 Equity Incentive Plan, filed as Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on May 23, 2011, is incorporated by reference herein.
10.17(*)	Form of Performance Stock Award Agreement under the Company's Amended and Restated 2005 Equity Incentive Plan, filed as Exhibit 10.5 to the registrant's Current Report on Form 8-K filed on May 23, 2011, is incorporated by reference herein.
10.18	Form of Amended and Restated Change in Control Agreement filed as Exhibit 10.41 to the registrant's Annual Report on Form 10-K for the period ended January 29, 2011, is incorporated by reference herein.
10.19(*)	Employment Offer Letter, dated as of November 26, 2012, by and between the Company and Michael Scarpa filed as Exhibit 10.40 to the registrant's Annual Report on Form 10-K for the period ended February 2, 2013, is incorporated by reference herein.
10.20	Eleventh Amendment to the Credit Agreement, dated March 4, 2014, by and among the Company and The Children's Place Services Company, LLC, as borrowers, The Children's Place (International), LLC, The Children's Place Canada Holdings, Inc., the childrensplace.com, inc., TCP IH II, LLC, TCP International IP Holdings, LLC and TCP International Product Holdings, LLC, as guarantors, and Wells Fargo Bank, National Association (successor by merger to Wells Fargo Retail Finance, LLC), as Administrative Agent and Collateral Agent, L/C Issuer, SwingLine Lender and as a Lender, Bank of America, N.A., HSBC Bank USA, N.A.and JPMorgan Chase Bank, N.A. filed as Exhibit 10.33 to the registrant's Annual Report on Form 10-K for the period ended February 1, 2014, is incorporated by reference herein.
10.21(*)	Letter Agreement dated October 3, 2014 between Anurup Pruthi and The Children's Place Services Company, LLC filed as Exhibit 10.22 to the registrant's Annual Report on Form 10-K for the period ended January 31, 2015, is incorporated by reference herein.
10.22(*)	Agreement and General Release dated as of January 30, 2015 between Natalie Levy and The Children's Place Services Company, LLC. filed as Exhibit 10.23 to the registrant's Annual Report on Form 10-K for the period ended January 31, 2015, is incorporated by reference herein.
10.23	Agreement dated May 22, 2015, by and among The Children’s Place, Inc., Macellum SPV II, LP, Barington Companies Equity Partners, L.P., Jonathan Duskin, James A. Mitarotonda, certain of their affiliates listed on Schedule A to the Agreement, and Robert L. Mettler filed as Exhibit 10.1 to the registrant’s Current Report on Form 8-K filed on May 29, 2015, is incorporated herein by reference.
10.24(*)	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (Senior Vice President & above) filed as Exhibit 10.1 to the registrant’s Quarterly Report on Form 10-Q for the period ended May 2, 2015, is incorporated by reference herein.
10.25(*)	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (below Senior Vice President) filed as Exhibit 10.2 to the registrant’s Quarterly Report on Form 10-Q for the period ended May 2, 2015, is incorporated by reference herein.
10.26(*)	Form of Time-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (Senior Vice President & above) filed as Exhibit 10.3 to the registrant’s Quarterly Report on Form 10-Q for the period ended May 2, 2015, is incorporated by reference herein.
10.27(*)	Form of Time-Based Restricted Stock Unit Award Agreement under the 2011 Equity Incentive Plan (below Senior Vice President) filed as Exhibit 10.4 to the registrant’s Quarterly Report on Form 10-Q for the period ended May 2, 2015, is incorporated by reference herein.
10.28(*)(+)	The Company Profit Sharing/401(k) Plan Adoption Agreement No.001 for use with Fidelity Basic Plan Document No. 17 entered into by the Company and Fidelity Management Trust Company on September 11, 2015.
10.29	Twelfth Amendment to the Credit Agreement, dated September 15, 2015, by and among the Company and The Children's Place Services Company, LLC, as borrowers, The Children's Place (International), LLC, The Children's Place Canada Holdings, Inc., the childrensplace.com, inc., TCP IH II, LLC, TCP International IP Holdings, LLC and TCP International Product Holdings, LLC, as guarantors, and Wells Fargo Bank, National Association (successor by merger to Wells Fargo Retail Finance, LLC), as Administrative Agent and Collateral Agent, L/C Issuer, Swing Line Lender and as a Lender, Bank of America, N.A., HSBC Bank USA, N.A. and JPMorgan Chase Bank, N.A. filed as Exhibit 10.3 to the registrant’s Quarterly Report on Form 10-Q for the period ended October 31, 2015, is incorporated by reference herein.
10.30(*)	Agreement and General Release dated as of November 30, 2015, between Brian Ferguson and The Children's Place Services Company, LLC filed as Exhibit 10.2 to the registrant’s Quarterly Report on Form 10-Q for the period ended October 31, 2015, is incorporated by reference herein.

Exhibit	Description
10.31(+)	The Children's Place Inc. First Amended and Restated 2011 Equity Incentive Plan.
18.1	Preferability Letter dated March 28, 2013 from BDO USA, LLP, The Children's Place Retail Stores, Inc.'s registered independent accounting firm, regarding change in accounting principle filed as Exhibit 18.1 to the registrant's Annual Report on Form 10-K for the period ended February 2, 2013, is incorporated by reference herein.
21.1(+)	Subsidiaries of the Company.
23.1(+)	Consent of Independent Registered Public Accounting Firm.
31.1(+)	Certificate of Principal Executive Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
31.2(+)	Certificate of Principal Financial Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
32(+)	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase.
101.LAB*	XBRL Taxonomy Extension Label Linkbase.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase.

(1) Exhibit numbers are identical to the exhibit numbers incorporated by reference to such registration statement.

(*) Compensation Arrangement.

(+) Filed herewith.

* Pursuant to Rule 406T of Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933 or Section 18 of the Securities Exchange Act of 1934 and otherwise are not subject to liability.

(b) Exhibits. The exhibits required by Item 601 of Regulation S-K are filed herewith or incorporated by reference.

(c) Financial Statement Schedules and Other Financial Statements.

Schedule II - Valuation and Qualifying Accounts

All other financial statement schedules are omitted from this Annual Report on Form 10-K, as they are not required or applicable or the required information is included in the financial statements or notes thereto.

SIGNATURES

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

THE CHILDREN'S PLACE, INC.

By: /S/ Jane T. Elfers

Jane T. Elfers

Chief Executive Officer and President

March 24, 2016

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

Signature	Title	Date
/S/ Norman Matthews Norman Matthews	Chairman of the Board	March 24, 2016
/S/ Jane T. Elfers Jane T. Elfers	Director, Chief Executive Officer and President (Principal Executive Officer)	March 24, 2016
/S/ Anurup Pruthi Anurup Pruthi	Chief Financial Officer (Principal Financial and Accounting Officer)	March 24, 2016
/S/ Joseph Alutto Joseph Alutto	Director	March 24, 2016
/S/ Marla Malcolm Beck Marla Malcolm Beck	Director	March 24, 2016
/S/ Susan Patricia Griffith Susan Patricia Griffith	Director	March 24, 2016
/S/ Joseph Gromek Joseph Gromek	Director	March 24, 2016
/S/ Robert Mettler Robert Mettler	Director	March 24, 2016
/S/ Kenneth Reiss Kenneth Reiss	Director	March 24, 2016
/S/ Stanley W. Reynolds Stanley Reynolds	Director	March 24, 2016
/S/ Susan Sobbott Susan Sobbott	Director	March 24, 2016

Exhibit 3.4

FIFTH AMENDED AND RESTATED BYLAWS

OF

THE CHILDREN'S PLACE, INC.

(a Delaware corporation)

ARTICLE I

STOCKHOLDERS

1. CERTIFICATES REPRESENTING STOCK.

(a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of, the Corporation by the Chairman of the Board of Directors, if any, or by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by such person in the Corporation. If such certificate is countersigned by a transfer agent other than the Corporation or its employee or by a registrar other than the Corporation or its employee, any other signature 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, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

(b) Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, and whenever the Corporation shall issue any shares of its stock as partly paid stock, the certificates representing shares of any such class or series or of any such partly paid stock shall set forth thereon the statements prescribed by the General Corporation Law of the State of Delaware (the "DGCL"). Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

(c) The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or such person's legal representative, to give the Corporation a bond sufficient to indemnify the Corporation and its transfer agent or agents and registrar or registrars against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

2. FRACTIONAL SHARE INTERESTS.

The Corporation may, but shall not be required to, issue fractions of a share.

3. STOCK TRANSFERS.

Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the stock ledger of the Corporation by the registered holder thereof, or by such person's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

4. RECORD DATE FOR STOCKHOLDERS.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. 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.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date has been fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5. MEANING OF CERTAIN TERMS.

As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the Corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") confers such rights where

there are two or more classes or series of shares of stock or upon which or upon whom the DGCL confers such rights notwithstanding that the Certificate of Incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the Certificate of Incorporation, including any preferred stock which is denied voting rights under the provisions of the resolution or resolutions adopted by the Board of Directors with respect to the issuance thereof.

6. STOCKHOLDER MEETINGS.

(a) **Annual Meetings.** An annual meeting of the stockholders of the Corporation shall be held at such time and on such date as shall be designated from time to time by the Board of Directors. The meeting shall be held for the purpose of electing directors and transacting such other business as may properly come before the meeting.

(b) **Special Meetings.** Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or by the Secretary of the Corporation within ten calendar days after receipt of a written request from a majority of the total number of directors which the Corporation would have if there were no vacancies. Such special meetings may not be called by any other person or persons.

(c) **Time and Place of Meetings.** Subject to the provisions of Section 6(a), each meeting of stockholders shall be held on such date, at such hour, and at such place, either within or without the State of Delaware, as fixed by the Board of Directors from time to time or in the notice of the meeting or, in the case of an adjourned meeting, as announced at the meeting at which the adjournment is taken. Whenever the Board of Directors shall fail to fix such place, the meeting shall be held at the registered office of the Corporation in the State of Delaware.

(d) **Notice of Meetings; Waiver of Notice.** Written notice of all meetings shall be given, stating the place, date and hour of the meeting. The notice of an annual meeting shall state that the meeting is called for the election of Directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting), state such other action or actions as are known at the time of such notice. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. If any action is proposed to be taken which would, if taken, entitle stockholders to receive payment for their shares of stock, the notice shall include a statement of that purpose and to that effect. Except as otherwise provided by the DGCL, a copy of the notice of any meeting shall be given, personally or by mail, not less than ten days nor more than sixty days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and directed to each stockholder at such person's address as it appears on the records of the Corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned to another time, not more than thirty days after the date of

the meeting at which the adjournment is taken, and/or to another place, and if an announcement of the adjourned time and place is made at the meeting at which the adjournment is taken, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment, fixes a new record date for the adjourned meeting. Notice need not be given to any stockholder who submits a written waiver of notice before or after the time stated therein. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder 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 regular or special meeting of the stockholders need be specified in any written waiver of notice.

(e) **Quorum and Manner of Acting.** Subject to the provisions of these Amended and Restated Bylaws (the "Bylaws"), the Certificate of Incorporation and any provision of the DGCL as to the vote that is required for a specified action, the presence in person or by proxy of the holders of a majority of the outstanding shares of the Corporation entitled to vote at any meeting of stockholders shall constitute a quorum for the transaction of business, and the vote in person or by proxy of the holders of a majority of the shares constituting such quorum shall be binding on all stockholders of the Corporation. A majority of the shares present in person or by proxy and entitled to vote may, regardless of whether or not they constitute a quorum, adjourn the meeting to another time and place. Any business which might have been transacted at the original meeting may be transacted at any adjourned meeting at which a quorum is present. When a quorum is present to organize a meeting, it is not broken by the subsequent withdrawal of any stockholders.

(f) **Voting.** Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation and of these Bylaws, or, with respect to the issuance of preferred stock, in accordance with the terms of a resolution or resolutions of the Board of Directors, shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder. The vote required for the election of directors shall be as provided in the Certificate of Incorporation. In voting on the election of directors, stockholders shall also be provided the opportunity to abstain, and abstentions, votes designated to be withheld from the election of a director and shares present but not voted in respect of the election of a director, if any, shall not be considered as votes cast. Any other action shall be authorized by a majority of the votes cast except where the DGCL, the Certificate of Incorporation or these Bylaws prescribe a different percentage of votes and/or a different exercise of voting power. Voting by ballot shall not be required for corporate action except as otherwise provided by the DGCL or by the Certificate of Incorporation.

(g) **Judges of Election.** The Board of Directors, in advance of any meeting of stockholders, may, but need not, appoint one or more inspectors of election or judges of the vote, as the case may be, to act at the meeting or any adjournment thereof. If an inspector or inspectors or judge or judges are not appointed by the Board of Directors, the chairman of the meeting may, but need not, appoint one or more inspectors or judges. In case any person who may be appointed as an inspector or judge fails to appear or act, the vacancy may be filled by appointment made by the chairman of the meeting. Each inspector or judge, if any, before

entering upon the discharge of such person's duties, shall take and sign an oath faithfully to execute the duties of inspector or judge at such meeting with strict impartiality and according to the best of his or her ability. The inspectors or judges, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum and the validity and effect of proxies and ballots, receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such other acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors or judge or judges, if any, shall make a report in writing of any challenge, question or matter determined by such person or persons and execute a certificate of any fact so found.

(h) **List of Stockholders.** A complete list of the stockholders entitled to vote at each meeting of stockholders of the Corporation, arranged in alphabetical order, and showing the address and number of shares registered in the name of each stockholder, shall be prepared and made available for examination during regular business hours by any stockholder for any purpose germane to the meeting. The list shall be available for such examination at the place where the meeting is to be held for a period of not less than ten days prior to the meeting and during the whole time of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 6(h) or the books of the Corporation, or to vote at any meeting of stockholders.

(i) **Conduct of Meeting.** At every meeting of stockholders, the chairman of the meeting shall be the Chairman of the Board or, in the absence of the Chairman of the Board, such person as shall have been designated by the Chairman of the Board or, if the Chairman of the Board has not so designated any person, by resolution adopted by the Board of Directors. The chairman of the meeting shall have sole authority to prescribe the agenda and rules of order for the conduct of such meeting of stockholders and to determine all questions arising thereat relating to the order of business and the conduct of the meeting, except as otherwise required by law. The Secretary of the Corporation or, in such person's absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the chairman for the meeting shall appoint a secretary of the meeting.

(j) **Stockholder Proposals and Nominations.** Except as otherwise provided by law, at any annual or special meeting of the stockholders of the Corporation, only such business shall be conducted as shall have been properly brought before the meeting. Except as otherwise provided herein, in order to have been properly brought before the meeting, such business must have been either (A) specified in the written notice of the meeting, or any supplement thereto, given to the stockholders of record on the record date for such meeting by or at the direction of the Board of Directors; (B) brought before the meeting at the direction of the Chairman of the Board, the President or the Board of Directors; or (C) specified in a written notice given by or on behalf of a stockholder of record on the record date for such meeting entitled to vote thereat or a duly authorized proxy for such stockholder, in accordance with all requirements set forth in this Section 6(j). A notice referred to in clause (C) of the preceding

sentence must be delivered personally to, or mailed to and received at, the principal executive office of the Corporation, addressed to the attention of the Secretary, not less than 45 days nor more than 60 days prior to the meeting; provided, however, that in the event that less than 55 days' notice or prior public disclosure of the date of the meeting was given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurred. Such notice referred to in clause (C) of the first sentence of this Section 6(j) shall set forth: (i) a full description of each such item of business proposed to be brought before the meeting and the reasons for conducting such business at such meeting; (ii) the name and address of the person proposing to bring such business before the meeting; (iii) the class and number of shares held of record, held beneficially and represented by proxy by such person as of the record date for the meeting (if such date has then been made publicly available) and as of the date of such notice; (iv) if any item of such business involves a nomination for director, all information regarding each such nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, or any successor thereto (the "Exchange Act"), and the written consent of each such nominee to serve if elected; (v) any material interest of the stockholder in such item of business; and (vi) all other information that would be required to be filed with the Commission if, with respect to the business proposed to be brought before the meeting, the person proposing such business was a participant in a solicitation subject to Section 14 of the Exchange Act. No business shall be brought before any meeting of stockholders of the Corporation otherwise than as provided in this Section 6(j). The Board of Directors may require a proposed nominee for director to furnish such other information as may be required to be set forth in a stockholder's notice of nomination which pertains to the nominee or which may be reasonably required to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The chairman of the meeting may, if the facts warrant, determine that a nomination or stockholder proposal was not made in accordance with the foregoing procedure, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

(k) **Proxy Representation.** Every stockholder may authorize another person or persons to act for such stockholder by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting. Every proxy must be signed by the stockholder or by such person's attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

(l) **Stockholder Action Without Meetings.** Any action required by the DGCL to be taken at an annual or special meeting of stockholders of the Corporation, and any action which otherwise may be taken at any annual or special meeting of stockholders of the Corporation, shall be taken only at a duly called meeting of the stockholders of the Corporation

and, notwithstanding Section 228 of the DGCL, no such action shall be taken by written consent or consents without a meeting of the stockholders of the Corporation.

7. PROXY ACCESS

Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 7, the Corporation shall include in its proxy statement for such annual meeting of stockholders, in addition to any persons nominated for election by the Board of Directors or any committee thereof, the name, together with the Required Information (defined below), of any person nominated for election (the "Stockholder Nominee") to the Board of Directors by a stockholder or group of no more than twenty (20) stockholders that satisfies the requirements of this Section 7 (the "Eligible Stockholder") and that expressly elects at the time of providing the notice required by this Section 7 (the "Notice of Proxy Access Nomination") to have such nominee included in the Corporation's proxy materials. For purposes of determining the number of stockholders comprising a group of stockholders under the immediately-preceding sentence, any two (2) or more funds under common management or sharing a common investment adviser shall be counted as one (1) stockholder. For purposes of this Section 7, the "Required Information" that the Corporation will include in its proxy statement is the information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the regulations promulgated under the Exchange Act and, if the Eligible Stockholder so elects, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)' candidacy (the "Statement"). Subject to the provisions of this Section 7, the name of any Stockholder Nominee included in the Corporation's proxy materials for such annual meeting of stockholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting of stockholders. Notwithstanding anything to the contrary contained in this Section 7, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

To be timely, the Notice of Proxy Access Nomination must be delivered to, or mailed to and received by, the Secretary of the Corporation no earlier than one hundred fifty (150) days and no later than one hundred twenty (120) days before the anniversary of the date that the Corporation issued its proxy statement for the previous year's annual meeting of stockholders.

The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (x) two or (y) twenty percent (20%) of the number of directors in office (rounded down to the nearest whole number) as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 7 (the "Final Proxy Access Nomination Date"). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the

maximum number of Stockholder Nominees included in the Corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. For purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 7 has been reached, each of the following persons shall be counted as one of the Stockholder Nominees: (i) any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 7 whom the Board of Directors decides to nominate for election to the Board of Directors; and (ii) any director in office as of the Final Proxy Access Nomination Date who was included in the Corporation's proxy materials as a Stockholder Nominee for either of the two (2) most recent preceding annual meetings of stockholders (including any individual counted as a Stockholder Nominee pursuant to the preceding clause (i)) and whom the Board of Directors decides to nominate for re-election to the Board of Directors. Any Eligible Stockholder submitting more than one (1) Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 7 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 7 exceeds the maximum number of Stockholder Nominees permitted. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders exceeds the maximum number of Stockholder Nominees permitted by this Section 7, the highest ranking Stockholder Nominee who meets the requirements of this Section 7 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order of the Eligible Stockholder holding the greatest number of shares to that holding the lowest number of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned in its respective Notice of Proxy Access Nomination submitted to the Corporation. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 7 from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this Section 7 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

For purposes of this Section 7, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided, that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full

right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate, other than hedging across a broad multi-industry investment portfolio solely with respect to currency risk, interest rate risk or, using a broad index-based hedge, equity risk. A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which (i) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder or (ii) the stockholder has loaned such shares; provided, that the stockholder has the power to recall such loaned shares on five (5) business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof. For purposes of this Section 7, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

In order to make a nomination pursuant to this Section 7, an Eligible Stockholder must have owned at least the Required Ownership Percentage (as defined below) of the Corporation's outstanding common stock (the "Required Shares") continuously for at least the Minimum Holding Period (as defined below) as of both the date the Notice of Proxy Access Nomination is delivered to, or mailed to and received by, the Secretary of the Corporation in accordance with this Section 7 and the record date for determining the stockholders entitled to vote at the annual meeting of stockholders and must continue to own the Required Shares through the meeting date. For purposes of this Section 7, the "Required Ownership Percentage" is three percent (3)%, and the "Minimum Holding Period" is three (3) consecutive years. Within the time period specified in this Section 7 for delivering the Notice of Proxy Access Nomination, an Eligible Stockholder must provide the following information in writing to the Secretary of the Corporation: (i) a written statement by the Eligible Stockholder certifying as to the number of shares it owns and has owned (as defined in this Section 7) continuously during the Minimum Holding Period; (ii) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to, or mailed to and received by, the Secretary of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting of stockholders, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date; (iii) a copy of the Schedule 14N that has been filed with the United States Securities and Exchange Commission (the "SEC") as required by Rule 14a-18 under the Exchange Act; (iv) the information required by Article I, Section 6(j) of these Bylaws; (v) the consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected; (vi) a representation that the Eligible Stockholder (including each member of any group of

stockholders that together is an Eligible Stockholder hereunder) (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (B) presently intends to maintain qualifying ownership of the Required Shares through the date the annual meeting of stockholders, (C) has not nominated and will not nominate for election to the Board of Directors at the annual meeting of stockholders any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 7, (D) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting of stockholders other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (E) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting of stockholders other than the form distributed by the Corporation, (F) agrees to comply with all applicable laws and regulations applicable to solicitations and the use, if any, of soliciting material, and (G) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make such information, in light of the circumstances under which it was or will be made or provided, not misleading; (vii) a representation as to the Eligible Stockholder's (including each member of any group of stockholders that together is an Eligible Stockholder hereunder) intentions with respect to maintaining qualifying ownership of the Required Shares through the date of the annual meeting of stockholders; (viii) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation and (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 7; and (ix) in the case of a nomination by a group of stockholders together constituting an Eligible Stockholder in which two or more funds under common management or sharing a common investment adviser are counted as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management or share a common investment adviser.

In the event that any information or communication provided by the Eligible Stockholder or the Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct or omits a material fact necessary to make such information or communication, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided information or communication and of the information that is required to correct any such defect. In addition, any person providing any information pursuant to this Section 7 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the annual meeting of stockholders, and such update and supplement (or a written certification that no such

updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of such annual meeting of stockholders.

The Corporation shall not be required to include, pursuant to this Section 7, a Stockholder Nominee in its proxy materials (i) for any meeting of stockholders for which the Secretary of the Corporation receives notice that the Eligible Stockholder or any other stockholder has nominated one or more persons for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director set forth in Article I, Section 6(j) of these Bylaws, (ii) if the Eligible Stockholder (or any member of any group of stockholders that together is such Eligible Stockholder) who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting of stockholders other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (iii) who is not independent under the listing standards of the NASDAQ, any applicable rules of the SEC, Rule 16(B) under the Exchange Act, Section 162(m) of the Internal Revenue Code of 1986, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors, (iv) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the NASDAQ, or any applicable state or federal law, rule or regulation, (v) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vi) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (vii) if such Stockholder Nominee or the applicable Eligible Stockholder (or any member of any group of stockholders that together is such Eligible Stockholder) shall have provided information to the Corporation in respect to such nomination that was untrue in any material respect (or omits to state a material fact necessary in order to make the statement made in light of the circumstances under which they are made, not misleading) or (viii) if the Eligible Stockholder (or any member of any group of stockholders that together is such Eligible Stockholder) or applicable Stockholder Nominee fails to comply with its obligations pursuant to this Section 7.

Notwithstanding anything to the contrary set forth herein, the Board of Directors or the chairman of the annual meeting of stockholders shall declare a nomination by an Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if (i) (A) the Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached any of its or their obligations, agreements or representations under this Section 7 or (B) the Stockholder Nominee shall have otherwise become ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 7, in each case as determined by the Board of Directors or the chairman of the annual meeting of stockholders (in either of which cases, (x) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the

related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting of stockholders and (y) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder) or (ii) the Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting of stockholders to present any nomination pursuant to this Section 7.

Whenever the Eligible Stockholder consists of a group of stockholders, (i) each provision in this Section 7 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the Required Ownership), (ii) a breach of any obligation, agreement or representation under this Section 7 by any member of such group shall be deemed a breach by the Eligible Stockholder and (iii) the Notice of Proxy Access Nomination must designate one member of the group for purposes of receiving communications, notices and inquiries from the Corporation and otherwise authorize such member to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 7 (including withdrawal of the nomination). No person may be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting of stockholders.

Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting of stockholders, or (ii) does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 7 for the next two (2) annual meetings of stockholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with Article I, Section 6(j) of these Bylaws.

Any Stockholder Nominee who is included in the Corporation's proxy materials for any particular meeting shall tender an irrevocable resignation (resigning his or her candidacy for director election and, if applicable at the time of the determination made in the next sentence, resigning from his or her position as a director), in a form satisfactory to the Corporation, in advance of such meeting, provided that such resignation shall expire upon the certification of the voting results of that annual meeting of stockholders. Such resignation shall become effective upon a determination by the Board of Directors or any committee thereof that (i) the information provided pursuant to this Section 7 to the Corporation by such individual or by the Eligible Stockholder (or any member of any group of persons that together is such Eligible Stockholder) who nominated such individual was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (ii) such individual, or the Eligible Stockholder (or any member of any group of persons that together is such Eligible Stockholder) who nominated such

individual, shall have breached or failed to comply with its agreements, representations undertakings and/or obligations pursuant to these By-laws, including, without limitation, this Section 7.

ARTICLE II

DIRECTORS

1. FUNCTIONS AND DEFINITION.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. The term "Whole Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

2. QUALIFICATIONS, NUMBER AND VACANCIES.

(a) **Qualifications.** A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware.

(b) **Number.** The number of directors which shall constitute the Whole Board shall be not less than three nor more than 12 and the exact number shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the directors then in office; provided, however, that such maximum number of directors may be increased from time to time to reflect the rights, if any, of holders of Preferred Stock to elect directors in accordance with the terms of the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares of Preferred Stock. The number of directors may be increased or decreased only by action of the Board of Directors.

(c) **Vacancies.** Subject to the rights, if any, of the holders of any Preferred Stock, the power to fill vacancies on the Board of Directors (whether by reason of resignation, removal, an increase in the number of directors or otherwise) shall be vested solely in the Board of Directors, and vacancies may be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by the sole remaining director, unless all directorships are vacant, in which case the stockholders shall fill the then existing vacancies. Any director chosen by the Board of Directors to fill a vacancy (including a vacancy resulting from an increase in the number of directors) shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred (or in which the new directorship was created) and until that director's successor shall be elected and shall have qualified. No decrease in the number of directors constituting the Board of Directors may shorten the term of any incumbent director.

(d) **Election.** At the annual meeting of stockholders, the stockholders will elect by a vote in accordance with the terms of the Certificate of Incorporation and of these Bylaws, the directors to succeed those whose terms expire at such meeting. Any director may resign at any time upon written notice to the Corporation.

(e) **Nominations.** Nominations for the election of Directors may be made the Board of Directors or by any stockholder entitled to vote for the election of Directors

who complies with the provisions of Section 6(j) of Article I of these Bylaws and Article Nine of the Certificate of Incorporation of the Corporation.

3. MEETINGS.

(c) **Time**. Regular meetings of the Board of Directors shall be held at such time as the Board of Directors shall fix. Special meetings shall be held at such time as may be specified in the notice thereof.

(d) **First Meeting**. The first meeting of each newly elected Board of Directors may be held immediately after each annual meeting of the stockholders at the same place at which the meeting is held, and no notice of such meeting shall be necessary to call the meeting, provided a quorum shall be present. In the event such first meeting is not so held immediately after the annual meeting of the stockholders, it may be held at such time and place as shall be specified in the notice given as provided for special meetings of the Board of Directors, or at such time and place as shall be fixed by the consent in writing of all of the directors.

(e) **Place**. Meetings of the Board of Directors, both regular and special, shall be held at such place within or without the State of Delaware as shall be fixed by the Board of Directors.

(f) **Call**. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board or a majority of the directors.

(g) **Notice Or Actual Or Constructive Waiver**. No notice shall be required for regular meetings of the Board of Directors for which the time and place have been fixed. Written, oral or any other mode of notice of the time and place shall be given for special meetings at least twenty-four hours prior to the meeting; notice may be given by telephone or telefax (in which case it is effective when given), by overnight courier or messenger (in which case it is effective when received) or by mail (in which case it is effective seventy-two hours after mailing by prepaid first class mail). The notice of any meeting need not specify the purpose of the meeting. Any requirement of furnishing a notice shall be waived by any director who signs a written waiver of such notice before or after the time stated therein. Attendance of a director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except when the director 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.

(h) **Quorum And Action**. A majority of the Whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided that such majority shall constitute at least one-third (1/3) of the Whole Board. Any director may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment by means of which all directors participating in the meeting can hear each other, and

such participation in a meeting of the Board of Directors shall constitute presence in person at such meeting. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the DGCL, the act of the Board of Directors shall be the act by vote of a majority of the directors present at a meeting, a quorum being present. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the DGCL, the Certificate of Incorporation and these Bylaws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board of Directors.

(i) **Chairman Of The Meeting**. The Chairman of the Board, if present and acting, shall preside at all meetings of the Board of Directors. Otherwise, any other director chosen by the Board of Directors shall preside.

4. REMOVAL OF DIRECTORS.

Any or all of the directors may be removed only in accordance with Article Thirteen of the Certificate of Incorporation of the Corporation.

5. COMMITTEES.

The Board of Directors may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Except as otherwise provided by law, any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. In the absence or disqualification of any member of any such committee or committees, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

6. ACTION IN WRITING.

Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or 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 of Directors or committee.

ARTICLE III

OFFICERS

1. OFFICERS.

The Board of Directors may elect or appoint a Chairman of the Board of Directors, a President, one or more Vice Presidents (which may be denominated with additional descriptive titles), a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as it may determine. The Board of Directors shall designate from among such elected officers a chief executive officer, a chief operating officer, a chief financial officer and a principal accounting officer, and may from time to time make, or provide for, other designations it deems appropriate. The Board of Directors may also appoint, or provide for the appointment of, such other officers and agents as may from time to time appear necessary or advisable in the conduct of the affairs of the Corporation. Any number of offices may be held by the same person, except that no person may at the same time be both the President and the Secretary.

2. TERM OF OFFICE AND REMOVAL.

Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the meeting of the Board of Directors following the next annual meeting of stockholders and until such officer's successor has been elected and qualified or until the earlier death, retirement, resignation or removal of such officer. The Board of Directors may remove any officer for cause or without cause.

3. AUTHORITY AND DUTIES.

All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws, or, to the extent not so provided, by the Board of Directors.

4. THE CHAIRMAN OF THE BOARD OF DIRECTORS.

The Chairman of the Board may be, but shall not be required to be, the Chief Executive Officer of the Corporation. In addition, the Chairman of the Board of Directors, if present and acting, shall preside at all meetings of the stockholders and all meetings of the Board of Directors.

5. THE PRESIDENT.

The President may be, but shall not be required to be, the chief operating officer and/or chief financial officer of the Corporation. Except to the extent otherwise provided in these Bylaws, the President shall have general authority to execute any and all documents in the name of the Corporation and to supervise and control all of the business and affairs of the Corporation. In the absence of the President, his duties shall be performed and his powers may be exercised by the chief financial officer of the Corporation or by such other officer as shall be designated by the Board of Directors.

6. VICE PRESIDENTS.

Any Vice President that may have been appointed and shall perform such other duties as the Board of Directors shall prescribe.

7. THE SECRETARY.

The Secretary shall keep in safe custody the seal of the Corporation and affix it to any instrument when authorized by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board, the President or the chief financial officer. The Secretary (or in such officer's absence, an Assistant Secretary, but if neither is present another person selected by the chairman for the meeting) shall have the duty to record the proceedings of the meetings of the stockholders and Board of Directors in a book to be kept for that purpose.

8. THE TREASURER.

The Treasurer shall have the care and custody of the corporate funds, and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board of Directors, or whenever they may require it, an accounting of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for such term, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of such office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

ARTICLE IV

CORPORATE SEAL AND CORPORATE BOOKS

The corporate seal shall be in such form as the Board of Directors shall prescribe. The books of the Corporation may be kept within or without the State of Delaware, at such place or places as the Board of Directors may, from time to time, determine.

ARTICLE V

FISCAL YEAR

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VI

INDEMNITY

1. INDEMNIFICATION.

(m) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification than permitted prior thereto), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such indemnitee in connection with such action, suit or proceeding, if the indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of the proceeding, whether by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe such conduct was unlawful.

(n) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification than permitted prior thereto), against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such suit or action was brought, shall determine, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

2. ADVANCEMENT OF EXPENSES.

All reasonable expenses incurred by or on behalf of the indemnitee in connection with any suit, action or proceeding may be advanced to the indemnitee by the Corporation.

3. INDEMNIFICATION NOT EXCLUSIVE.

The indemnification and advancement of expenses provided for in this Article V shall not be deemed exclusive of any other rights which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, a Bylaw of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

4. CONTINUATION OF INDEMNIFICATION.

The right to indemnification and advancement of expenses provided by this Article V shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE VII

AMENDMENTS

1. BY THE STOCKHOLDERS.

These Bylaws may be amended by the stockholders only (i) at a meeting called for that purpose and (ii) in a manner not inconsistent with any provision of law or the Certificate of Incorporation of the Corporation.

2. BY THE DIRECTORS.

These Bylaws may be amended by the affirmative vote of a majority of the Whole Board, in any manner not inconsistent with any provision of law or the Certificate of Incorporation of the Corporation.

Exhibit 10.28

VOLUME SUBMITTER
DEFINED CONTRIBUTION PLAN

(PROFIT SHARING/401(K) PLAN)

A FIDELITY VOLUME SUBMITTER PLAN Adoption Agreement No. 001

For use With
Fidelity Basic Plan Document No. 17

TABLE OF CONTENTS

ADOPTION AGREEMENT

ARTICLE 1

PROFIT SHARING/401(k) PLAN

1.01 PLAN INFORMATION (a) ***Name of Plan*:**

This is the The Children's Place 401(k) Savings Plan (the "Plan")

(b) ***Type of Plan:***

(1) ☑ 401(k) Only

(2) ☐ 401(k) and Profit Sharing

(3) ☐ Profit Sharing Only

(c) ***Administrator Name (if not the Employer)***:

(d) ***Plan Year End*** (month/day): 12/31 **(e)** ***Three Digit Plan Number***: 001 **(f)** ***Limitation Year*** (check one):

(1) ☐ Calendar Year

(2) ☑ Plan Year

(3) ☐ Other, (12-month period ending on the following date):

(g) ***Plan Status***:

(1) Adoption Agreement Effective Date: 10/01/2015 (cannot be earlier than the later of (i) the first day of the 2007 Plan Year or (ii) the effective date of the Plan)

(2) The Adoption Agreement Effective Date is:

(A) ☐ A new Plan Effective Date

(B) ☑ An amendment Effective Date (check one):

(i) ☐ an amendment and restatement of this Basic Plan Document No. 17 (or restatement of former Fidelity Basic Plan Document No. 14) and its Adoption Agreement previously executed by the Employer;

(ii) ☑ a conversion to Basic Plan Document No. 17 and its Adoption Agreement.

The original effective date of the Plan: 09/01/1990

(3) ☐ **Special Effective Dates.** Certain provisions of the Plan shall be effective as of a date other than the date specified in Subsection 1.01(g)(1) above. Please complete the Special Effective Dates Addendum to the Adoption Agreement indicating the affected provisions and their effective dates.

(4) ☐ **Plan Merger Effective Dates.** Certain plan(s) were merged into the Plan on or after the date specified in Subsection 1.01(g)(1) above. Please complete the appropriate subsection(s) of the Plan Mergers Addendum.

(5) ☐ **Frozen Plan.** The Plan is currently frozen. While the Plan is frozen, the definition of Compensation for purposes of determining contributions under Section 5.02 of the Basic Plan Document shall not include compensation earned after the date the Plan is frozen. Plan assets will continue to be held on behalf of Participants and their Beneficiaries until distributed in accordance with the Plan terms. ***(If this provision is selected, it will override any conflicting provision selected in the Adoption Agreement.)****(Choose one.)*

(A) ☐ Contributions under the Plan are permanently discontinued. Accounts of all Employees shall be 100% vested without regard to any schedule selected in 1.16.

(B) ☐ Contributions under the Plan are temporarily suspended. The Employer contemplates that contributions will resume at a later date.

Note: Deferral Contributions and Employee Contributions shall not be taken from compensation earned after the date the Plan is frozen, however, loan repayments shall continue to be made until the loan obligation is satisfied.

1.02 EMPLOYER

(a) ***Employer Name*****:** The Children's Place, Inc.

(1) Employer's Tax Identification Number: 31-1241495

(2) Employer's fiscal year end: The Saturday that is the closest to 01/31

(b) ***The term "Employer" includes the following participating employers*** (choose one)**: (1)** ☐ No other employers participate in the Plan.

(2) ☑ Certain other employers participate in the Plan. Please complete the Participating Employers Addendum.

1.03 TRUSTEE

(a) ***Trustee Name***: Fidelity Management Trust Company
Address: 82 Devonshire Street
Boston, MA 02109

1.04 COVERAGE

All Employees who meet the conditions specified below shall be eligible to participate in the Plan:

(a) ***Age Requirement*** (check one)**:**

(1) ☑ no age requirement.

(2) ☐ must have attained age: **(not to exceed 21).**

(b) ***Eligibility Service Requirement(s)*** - There shall be no eligibility service requirements for contributions to the Plan unless selected below for the following contributions:

(1) Deferral Contributions, Employee Contributions, Qualified Nonelective Employer Contributions	**(2)** Nonelective Employer Contributions	**(3)** Matching Employer Contributions	
	X		N/A – not applicable – type(s) of contribution not selected
			days of Eligibility Service requirement (no minimum Hours of Service). ***(Do not indicate more than 365 days in column (1) or 730 days in either of the other columns.)***
3.00		12.00	months of Eligibility Service requirement (no minimum Hours of Service). ***(Do not indicate more than 12 months in column (1) or 24 months in either of the other columns.)***
			one year of Eligibility Service requirement (at least (not to exceed 1,000) Hours of Service are required during the Eligibility Computation Period).
			two years of Eligibility Service requirement (at least (not to exceed 1,000) Hours of Service are required during the Eligibility Computation Period). ***(Select only for column (2) or (3).)***

Note: If the Employer selects an Eligibility Service requirement of more than 365 days or 12 months or selects the two year Eligibility Service requirement, then (1) contributions subject to such Eligibility Service requirement must be 100% vested when made, and (2) if the Plan has selected either Safe Harbor Matching Employer Contributions in Option 1.11

(a)(3) or Safe Harbor Formula in Option 1.12(a)(3), then only one year of Eligibility Service (with at least 1000 Hours of Service) is required for such contributions.

Note: The Plan shall be disaggregated for testing pursuant to Section 6.09 of the Basic Plan Document if a more stringent eligibility requirement is elected in Subsection 1.04(a) or (b) either (1) with respect to Matching Employer Contributions and Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, is selected or (2) with respect to Nonelective Employer Contributions and Option 1.12(a)(3), 401(k) Safe Harbor Formula, is selected, than with respect to Deferral Contributions.

Note: If different eligibility requirements are selected for Deferral Contributions than for Employer Contributions and the Plan becomes a "top-heavy plan," the Employer may need to make a minimum Employer Contribution on behalf of non-key Employees who have satisfied the eligibility requirements for Deferral Contributions and are employed on the last day of the Plan Year, but have not satisfied the eligibility requirements for Employer Contributions.

(4) ☐ **Hours of Service Crediting.** Hours of Service will be credited in accordance with the equivalency selected in the Hours of Service Equivalencies Addendum rather than in accordance with the equivalency described in Subsection 2.01(cc) of the Basic Plan Document. Please complete the Hours of Service Equivalencies Addendum.

(c) ***Eligibility Computation Period*** - The Eligibility Computation Period is the 12-consecutive-month period beginning on an Employee's Employment Commencement Date and each 12-consecutive-month period beginning on an anniversary of his Employment Commencement Date.

(d) ***Eligible Class of Employees***:

(1) Generally, the Employees eligible to participate in the Plan are (choose one):

(A) ☑ all Employees of the Employer.

(B) ☐ only Employees of the Employer who are covered by (choose one):

(i) ☐ any collective bargaining agreement with the Employer, provided that the agreement requires the employees to be included under the Plan.

(ii) ☐ the following collective bargaining agreement(s) with the Employer:

(2) ☑ Notwithstanding the selection in Subsection 1.04(d)(1) above, certain Employees of the Employer are excluded from participation in the Plan:

Note: Certain employees (e.g., residents of Puerto Rico) are excluded automatically pursuant to Subsection 2.01(r) of the Basic Plan Document, regardless of the Employer's selection under this Subsection 1.04(d)(2).

(A) ☑ employees covered by a collective bargaining agreement, unless the agreement requires the employees to be included under the Plan. ***(Do not choose if Option 1.04(d)(1)(B) is selected above.)***

(B) Â Highly Compensated Employees as defined in Subsection 2.01(bb) of the Basic Plan Document.

(C) ☑ Leased Employees as defined in Subsection 2.01(ee) of the Basic Plan Document.

(D) ☑ nonresident aliens who do not receive any earned income from the Employer which constitutes United States source income.

(E) ☑ other:
Freelance Personnel

Note: The eligible group defined above must be a definitely determinable group and cannot be subject to the discretion of the Employer. In addition, the design of the classifications cannot be such that the only Non-Highly Compensated Employees benefiting under the Plan are those with the lowest compensation and/or the shortest periods of service and who may represent the minimum number of such employees necessary to satisfy coverage under Code Section 410(b).

(i) ☐ Notwithstanding this exclusion, any Employee who would otherwise be excluded from participation solely because he is in a group described below shall be part of the class of Employees eligible to participate in the Plan and, if he has never been a Participant in the Plan previously, will be required to meet different age and service requirements for eligibility than those specified in Subsections (a) and (b) permitting him to enter on the Entry Date immediately following the end of the Eligibility Computation Period during which he first satisfies the following requirements: (I) has attained age 21 and (II) has completed at least 1,000 Hours of Service. This Subsection 1.04(d)(2)(E)(i) applies to the following excluded Employees ***(Must choose if an exclusion in (E) above directly or indirectly imposes an age and/or service requirement for participation, for example by excluding part- time or temporary employees)***:

Note: Exclusion of employees may adversely affect the Plan's satisfaction of the minimum coverage requirements, as provided in Code Section 410(b).

(e) ***Entry Dates*** – The Entry Dates shall be as indicated below with respect to the applicable type(s) of contribution. (Complete the table below by checking the appropriate boxes to indicate Entry Dates for the contributions listed.)

	(1) Deferral Contributions, Employee Contributions, Qualified Nonelective Employer Contributions	**(2)** Nonelective Employer Contributions	**(3)** Matching Employer Contributions	
(A)		X		N/A – not applicable – type(s) of contribution not selected
(B)				Immediate upon meeting the eligibility requirements specified in Subsections 1.04(a) and 1.04(b)
(C)				the first day of each Plan Year and the first day of the seventh month of each Plan Year
(D)				the first day of each Plan Year and the first day of the fourth, seventh, and tenth months of each Plan Year
(E)	X		X	the first day of each month
(F)				the first day of each Plan Year ***(Do not select if there is an Eligibility Service requirement of more than six months in Subsection 1.04(b) for the type(s) of contribution or if there is an age requirement of more than 20 1/2 in Subsection 1.04(a) for the type(s) of contribution.)***

Note: If another plan is merged into the Plan, the Plan may provide on the Plan Mergers Addendum that the effective date of the merger is also an Entry Date with respect to certain Employees.

(f) ***Date of Initial Participation*** - An Eligible Employee shall become a Participant on the Entry Date coinciding with or immediately following the date such Eligible Employee completes the age and service requirement(s) in Subsections 1.04(a) and (b), if any, or in Subsection 1.04(d)(2)(E)(i), if applicable, except (check one):

(1) ☑ no exceptions.

(2) ☐ Eligible Employees employed on *(insert date)* shall become Participants on that date.

(3) ☐ Eligible Employees who meet the age and service requirement(s) of Subsections 1.04(a) and (b) on *(insert date)* shall become Participants on that date.

1.05 COMPENSATION

Compensation, as defined in Subsection 2.01(k) of the Basic Plan Document, shall be modified as provided below.

(a) ***Compensation Exclusions*** - Compensation shall not include reimbursements or other expense allowances, fringe benefits (cash and non-cash), moving expenses, deferred compensation, welfare benefits, unused leave (as described in Section 2.01(k)(2)), or any of the following additional item(s):

(1) ☐ No additional exclusions.

(2) ☐ Differential Wages.

(3) ☐ Overtime pay.

(4) ☐ Bonuses.

(5) ☐ Commissions.

(6) ☐ The value of restricted stock or of a qualified or a non-qualified stock option granted to an Employee by the Employer to the extent such value is includable in the Employee's taxable income.

(7) ☐ Severance pay received prior to termination of employment. *(Severance pay received following termination of employment is a severance amount as described in Subsection 2.01(k) and is always excluded.)*

(8) ☑ See Additional Provisions Addendum.

Note: If the Employer selects an option, other than (1) or (2) above, with respect to Nonelective Employer Contributions, Compensation must be tested to show that it meets the requirements of Code Section 414(s), unless 401(k) Safe Harbor Formula has been selected, or the allocations must be tested to show that they meet the general test under regulations issued under Code Section 401(a)(4). If the Employer selects an option, other than (1) or (2) above, and Option 1.11(a)(3), Safe Harbor Matching Employer Contributions, is selected, a Participant must be permitted to make Deferral Contributions under the Plan sufficient to receive the full 401(k) Safe Harbor Matching Employer Contribution, determined as a percentage of Compensation meeting the requirements of Code Section 414(s).

(b) ***Compensation for the First Year of Participation*** - Contributions for the Plan Year in which an Employee first becomes a Participant shall be determined based on the Employee's Compensation as provided below.

(1) ☑ Compensation for the entire Plan Year. *(Complete (A) below, if applicable. If (A) is not selected, the amount of any Nonelective Employer Contribution for the initial Plan Year will be determined in accordance with this subsection 1.05(b)(1) using only Compensation from the Effective Date of the Plan through the end of the initial Plan Year.)*

(A) ☐ For purposes of determining the amount of Nonelective Employer Contributions, other than 401(k) Safe Harbor Nonelective Employer Contributions, Compensation for the 12-month period ending on the last day of the initial Plan Year shall be used.

(2) ☐ Only Compensation for the portion of the Plan Year in which the Employee is eligible to participate in the Plan. *(Complete (A) below, if applicable. If (A) is not selected, the amount of any Nonelective Employer Contribution for the initial Plan Year will be determined in accordance with this subsection 1.05(b)(2) using only Compensation from the Effective Date of the Plan through the end of the initial Plan Year.)*

(A) ☐ For purposes of determining the amount of Nonelective Employer Contributions, other than 401(k) Safe Harbor Nonelective Employer Contributions, for those Employees who become Active Participants on the Effective Date of the Plan, Compensation for the 12-month period ending on the last day of the initial Plan Year shall be used. For all other Employees, only Compensation for the period in which they are eligible shall be used.

1.06 TESTING RULES

(a) ***ADP/ACP Present Testing Method*** - The testing method for purposes of applying the "ADP" and "ACP" tests described in Sections 6.03 and 6.06 of the Basic Plan Document shall be the (check one):

(1) ☑ **Current Year Testing Method** - The "ADP" or "ACP" of Highly Compensated Employees for the Plan Year shall be compared to the "ADP" or "ACP" of Non-Highly Compensated Employees for the same Plan Year. *(Must choose if Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)*

(2) ☐ **Prior Year Testing Method** - The "ADP" or "ACP" of Highly Compensated Employees for the Plan Year shall be compared to the "ADP" or "ACP" of Non-Highly Compensated Employees for the immediately preceding Plan Year. *(Do <u>not</u> choose if Option 1.10(a)(1), alternative allocation formula for Qualified Nonelective Contributions.)*

(3) ☐ Not applicable. *(Only if Option 1.01(b)(3), Profit Sharing Only, is checked and Option 1.08(a)(1), Future Employee Contributions, and Option 1.11(a), Matching Employer Contributions, are <u>not</u> checked or Option 1.04(d)(2)(B), excluding all Highly Compensated Employees from the eligible class of Employees, is checked.)*

Note: Restrictions apply on elections to change testing methods.

(b) ***First Year Testing Method*** - If the first Plan Year that the Plan, other than a successor plan, permits Deferral Contributions or provides for either Employee or Matching Employer Contributions, occurs on or after the Effective Date specified in Subsection 1.01(g), the "ADP" and/or "ACP" test for such first Plan Year shall be applied using the actual "ADP" and/or "ACP" of Non-Highly Compensated Employees for such first Plan Year, unless otherwise provided below.

(1) ☐ The "ADP" and/or "ACP" test for the first Plan Year that the Plan permits Deferral Contributions or provides for either Employee or Matching Employer Contributions shall be applied assuming a 3% "ADP" and/or "ACP" for Non-Highly Compensated Employees. *(Do not choose unless Plan uses prior year testing method described in Subsection 1.06(a)(2).)*

(c) ***HCE Determinations: Look Back Year*** - The look back year for purposes of determining which Employees are Highly Compensated Employees shall be the 12-consecutive-month period preceding the Plan Year, unless otherwise provided below.

(1) ☐ **Calendar Year Determination** - The look back year shall be the calendar year beginning within the preceding Plan Year. *(Do not choose if the Plan Year is the calendar year.)*

(d) ***HCE Determinations: Top Paid Group Election*** - All Employees with Compensation exceeding the dollar amount specified in Code Section 414(q)(1)(B)(i) adjusted pursuant to Code Section 415(d) (e.g., $115,000 for "determination years" beginning in 2013 and "look-back years" beginning in 2012) shall be considered Highly Compensated Employees, unless Top Paid Group Election below is checked.

(1) ☐ **Top Paid Group Election** - Employees with Compensation exceeding the dollar amount specified in Code Section 414(q)(1)(B)(i) adjusted pursuant to Code Section 415(d) shall be considered Highly Compensated Employees only if they are in the top paid group (the top 20% of Employees ranked by Compensation).

Note: Plan provisions for Sections 1.06(c) and 1.06(d) must apply consistently to all retirement plans of the Employer for determination years that begin with or within the same calendar year

1.07 <u>DEFERRAL CONTRIBUTIONS</u>

(a) ☑ ***Deferral Contributions*** - Participants may elect to have a portion of their Compensation contributed to the Plan on a before-tax basis pursuant to Code Section 401(k).

(1) **Regular Contributions -** The Employer shall make a Deferral Contribution in accordance with Section 5.03 of the Basic Plan Document on behalf of each Participant who has an executed salary reduction agreement in effect with the Employer for the payroll period in question. Such Deferral Contribution shall not exceed the deferral limit below.

(A) ☑ The deferral limit is 60.00% ***(must be a whole number multiple of one percent)*** of Compensation.

Note: If Catch-Up Contributions are selected below, a Participant eligible to make Catch-Up Contributions shall (subject to the statutory limits in Treasury Regulation Section 1.414(v)-1(b)(1)(i)) in any event be permitted to contribute in excess of the specified deferral limit up to 100% of the Participant's "effectively available Compensation" (*i.e.*, Compensation available after other withholding).

(B) ☐ Instead of specifying a percentage of Compensation, a Participant's salary reduction agreement may specify a dollar amount to be contributed each payroll period, provided such dollar amount does not exceed the maximum percentage of Compensation specified in Subsection 5.03(a) of the Basic Plan Document or in Subsection 1.07(a)(1)(A) above, as applicable.

(C) A Participant may change, on a prospective basis, his salary reduction agreement (check one):

(i) ☑ as of the beginning of each payroll period.

(ii) Â as of the first day of each month.

(iii) Â as of each Entry Date. *(Do not select if immediate entry is elected with respect to Deferral Contributions in Subsection 1.04(e).)*

(iv) Â as of the first day of each calendar quarter.

(v) Â as of the first day of each Plan Year.

(vi) ☐ other. (Specify, but must be at least once per Plan Year)

Note: Notwithstanding the Employer's election hereunder, if Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked, the Plan provides that an Active Participant may change his salary reduction agreement for the Plan Year within a reasonable period (not fewer than 30 days) of receiving the notice described in Section 6.09 of the Basic Plan Document.

(D) A Participant may revoke, on a prospective basis, a salary reduction agreement at any time upon proper notice to the Administrator but in such case may not complete a new salary reduction agreement until (check one):

(i) ☑ the beginning of the next payroll period.

(ii) ☐ the first day of the next month.

(iii) ☐ the next Entry Date. *(Do not select if immediate entry is elected with respect to Deferral Contributions in Subsection 1.04(e).)*

(iv) ☐ as of the first day of each calendar quarter.

(v) ☐ as of the first day of each Plan Year.

(vi) ☐ other. (Specify, but must be at least once per Plan Year)

(2) ☐ **Additional Deferral Contributions** - The Employer shall allow a Participant upon proper notice and approval to enter into a special salary reduction agreement to make additional Deferral Contributions in an amount up to 100% of their effectively available Compensation for the payroll period(s) designated by the Employer.

(3) ☐ **Bonus Contributions** - The Employer shall allow a Participant upon proper notice and approval to enter into a special salary reduction agreement to make Deferral Contributions from any Employer paid cash bonuses designated by the Employer on a uniform and nondiscriminatory basis that are made for such Participants during the Plan Year in an amount up to 100% of such bonuses. The Compensation definition elected by the Employer in Subsection 1.05(a) must include bonuses if bonus contributions are permitted. Unless a Participant has entered into a special salary reduction agreement with respect to bonuses, the percentage deferred from any Employer paid cash bonus shall be (check (A) or (B) below):

(A) ☐ Zero.

(B) ☐ The same percentage elected by the Participant for his regular contributions in accordance with Subsection 1.07(a)(1) above or deemed to have been elected by the Participant in accordance with Option 1.07(a)(6) below.

Note: A Participant's contributions under Subsection 1.07(a)(2) and/or (3) may not cause the Participant to exceed the percentage limit specified by the Employer in Subsection 1.07(a)(1)(A) for the full Plan Year. If the Administrator anticipates that the Plan will not satisfy the "ADP" and/or "ACP" test for the year, the Administrator may reduce the rate of Deferral Contributions of Participants who are Highly Compensated

Employees to an amount objectively determined by the Administrator to be necessary to satisfy the "ADP" and/or "ACP" test.

(4) ☑ **Catch-Up Contributions** - The following Participants who have attained or are expected to attain age 50 before the close of the taxable year will be permitted to make Catch-Up Contributions to the Plan, as described in Subsection 5.03(a) of the Basic Plan Document:

(A) ☑ All such Participants.

(B) Â All such Participants except those covered by a collective-bargaining agreement under which retirement benefits were a subject of good faith bargaining unless the bargaining agreement specifically provides for Catch-Up Contributions to be made on behalf of such Participants.

Note: The Employer must ***not*** select Option 1.07(a)(4) above unless all applicable plans (as defined in Code Section 414(v)(6)(A), other than any plan that is qualified under Puerto Rican law or that covers only employees who are covered by a collective bargaining agreement under which retirement benefits were a subject of good faith bargaining) maintained by the Employer and by any other employer that is treated as a single employer with the Employer under Code Section 414(b), (c), (m), or (o) also permit Catch-Up Contributions in the same dollar amount.

(5) ☑ ***Roth 401(k) Contributions*.** Participants shall be permitted to irrevocably designate pursuant to Subsection 5.03(b) of the Basic Plan Document that a portion or all of the Deferral Contributions made under this Subsection 1.07(a) are Roth 401(k) Contributions that are includable in the Participant's gross income at the time deferred.

(6) Â ***Automatic Enrollment Contributions.*** Unless they affirmatively elect otherwise, certain Eligible Employees will have their Compensation reduced in accordance with the provisions of Subsection 5.03(c) of the Basic Plan Document (an "Automatic Enrollment Contribution"), Section 1.07(b) of the Additional Provisions Addendum, and the following:

(A) Â All newly Eligible Employees shall be subject to the same automatic enrollment provisions.

(B) Â The automatic enrollment provisions of the Plan shall be/are different for different groups of Eligible Employees.

(C) Â Some form of automatic deferral increase will be part of the automatic enrollment provisions.

(D) Â A qualified automatic contribution arrangement described in Code Section 401(k)(13) (“QACA”) has been adopted. *(Select Option 1.11(a)(3) or 1.12(a)(3) and complete appropriate Addendum.)*

(E) Â An eligible automatic enrollment arrangement described in Code Section 414(w) (“EACA”) has been adopted.

1.08 EMPLOYEE CONTRIBUTIONS (AFTER-TAX CONTRIBUTIONS)

(a) ☐ ***Future Employee Contributions*** - Participants may make voluntary, non-deductible, after-tax Employee Contributions pursuant to Section 5.04 of the Basic Plan Document. The Employee

Contribution made on behalf of an Active Participant each payroll period shall not exceed the contribution limit specified in Subsection 1.08(a)(1) below.

(1) The contribution limit is __% of Compensation.

(b) Â ***Frozen Employee Contributions*** - Participants may not currently make after-tax Employee Contributions to the Plan, but the Employer does maintain frozen Employee Contributions Accounts.

1.09 ROLLOVER CONTRIBUTIONS

(a) ☑ ***Rollover Contributions*** - Employees may roll over eligible amounts from other plans to the Plan subject to the additional following requirements:

(1) ☑ The Plan will not accept rollovers of after-tax employee contributions.

(2) Â The Plan will not accept rollovers of designated Roth contributions. ***(Must be selected if Roth 401(k) Contributions are not elected in Subsection 1.07(a)(5).)***

(b) Â ***In-Plan Roth Rollover Contributions (Choose only if Roth 401(k) Contributions are selected in Option 1.07(a)(5) above)*** – Unless Option 1.09(b)(1) is selected below and in accordance with Section 5.06 of the Basic Plan Document, any Participant, spousal alternate payee or spousal Beneficiary may elect to have otherwise distributable portions of his Account, which are not part of an outstanding loan balance pursuant to Article 9 of the Basic Plan Document and are not “designated Roth contributions” under the Plan, be considered “designated Roth contributions” for purposes of the Plan.

(1) Â Only a Participant who is still employed by the Employer (or a spousal alternate payee or spousal Beneficiary of such a Participant) may elect to make such an in-plan Roth Rollover.

1.10 QUALIFIED NONELECTIVE EMPLOYER CONTRIBUTIONS

(a) ***Qualified Nonelective Employer Contributions*** - The Employer may contribute an amount which it designates as a Qualified Nonelective Employer Contribution for any permissible purpose, as provided in Section 5.07 of the Basic Plan Document. If Option 1.07(a) or 1.08(a)(1) is checked, except as provided in Section 5.07 of the Basic Plan Document or as otherwise provided below, Qualified Nonelective Employer Contributions shall be allocated to all Participants who were eligible to participate in the Plan at any time during the Plan Year and are Non-Highly Compensated Employees in the ratio which each such Participant's "testing compensation", as defined in Subsection 6.01(s) of the Basic Plan Document, for the Plan Year bears to the total of all such Participants' "testing compensation" for the Plan Year.

(1) ☐ Qualified Nonelective Employer Contributions shall be allocated only among such Participants described above who are designated by the Employer as eligible to receive a Qualified Nonelective Employer Contribution for the Plan Year. The amount of the Qualified Nonelective Employer Contribution allocated to each such Participant shall be as designated by the Employer, but not in excess of the "regulatory maximum." The "regulatory maximum" means 5% (10% for Qualified Nonelective Contributions made in connection with the Employer's obligation to pay prevailing wages) of the "testing compensation" for such Participant for the Plan Year. The "regulatory maximum" shall apply separately with respect to Qualified Nonelective Contributions to be included in the "ADP" test and Qualified Nonelective Contributions to be included in the "ACP" test.

(Cannot be selected if the Employer has elected prior year testing in Subsection 1.06(a)(2).)

1.11 MATCHING EMPLOYER CONTRIBUTIONS

(a) ☑ ***Matching Employer Contributions*** **-** The Employer shall make Matching Employer Contributions on behalf of each of its "eligible" Participants as provided in this Section 1.11. For purposes of this Section 1.11, an "eligible" Participant means any Participant who is an Active Participant during the Contribution Period and who satisfies the requirements of Subsection 1.11(e) or Section 1.13.

(1) ☑ **Non-Discretionary Matching Employer Contributions -** The Employer shall make a Matching Employer Contribution on behalf of each "eligible" Participant in an amount equal to the following percentage of the eligible contributions made by the "eligible" Participant during the Contribution Period (complete all that apply):

(A) ☐ Flat Percentage Match: __% to all “eligible” Participants.

(B) ☐ Tiered Match: ___% of the first __% of the "eligible" Participant's Compensation contributed to the Plan,

% of the next

Compensation contributed to the Plan,

% of the next

Compensation contributed to the Plan.

_% of the "eligible" Participant's

_% of the "eligible" Participant's

Note: The group of "eligible" Participants benefiting under each match rate must satisfy the nondiscriminatory coverage requirements of Code Section 410(b) and the group to whom the match rate is effectively available must not substantially favor HCEs.

(C) Â Li mit on Non-Discretionary Matching Employer Contributions (check the app ropriate box(es)):

(i) Â Contributions in excess of _____ _% of the "eligible" Participant's Compensation for the Contribution Period shall not be considered for non-discretionary Matching Employer Contributions.

(ii) Â Matching Employer Contributions for each "eligible" Participant for each Plan Year shall be limited to $___.

(2) ☐ **Discretionary Matching Employer Contributions -** The Employer may make a discretionary Matching Employer Contribution on behalf of "eligible" Participants, or a designated group of "eligible" Participants, in accordance with Section 5.08 of the Basic Plan Document. An "eligible" Participant's allocable share of the discretionary Matching Employer

Contribution shall be a percentage of the eligible contributions made by the "eligible" Participant during the Contribution Period. The Employer may limit the eligible contributions taken into account under the allocation formula to contributions up to a specified percentage of Compensation or dollar amount or may provide for Matching Employer Contributions to be made in a different ratio for eligible contributions above and below a specified percentage of Compensation or dollar amount. The Matching Employer Contribution is allocated among “eligible” Participants so that each “eligible” Participant receives a rate or amount that is identical to the rate or amount received by all other “eligible” Participants (or designated group of “eligible” Participants, if applicable)

as determined by the Employer on or before the due date of the Employer’s tax return for the year of allocation.

Note: If the Matching Employer Contribution made in accordance with this Subsection 1.11(a)(2) matches different percentages of contributions for different groups of "eligible" Participants, the group of "eligible" Participants benefiting under each match rate must satisfy the nondiscriminatory coverage requirements of Code Section 410(b) and the group to whom the match rate is effectively available must not substantially favor HCEs.

(A) Â 4% Limitation on Discretionary Matching Employer Contributions for Deemed Satisfaction of "ACP" Test - In no event may the dollar amount of the discretionary Matching Employer Contribution made on an "eligible" Participant's behalf for the Plan Year exceed 4% of the "eligible" Participant's Compensation for the Plan Year. ***(Only if Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)***

(3) ☑ **401(k) Safe Harbor Matching Employer Contributions** - If the Employer elects one of the safe harbor formula Options provided in the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement and provides written notice each Plan Year to all Active Participants of their rights and obligations under the Plan, the Plan shall be deemed to satisfy the "ADP" test and, under certain circumstances, the "ACP" test.

(4) ☑ See Additional Provisions Addendum.

(b) ☐ ***Additional Matching Employer Contributions*** - The Employer may at Plan Year end make an additional Matching Employer Contribution on behalf of each "eligible" Participant in an amount equal to a percentage of the eligible contributions made by each "eligible" Participant during the Plan Year. The additional Matching Employer Contribution may be limited to match only contributions up to a specified percentage of Compensation or limit the amount of the match to a specified dollar amount.

Note: If the additional Matching Employer Contribution made in accordance with this Subsection 1.11(b) matches different percentages of contributions for different groups of "eligible" Participants, the group of "eligible" Participants benefiting under each match rate must satisfy the nondiscriminatory coverage requirements of Code Section 410(b) and the group to whom the match rate is effectively available must not substantially favor HCEs.

(1) ☐ **4% Limitation on additional Matching Employer Contributions for Deemed Satisfaction of "ACP" Test** - In no event may the dollar amount of the additional Matching Employer Contribution made on an "eligible" Participant's behalf for the Plan Year exceed 4% of the "eligible" Participant's Compensation for the Plan Year. *(Only if Option 1.11(a)*

(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)

Note: If the Employer elected Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, above and wants to be deemed to have satisfied the "ADP" test, the additional Matching Employer Contribution must meet the requirements of Section 6.09 of the Basic Plan Document. In addition to the foregoing requirements, if the Employer elected Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions, and wants to be deemed to have satisfied the "ACP" test with respect to Matching Employer Contributions for the Plan Year, the eligible contributions matched may not exceed the limitations in
Section 6.10 of the Basic Plan Document.

(c) ***Contributions Matched*** - The Employer matches the following contributions (check appropriate box(es)):

(1) Deferral Contributions - Deferral Contributions made to the Plan are matched at the rate specified in this Section 1.11. Catch-Up Contributions are not matched unless the Employer elects Option 1.11(c)(1)(A) below.

(A) ☑ Catch-Up Contributions made to the Plan pursuant to Subsection 1.07(a)(4) are matched at the rates specified in this Section 1.11.

Note: Notwithstanding the above, if the Employer elected Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, Deferral Contributions shall be matched at the rate specified in the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement without regard to whether they are Catch-Up Contributions.

(d) ***Contribution Period for Matching Employer Contributions*** - The Contribution Period for purposes of calculating the amount of Matching Employer Contributions is:

(1) Â each calendar month. **(2)** Â each Plan Year quarter. **(3)** Â each Plan Year.

(4) ☑ each payroll period.

(5) Â The Employer shall determine the Contribution Period for calculation of any discretionary Matching Employer Contributions elected pursuant to Option 1.11(a)(2) above at the time that the matching contribution formula is determined.

The Contribution Period for additional Matching Employer Contributions described in Subsection 1.11(b) is the Plan Year.

Note: If Option (5) is selected, one of the other options must be selected to apply to any non-discretionary Matching Employer Contributions.

Note: If Matching Employer Contributions are made more frequently than for the Contribution Period selected above, the Employer must calculate the Matching Employer Contribution required with respect to the full Contribution Period, taking into account the "eligible" Participant's contributions and Compensation for the full Contribution Period, and contribute any additional Matching Employer Contributions necessary to "true up" the Matching Employer Contribution so that the full Matching Employer Contribution is made for the Contribution Period.

(e) ***Continuing Eligibility Requirement(s)*** - A Participant who is an Active Participant during a Contribution Period and makes eligible contributions during the Contribution Period shall only be entitled to receive Matching Employer Contributions under Section 1.11 for that Contribution Period if the Participant satisfies the following requirement(s) (Check the appropriate box(es). Options (3) and (4) may not be elected together; Option (5) may not be elected with Option (2), (3), or (4); Options (2), (3), (4), (5), and (7) may not be elected with respect to Matching Employer Contributions if Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, is checked or if Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked and the Employer intends to satisfy the Code Section 401(m)(11) safe harbor with respect to Matching Employer Contributions):

(1) ☑ No requirements.

(2) Â Is employed by the Employer or a Related Employer on the last day of the Contribution Period.

(3) Â Earns at least 501 Hours of Service during the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(4) Â Earns at least **(not to exceed 1,000)** Hours of Service during the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(5) Â Either earns at least 501 Hours of Service during the Plan Year or is employed by the Employer or a Related Employer on the last day of the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(6) Â Is not a Highly Compensated Employee for the Plan Year.

(7) Â Is not a partner or a member of the Employer, if the Employer is a partnership or an entity taxed as a partnership.

(8) Â Special continuing eligibility requirement(s) for additional Matching Employer Contributions. *(Only if Option 1.11(b), Additional Matching Employer Contributions, is checked.)*

(A) The continuing eligibility requirement(s) for additional Matching Employer Contributions is/are:

(Fill in number of applicable eligibility requirement(s) from above, including the number of Hours of Service if Option (4) has been selected. Options (2), (3), (4), (5), and (7) may not be elected with respect to additional Matching Employer

Contributions if Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, is checked or if Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked and the Employer intends to satisfy the Code Section 401(m)(11) safe harbor with respect to Matching Employer Contributions.)

Note: Except when added in conjunction with the addition of a new Matching Employer Contribution, if Option (2), (3), (4), or (5) is adopted during a Contribution Period, such Option shall not become effective until the first day of the next Contribution Period. Matching Employer Contributions attributable to the Contribution Period that are funded during the Contribution Period shall not be subject to the eligibility requirements of Option (2), (3), (4), or (5). If Option (2), (3), (4), (5), or (7) is elected with respect to any Matching Employer Contributions and if Option 1.12(a)(3), 401(k) Safe Harbor Formula, is also elected, the Plan will not be deemed to satisfy the "ACP" test in accordance with Section 6.10 of the Basic Plan Document and will have to pass the "ACP" test each year.

(f) Â ***Qualified Matching Employer Contributions*** - Prior to making any Matching Employer Contribution hereunder (other than a 401(k) Safe Harbor Matching Employer Contribution), the Employer may designate all or a portion of such Matching Employer Contribution as a Qualified Matching Employer Contribution that may be used to satisfy the "ADP" test on Deferral Contributions and excluded in applying the "ACP" test on Employee and Matching Employer Contributions. Unless the additional eligibility requirement is selected below, Qualified Matching Employer Contributions shall be allocated to **all** Participants who were Active Participants during the Contribution Period and who meet the continuing eligibility requirement(s) described in Subsection 1.11(e) above for the type of Matching Employer Contribution being characterized as a Qualified Matching Employer Contribution.

(1) Â To receive an allocation of Qualified Matching Employer Contributions a Participant must also be a Non-Highly Compensated Employee for the Plan Year.

Note: Qualified Matching Employer Contributions may not be excluded in applying the "ACP" test for a Plan Year if the Employer elected Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, with respect to Nonelective Employer Contributions, and the "ADP" test is deemed satisfied under Section 6.09 of the Basic Plan Document for such Plan Year.

1.12 NONELECTIVE EMPLOYER CONTRIBUTIONS

If (a) or (b) is elected below, the Employer may make Nonelective Employer Contributions on behalf of each of its "eligible" Participants in accordance with the provisions of this Section 1.12. Except as otherwise defined in this Adoption Agreement pertaining to Nonelective Employer Contributions, for purposes of this Section 1.12, an "eligible" Participant means a Participant who is an Active Participant during the Contribution Period and who satisfies the requirements of Subsection 1.12(d) or Section 1.13.

Note: An Employer may elect both a fixed formula and a discretionary formula. If both are selected, the discretionary formula shall be treated as an additional Nonelective Employer Contribution and allocated separately in accordance with the allocation formula selected by the Employer.

(a) Â ***Fixed Formula***:

(1) Â **Fixed Percentage Employer Contribution** - For each Contribution Period, the Employer shall contribute for each "eligible" Participant a percentage of such "eligible" Participant's Compensation equal to):

(A)

% **(not to exceed 25%)** to all “eligible” Participants.

Note: The allocation formula in Option 1.12(a)(1)(A) above generally satisfies a design-based safe harbor pursuant to the regulations under Code Section 401(a)(4).

(2) Â **Fixed Flat Dollar Employer Contribution** - The Employer shall contribute for each "eligible" Participant an amount equal to:

(A) $ to all “eligible” Participants. (Complete (i) below).

(i) The contribution amount is based on an "eligible" Participant's service for the following period (check one of the following):

(I)ÂEach paid hour.

(II)ÂEach Plan Year.

(III) Â Other: ***(must be a period within the Plan Year that does not exceed one week and is uniform with respect to all "eligible" Participants)***.

Note: The allocation formula in Option 1.12(a)(2)(A) above generally satisfies a design-based safe harbor pursuant to the regulations under Code Section 401(a)(4).

(3) Â **401(k) Safe Harbor Formula** - The Nonelective Employer Contribution specified in the 401(k) Safe Harbor Nonelective Employer Contributions Addendum is intended to satisfy the safe harbor contribution requirements under Sections 401(k) and 401(m) of the Code such that the "ADP" test (and, under certain circumstances, the "ACP" test) is deemed satisfied. Please complete the 401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement. ***(Choose only if Option 1.07(a), Deferral Contributions, is checked.)***

(b) Â ***Discretionary Formula*** - The Employer may decide each Contribution Period whether to make a discretionary Nonelective Employer Contribution on behalf of "eligible" Participants in accordance with Section 5.10 of the Basic Plan Document.

(1) Â **Non-Integrated Allocation Formula** - In the ratio that each "eligible" Participant's Compensation bears to the total Compensation paid to all "eligible" Participants for the Contribution Period.

Note: The allocation formula in Option 1.12(b)(1) above generally satisfies a design-based safe harbor pursuant to the regulations under Code Section 401(a)(4).

(2) Â **Integrated Allocation Formula** - As (1) a percentage of each "eligible" Participant's Compensation plus (2) a percentage of each "eligible" Participant's Compensation in excess of the "integration level" as defined below. The percentage of Compensation in excess of the "integration level" shall be equal to the lesser of the percentage of the "eligible" Participant's Compensation allocated under (1) above or the "permitted disparity limit" as defined below.

Note: An Employer that has elected Option 1.12(a)(3), 401(k) Safe Harbor Formula, may not take Nonelective Employer Contributions made to satisfy the 401(k) safe harbor into account in applying the integrated allocation formula described above.

(A) "Integration level" means the Social Security taxable wage base for the Plan Year, unless the Employer elects a lesser amount in (i) or (ii) below.

(i)

% **(not to exceed 100%)** of the Social Security taxable wage base for the Plan Year, or

(ii) $ **(not to exceed the Social Security taxable wage base)**. "Permitted disparity limit" means the percentage provided by the following table:

The "Integration Level" is % of the Taxable Wage Base	**The "Permitted Disparity Limit" is**
20% or less	**5.7%**
More than 20%, but not more than 80%	

The Social Security taxable wage base is the contribution and benefit base in effect under Section 230 of the Social Security Act at the beginning of the Plan Year.

Note: The allocation formula in Option 1.12(b)(2) above generally satisfies a design-based safe harbor pursuant to the regulations under Code Section 401(a)(4).

Note: An Employer who maintains any other plan that provides for or imputes Social Security Integration (permitted disparity) may not elect Option 1.12(b)(2).

(c) ***Contribution Period for Nonelective Employer Contributions*** - The Contribution Period for purposes of calculating the amount of Nonelective Employer Contributions is the Plan Year, unless the Employer elects another Contribution Period below. Regardless of any selection made below, the Contribution Period for 401(k) Safe Harbor Nonelective Employer Contributions under Option 1.12(a)(3) or Nonelective Employer Contributions allocated under an integrated formula selected under Option 1.12(b)(2) is the Plan Year.

(1) Â each calendar month. **(2)** Â each Plan Year quarter. **(3)** Â each payroll period.

Note: If Nonelective Employer Contributions are made more frequently than for the Contribution Period selected above, the Employer must calculate the Nonelective Employer Contribution required with respect to the full Contribution Period, taking into account the "eligible" Participant's Compensation for the full Contribution Period, and contribute any additional Nonelective Employer Contributions necessary to "true up" the Nonelective Employer Contribution so that the full Nonelective Employer Contribution is made for the Contribution Period.

(d) ***Continuing Eligibility Requirement(s)*** - A Participant shall only be entitled to receive Nonelective Employer Contributions for a Plan Year under this Section 1.12 if the Participant is an Active Participant during the Plan Year and satisfies the following requirement(s) (Check the appropriate box(es) - Options (3) and (4) may not be elected together; Option (5) may not be elected with Option (2), (3), or (4); Options (2), (3), (4), (5), and (7) may not be elected with respect to Nonelective Employer Contributions under the fixed formula if Option 1.12(a)(3), 401(k) Safe Harbor Formula, is checked):

(1) Â No requirements.

(2) Â Is employed by the Employer or a Related Employer on the last day of the Contribution Period.

(3) Â Earns at least 501 Hours of Service during the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(4) Â Earns at least **(not to exceed 1,000)** Hours of Service during the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(5) Â Either earns at least 501 Hours of Service during the Plan Year or is employed by the Employer or a Related Employer on the last day of the Plan Year. *(Only if the Contribution Period is the Plan Year.)*

(6) Â Is not a Highly Compensated Employee for the Plan Year.

(7) Â Is not a partner or a member of the Employer, if the Employer is a partnership or an entity taxed as a partnership.

(8) Â Special continuing eligibility requirement(s) for discretionary Nonelective Employer Contributions. (Only if both Options 1.12(a) and (b) are checked.)

(A) The continuing eligibility requirement(s) for discretionary Nonelective Employer Contributions is/are:
(Fill in number of applicable eligibility requirement(s) from above, including the number of Hours of Service if Option (4) has been selected.)

Note: Except when added in conjunction with the addition of a new Nonelective Employer Contribution, if Option (2), (3), (4), or (5) is adopted during a Contribution Period, such Option shall not become effective until the first day of the next Contribution Period. Nonelective Employer Contributions attributable to the Contribution Period that are funded during the Contribution Period shall not be subject to the eligibility requirements of Option (2), (3), (4), or (5).

1.13 EXCEPTIONS TO CONTINUING ELIGIBILITY REQUIREMENTS

Â ***Death, Disability, and Retirement Exceptions*** **-** All Participants who become disabled, as defined in Section 1.15, retire, as provided in Subsection 1.14(a), (b), or (c), or die are excepted from any last day or Hours of Service requirement. For purposes of this Section, any Participant who dies while performing qualified military service as defined in Code Section 414(u)(5) will be excepted from any last day or Hours of Service requirement.

1.14 RETIREMENT

(a) ***The Normal Retirement Age under the Plan is*** (check one):

(1) ☑ age 65.

(2) Â age (specify between 55 and 64).

(3) Â later of age **(not to exceed 65)** or the **(not to exceed 5th)** anniversary of the Participant's Employment Commencement Date.

(b) ☑ The Early Retirement Age is the date the Participant attains age 55 and completes 0 years of Vesting Service.

Note: If this Option is elected, Participants who are employed by the Employer or a Related Employer on the date they reach Early Retirement Age shall be 100% vested in their Accounts under the Plan.

(c) ☑ A Participant who becomes disabled, as defined in Section 1.15, is eligible for disability retirement.

Note: If this Option is elected, Participants who are employed by the Employer or a Related Employer on the date they become disabled shall be 100% vested in their Accounts under the Plan. Pursuant to Section 11.03 of the Basic Plan Document, a Participant is not considered to be disabled until he terminates his employment with the Employer.

1.15 DEFINITION OF DISABLED

A Participant is disabled if he/she meets any of the requirements selected below:

(a) Â The Participant satisfies the requirements for benefits under the Employer's long-term disability plan.

(b) ☑ The Participant satisfies the requirements for Social Security disability benefits.

(c) Â The Participant is determined to be disabled by a physician approved by the Employer.

1.16 VESTING

A Participant's vested interest in Matching Employer Contributions and/or Nonelective Employer Contributions, other than those described in Subsection 5.11(a) of the Basic Plan Document, shall be based upon his years of Vesting Service and the schedule selected in Subsection 1.16(c) below, except as provided in the Vesting Schedule Addendum to the Adoption Agreement or as provided in Subsection 1.22(c).

(a) When years of Vesting Service are determined, the elapsed time method shall be used.

(b) Â Years of Vesting Service shall exclude service prior to the Plan's original Effective Date as listed in Subsection 1.01(g)(1) or Subsection 1.01(g)(2), as applicable.

(c) ***Vesting Schedule(s)***

(1) Nonelective Employer Contributions
(check one)**:**

(A) ☑ N/A - No Nonelective Employer Contributions

(B) Â 100% Vesting immediately

(C) Â 3 year cliff (see **C** below)

(D) Â 6 year graduated (see **D** below)

(E) Â Other vesting (complete **E1** below)

(2) Matching Employer Contributions
(check one)**:**

(A) Â N/A - No Matching Employer Contributions

(B) Â 100% Vesting immediately

(C) Â 3 year cliff (see **C** below)

(D) Â 6 year graduated (see **D** below)

(E) ☑ Other vesting (complete **E2** below)

Years of Vesting Service	Applicable Vesting Schedule(s)			
	C	**D**	**E1**	**E2**

Years of Vesting Service	Applicable Vesting Schedule(s)			
	C	**D**	**E1**	**E2**
		0%	%	— %
		0%	%	— %
0		20%	%	25 %
3	100%	40%	%	50 %
4	100%	60%	%	75 %
5	100%	80%	%	100 %
6 or more	100%	100%	%	100%

Note: A schedule elected under E1 or E2 above must be at least as favorable as one of the schedules in C or D above. If the vesting schedule is amended, any such amendment must satisfy the requirements of Section 16.04 of the Basic Plan Document

Note: The amendment of the plan to add a Fixed Nonelective Employer Contribution, Discretionary Nonelective Employer Contribution, 401(k) Safe Harbor Nonelective Employer Contribution, Fixed Matching Employer Contribution, Discretionary Matching Employer Contribution, Additional Matching Employer Contribution, or
401(k) Safe Harbor Matching Employer Contribution and an attendant vesting schedule does not constitute an amendment to a vesting schedule under Section 16.04 of the Basic Plan Document, unless a contribution source of the same type exists under the Plan on the effective date of such amendment. Any amendment to the vesting schedule of one such contribution source shall not require the amendment of the vesting schedule of any other such contribution source, notwithstanding the fact that one or more Participants may be subject to different vesting schedules for such different contribution sources.

(d) ☑ A vesting schedule or schedules different from the vesting schedule(s) selected above applies to certain Participants. Please complete Section (a) of the Vesting Schedule Addendum to the Adoption Agreement.

1.17 PREDECESSOR EMPLOYER SERVICE

(a) Â Service for purposes of eligibility in Subsection 1.04(b) and vesting in Subsection 1.16 of this Plan shall include service with the following predecessor employer(s):

1.18 PARTICIPANT LOANS

(a) ☑ Participant loans are allowed in accordance with Article 9**.**

1.19 IN-SERVICE WITHDRAWALS

Participants may make withdrawals prior to termination of employment under the following circumstances:

(a) ☑ ***Hardship Withdrawals*** - Hardship withdrawals shall be allowed in accordance with Section 10.05 of the Basic Plan Document, subject to a $500.00 minimum amount.

(1) Hardship withdrawals will be permitted from:

(A) Â A Participant's Deferral Contributions Account only.

(B) ☑ The Accounts specified in the In-Service Withdrawals Addendum. Please complete Section (a) of the In-Service Withdrawals Addendum.

(b) ☑ ***Age 59 1/2*** - Participants shall be entitled to receive a distribution of all or any portion of the following Accounts upon attainment of age 59 1/2:

(1) Â Deferral Contributions Account.

(2) ☑ All vested Account balances.

(3) Â See In-Service Withdrawals Addendum.

(c) ***Withdrawal of Employee Contributions, Rollover Contributions and certain other contributions***

(1) Unless otherwise provided below, Employee Contributions may be withdrawn in accordance with Section 10.02 of the Basic Plan Document at any time.

(A) Â Employees may not make withdrawals of Employee Contributions more frequently than:

(2) Rollover Contributions may be withdrawn in accordance with Section 10.03 of the Basic Plan Document at any time.

(3) ***Active Military Distribution (HEART Act)*** - Certain contributions restricted from distribution only due to Code Section 401(k)(2)(B)(i)(I) may be withdrawn by Participants performing military service in accordance with Section 10.01 of the Basic Plan Document at any time.

(d) Â ***Qualified Disaster Distribution*** - One or more Qualified Disaster Distributions shall be allowed in accordance with Section 10.08 of the Basic Plan Document. Please complete the In-Service Withdrawals Addendum to the Adoption Agreement identifying each such Qualified Disaster Distribution.

(e) ☑ ***Qualified Reservist Distribution*** - A Qualified Reservist Distribution shall be allowed in accordance with Section 10.09 of the Basic Plan Document.

(f) Â ***Age 62 Distribution of Money Purchase Benefits*** - A Participant who has attained at least age 62, shall be entitled to receive a distribution of all or any portion of the vested amounts attributable to benefit amounts accrued as a result of the Participant's participation in a money purchase pension plan (due to a merger into this Plan of money purchase pension plan assets), if any. ***(Choose only if Option 1.20(d)(1)(B) is selected.)***

(g) Â ***Additional In-Service Withdrawal Provisions*** - Benefits are payable as (check the appropriate box(es)):

(1) Â an in-service withdrawal of vested amounts attributable to Employer Contributions maintained in a Participant's Account (check (A) and/or (B)):

(A) Â for at least (24 or more) months.

(i) Â Special restrictions apply to such in-service withdrawals, see the In- Service Withdrawals Addendum to the Adoption Agreement.

(B) Â after the Participant has at least 60 months of participation.

(i) Â Special restrictions apply to such in-service withdrawals, see the In- Service Withdrawals Addendum to the Adoption Agreement.

(2) Â another in-service withdrawal option that is permissible under the Code. Please complete the In-Service Withdrawals Addendum to the Adoption Agreement identifying the in- service withdrawal option(s).

Note: Any withdrawal indicated in this Section may be a "protected benefit" under Code Section 411(d)(6) which can be eliminated only to the extent permitted by applicable guidance.

1.20 FORM OF DISTRIBUTIONS

Subject to Section 13.01, 13.02 and Article 14 of the Basic Plan Document, distributions under the Plan shall be paid as provided below.

(a) ***Lump Sum Payments*** - Lump sum payments are always available under the Plan and are the normal form of payment under the Plan except as modified in Subsection 1.20(d)(2) below.

(b) ☑ ***Installment Payments*** - Participants may elect distribution under a systematic withdrawal plan (installments).

(c) Â ***Partial Withdrawals*** - A Participant whose employment has terminated and whose Account is distributable in accordance with the provisions of Article 12 of the Basic Plan Document may elect to withdraw any portion of his Distributable vested interest in his Account in cash at any time.

(d) Â ***Annuities*** (Check if the Plan is retaining any annuity form(s) of payment.)

(1) ÂAn annuity form of payment is available under the Plan because the Plan either converted from or received a transfer of assets from a plan that was subject to the minimum funding requirements of Code Section 412 and therefore an annuity form of payment is a protected benefit under the Plan in accordance with Code Section 411(d)(6).

(2) The normal form of payment under the Plan is (check (A) or (B)):

(A)ÂLump sum is the normal form of payment for:

(i)ÂAll Participants

(ii)ÂAll Participants except those as indicated on the Forms of Payment Addendum.

(B) Â Life annuity is the normal form of payment for all Participants.

(3) Â The Plan offers at least one other form of annuity as specified in the Forms of Payment Addendum.

Note: A life annuity option will continue to be an available form of payment for any Participant who elected such life annuity payment before the effective date of its elimination.

(e) ***Cash Outs and Implementation of Required Rollover Rule***

(1) ☑ If the vested Account balance payable to an individual is less than or equal to the cash out limit utilized for such individual, such Account will be distributed in accordance with the provisions of Section 13.02 or 18.04 of the Basic Plan Document. The cash out limit is:

(A) Â $1,000.

(B) ☑ The dollar amount specified in Code Section 411(a)(11)(A) ($5,000 as of January 1, 2013). Any distribution greater than $1,000 that is made to a Participant without the Participant's consent before the Participant's Normal Retirement Age (or age 62, if later) will be rolled over to an individual retirement plan designated by the Plan Administrator.

1.21 TIMING OF DISTRIBUTIONS

Except as provided in Subsection 1.21(a) or (b), distribution shall be made to an eligible Participant from his vested interest in his Account as soon as reasonably practicable following the Participant's request for distribution pursuant to Article 12 of the Basic Plan Document.

(a) Distribution shall be made to an eligible Participant from his vested interest in his Account as soon as reasonably practicable following the date the Participant's application for distribution is received by the Administrator, but in no event later than his Required Beginning Date, as defined in Subsection 2.01(tt).

(b) Â ***Preservation of Same Desk Rule*** - Check if the Employer wants to continue application of the same desk rule described in Subsection 12.01(b) of the Basic Plan Document regarding distribution of Deferral Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions, and 401(k) Safe Harbor Nonelective Employer Contributions. ***(If any of the above-listed contribution types were previously distributable upon severance from employment, this Option may not be selected.)***

1.22 TOP HEAVY STATUS

(a) The Plan shall be subject to the Top-Heavy Plan requirements of Article 15 (check one):

(1) Â for each Plan Year, whether or not the Plan is a "top-heavy plan" as defined in Subsection 15.01(g) of the Basic Plan Document.

(2) ☑ for each Plan Year, if any, for which the Plan is a "top-heavy plan" as defined in Subsection 15.01(g) of the Basic Plan Document.

(3) Â Not applicable. ***(Choose only if (A) Plan covers only employees subject to a collective bargaining agreement, or (B) Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(a)(3), 401(k) Safe Harbor Formula, is selected, and the Plan does not provide for Employee Contributions or any other type of Employer Contributions.)***

(b) If the Plan is or is treated as a "top-heavy plan" for a Plan Year, each non-key Employee shall receive an Employer Contribution of at least 3% (3 or 5)% of Compensation for the Plan Year or such other amount in accordance with Section 15.03 of the Basic Plan Document or as elected on the 416 Contributions Addendum. The minimum Employer Contribution provided in this Subsection 1.22(b) shall be made under this Plan only if the Participant is not entitled to such contribution under another qualified plan of the Employer, unless the Employer elects otherwise below:

(1) Â The minimum Employer Contribution shall be paid under this Plan in any event.

(2) Â Another method of satisfying the requirements of Code Section 416. Please complete the 416 Contributions Addendum to the Adoption Agreement describing the way in which the minimum contribution requirements will be satisfied in the event the Plan is or is treated as a "top-heavy plan".

(3) Â Not applicable. ***(Choose only if (A) Plan covers only employees subject to a collective bargaining agreement, or (B) Option 1.11(a)(3), 401(k) Safe Harbor Matching Employer Contributions, or Option 1.12(b)(3), 401(k) Safe Harbor Formula, is selected, and the Plan does not provide for Employee Contributions or any other type of Employer Contributions.)***

Note: The minimum Employer Contribution may be less than the percentage indicated in Subsection 1.22(b) above to the extent provided in Section 15.03 of the Basic Plan Document.

(c) If the Plan is or is treated as a "top-heavy plan" for a Plan Year, the vesting schedule found in Subsection 1.16(c)(1) shall apply for such Plan Year and each Plan Year thereafter, except with regard to Participants for whom there is a more favorable vesting schedule for Nonelective Employer Contributions. If the Employer has selected Option 1.01(b)(1) and the minimum Employer Contribution will not be immediately 100% vested, the Vesting Schedule Addendum must contain the applicable vesting schedule.

1.23 CORRECTION TO MEET 415 REQUIREMENTS UNDER MULTIPLE DEFINED CONTRIBUTION PLANS

Â ***Other Order for Limiting Annual Additions*** - If the Employer maintains other defined contribution plans, annual additions to a Participant's Account shall be limited as provided in Section 6.12 of the Basic Plan Document to meet the requirements of Code Section 415, unless the Employer elects this Option and completes the 415 Correction Addendum describing the order in which annual additions shall be limited among the plans.

1.24 INVESTMENT DIRECTION

Subject to Section 8.03 of the Basic Plan Document, Participant Accounts shall be invested (check one):

(a) Â in accordance with the investment directions provided to the Trustee by the Employer for allocating all Participant Accounts among the Permissible Investments.

(b) ☑ in accordance with the investment directions provided to the Trustee by each Participant for allocating his entire Account among the Permissible Investments.

(c) Â in accordance with the investment directions provided to the Trustee by each Participant for all contribution sources in his Account, except that the following sources shall be invested in accordance with the investment directions provided by the Employer (check (1) and/or (2)):

(1) ÂNonelective Employer Contributions

(2) ÂMatching Employer Contributions

Note: The Employer must direct the applicable sources among the Permissible Investments.

1.25 ADDITIONAL PROVISIONS AND PROTECTED BENEFITS

(a) ☑ ***Additional Provisions*** **-** The Plan includes certain provisions that are not delineated through the above elections in this Adoption Agreement, but are incorporated into Fidelity Basic Plan Document 17 and are described within the Additional Provisions Addendum. The provisions included within the Additional Provisions Addendum supplement and/or alter the provisions of this Adoption Agreement and/or the Basic Plan Document.

(b) Â ***Protected Benefit Provisions*** **-** The Plan includes provisions that are "protected benefits" under Code Section 411(d)(6) and are not delineated through the above elections in this Adoption Agreement, but are described within the Protected Benefit Provisions Addendum.

1.26 SUPERSEDING PROVISIONS

(a) Â The Employer has completed the Plan Superseding Provisions Addendum to show the provisions of the Plan which supersede provisions of this Adoption Agreement and/or the Basic Plan Document.

Note: If the Employer elects superseding provisions in Option (a) above, the Employer may not be permitted to rely on the Volume Submitter Sponsor's advisory letter for qualification of its Plan. In addition, such superseding provisions may in certain circumstances affect the Plan's status as a pre-approved volume submitter plan eligible for the 6-year remedial amendment cycle.

(b) Â The Employer has completed the Trust Superseding Provisions Addendum to show the provisions of the Plan which supersede provisions of the Trust Agreement in the Basic Plan Document.

1.27 RELIANCE ON ADVISORY LETTER

An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that this Plan is qualified under Code Section 401 only to the extent provided in Section 19.02 of Revenue Procedure 2011-49. The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter issued with respect to this Plan and in Section 19.03 of Revenue Procedure 2011-49. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

Failure to properly complete the Adoption Agreement and failure to operate the Plan in accordance with the terms of the Plan document may result in disqualification of the Plan.

This Adoption Agreement may be used only in conjunction with Fidelity Basic Plan Document No. 17. The Volume Submitter Sponsor shall inform the adopting Employer of any amendments made to the Plan or of the discontinuance or abandonment of the volume submitter plan document.

1.28 ELECTRONIC SIGNATURE AND RECORDS

This Adoption Agreement, and any amendment thereto, may be executed or affirmed by an electronic signature or electronic record permitted under applicable law or regulation, provided the type or method of electronic signature or electronic record is acceptable to the Trustee.

1.29 VOLUME SUBMITTER INFORMATION:

Name of Volume Submitter Sponsor: Fidelity Management & Research Company
Address of Volume Submitter Sponsor: 82 Devonshire Street

Boston, MA 02109

EXECUTION PAGE

Plan Name The Children's Place 401(k) Savings Plan (the "Plan")

Employer: The Children's Place, Inc.

The Fidelity Basic Plan Document No. 17 and the accompanying Adoption Agreement together comprise the Volume Submitter Defined Contribution Plan. It is the responsibility of the adopting Employer to review this volume submitter plan document with its legal counsel to ensure that the volume submitter plan is suitable for the Employer and that Adoption Agreement has been properly completed prior to signing.

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed this

day of

, _.

Employer: The Children's Place, Inc.

By:

Title:

Note: Only one authorized signature is required to execute this Adoption Agreement unless the Employer's corporate policy mandates two authorized signatures.

Employer: The Children's Place, Inc.

By:

Title:

Accepted by: Fidelity Management Trust Company, as Trustee

By: Date:

Title:

PARTICIPATING EMPLOYERS ADDENDUM

Plan Name: The Children's Place 401(k) Savings Plan
for

Note: All participating employers must be a business entity of a type recognized under Treasury Regulation Section 301.7701-2(a).

(a) ☑ Only the following Related Employers (as defined in Subsection 2.01(rr) of the Basic Plan Document) participate in the Plan (list each participating Related Employer and its Employer Tax Identification Number):
The Children's Place Services Company, LLC, 20-0859065

(b) Â All Related Employer(s) as defined in Subsection 2.01(rr) of the Basic Plan Document participate in the Plan.

401(k) SAFE HARBOR MATCHING EMPLOYER CONTRIBUTIONS ADDENDUM

for

Plan Name: The Children's Place 401(k) Savings Plan

401(k) Safe Harbor Matching Employer Contributions will be made on behalf of "eligible" Participants, as defined in Section 1.11 and, if applicable, as limited herein. 401(k) Safe Harbor Matching Employer Contributions will only satisfy the "ADP" test with respect to Deferral Contributions made under this Plan. 401(k) Safe Harbor Matching Employer Contributions may only be distributed because of death, disability, severance from employment, age 59 1/2, or termination of the Plan without the establishment of a successor plan. In addition, each Plan Year, the Employer must provide written notice to all Active Participants of their rights and obligations under the Plan.

(a) ***401(k) Safe Harbor Matching Employer Contributions Formula***

(1) The formula is:

100% of the first 3% of the "eligible" Participant's Compensation contributed to the Plan and 50% of the next 2% of the "eligible" Participant's Compensation contributed to the Plan.

Note: If the Employer selects this formula and does not elect Option 1.11(b), Additional Matching Employer Contributions, Matching Employer Contributions will automatically meet the safe harbor contribution requirements for deemed satisfaction of the "ACP" test. (Employee Contributions must still be tested.)

(b) ***Participants to receive 401(k) Safe Harbor Matching Contributions:***

(1) 401(k) Safe Harbor Matching Employer Contributions shall be made on behalf of

(A) Notwithstanding the above, the following Participants are excluded from this provision:

(i) Highly Compensated Employees

IN-SERVICE WITHDRAWALS ADDENDUM

for

Plan Name: The Children's Place 401(k) Savings Plan

(a) ***Sources Available for In-Service Hardship Withdrawal*** - In-service hardship withdrawals are permitted from the sub-accounts specified below, subject to the conditions applicable to hardship withdrawals under Section 10.05 of the Basic Plan Document:

Deferral Contributions and vested amounts from the following sub-accounts: Employer Match

VESTING SCHEDULE ADDENDUM

for

Plan Name: The Children's Place 401(k) Savings Plan

(a) ***Different Vesting Schedule***

Note: With regard to contributions for plan years beginning after December 31, 2006, any schedule provided hereunder must be at least as favorable as one of the schedules in C or D in the table shown in Section 1.16(c).

(1) A vesting schedule different from the vesting schedule selected in Section 1.16 applies to the Participants and contributions described below.

(A) The following vesting schedule applies to the class of Participants described in (a)(1)(B) and the contributions described in (a)(1)(C) below:

Years of Vesting Service	Vested Interest
0	100
1	100

(B) The vesting schedule specified in (a)(1)(A) above applies to the following class of Participants: Participants with the Safe Harbor Match source.

(C) The vesting schedule specified in (a)(1)(A) above applies to the following contributions: Safe Harbor Match.

(2) Additional different vesting schedule.

(A) The following vesting schedule applies to the class of Participants described in (a)(2)(B) and the contributions described in (a)(2)(C) below:

Years of Vesting Service	Vested Interest
0	100

(B) The vesting schedule specified in (a)(2)(A) above applies to the following class of Participants: Participants with assets in the Frozen Prior Vested ER Balance.

(C) The vesting schedule specified in (a)(2)(A) above applies to the following contributions: Frozen Prior Vested ER Balance.

ADDITIONAL PROVISIONS ADDENDUM

for

Plan Name: The Children's Place 401(k) Savings Plan

(a) ***Additional Provision(s)*** **-** The following provisions supplement and/or, to the degree described herein, supersede other provisions of this Adoption Agreement and the Basic Plan Document in the following manner:

(1) ***The following replaces Subsection 1.05(a):***

(a) ***Compensation Exclusions*** - Compensation shall exclude the following item(s):

(1) Reimbursements or other expense allowances.

(2) Fringe benefits (cash and non-cash).

(3) Moving expenses.

(4) Deferred compensation.

(5) Welfare benefits.

(6) Differential Wages.

(7) The value of restricted stock or of a qualified or a non-qualified stock option granted to an Employee by the Employer to the extent such value is includable in the Employee's taxable income.

(8) Severance pay received prior to termination of employment. *(Severance pay received following termination of employment is a severance amount as described in Subsection 2.01(k) which is always excluded.)*

Note: If the Employer has selected Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Formula any exclusion listed above must be a permitted exclusion under Section 1.414(s)-1(d)(2) of the Treasury Regulations. If the Employer has selected Safe Harbor Matching Employer Contributions, a Participant must also be permitted to make Deferral Contributions under the Plan sufficient to receive the full 401(k) Safe Harbor Matching Employer Contribution, determined as a percentage of Compensation meeting the requirements of Code Section 414(s).

Note: Compensation must be tested to show that it meets the requirements of Code Section 414(s) or, unless 401(k) Safe Harbor Formula has been selected, the allocations must be tested to show that they meet the general test under regulations issued under Code Section 401(a)(4). With respect to Matching Employer Contributions (other than 401(k) Safe Harbor Matching Employer Contributions), Compensation for purposes of applying the limitations on Matching Employer Contributions described in Section 6.10 of the Basic Plan Document (for deemed satisfaction of the "ACP" test), must be tested to show that it meets the requirements of Code Section 414(s).

(2) ***The following replaces Subsection 1.11(a)(1):***

(1) Non-Discretionary Matching Employer Contributions - As indicated within the following for each group of “eligible” Participants, the Employer shall make a Matching Employer Contribution on behalf of each "eligible" Participant in an amount equal to the percentage, of the eligible contributions made by the "eligible" Participant during the Contribution Period:

(A) Flat Percentage Match

(i) Flat percentage match of 50.00% shall be allocated only to the "eligible" Participants described below:

Highly Compensated Employees.

Limit on Non-Discretionary Matching Employer Contributions for the group of "eligible" Participants described above:

(I) Contributions in excess of 5.00% of the "eligible" Participant's Compensation for the Contribution Period shall not be considered for non-discretionary Matching Employer Contributions.

(II) Matching Employer Contributions for each "eligible" Participant for each Plan Year shall be limited to $.

Note: The Employer may be required to satisfy the nondiscriminatory benefits requirement of Code Section 401(a)(4).

(3)The following replaces Section 19.05:

19.05. Costs of Administration.

All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator and the Trustee in administering the Plan and Trust may be paid from the forfeitures (if any) resulting under Section 11.08, from the suspense account described in this Section, if any, or from the remaining Trust Fund. All such costs and expenses paid from the remaining Trust Fund shall, unless allocable to the Accounts of particular Participants, be charged against the Accounts of all Participants as provided in the Service Agreement. Amounts a service provider agrees to credit to the Plan in recognition of the service provider's compensation for Plan services will be allocated to a suspense account from which the Administrator may pay Plan expenses and/or allocate amounts to the Accounts of Participants and Beneficiaries pro rata based on their Account balances in the Trust excluding amounts invested in a loan pursuant to Article 9. Any amounts so allocated shall not constitute "annual additions" (as defined in Subsection 6.01(a)) under the Plan.

Volume Submitter Defined Contribution Plan

ADDENDUM TO ADOPTION AGREEMENT

FIDELITY BASIC PLAN DOCUMENT No. 17

RE: American Taxpayer Relief Act of 2012

Plan Name: The Children's Place 401(k) Savings Plan

Fidelity 5-digit Plan Number: 29388

PREAMBLE

Adoption and Effective Date of Amendment. This amendment of the Plan is adopted to reflect certain provisions of the American Taxpayer Relief Act of 2012 ("ATRA"). This amendment is intended as good faith compliance with the ATRA and is to be construed in accordance with applicable guidance. This amendment shall be effective with respect to Fidelity's Volume Submitter plan as provided below.

Supersession of Inconsistent Provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

(a) O ***In-Plan Roth Conversions.*** In accordance with Article 5 of the Basic Plan Document and as may be limited in (2) below, any Participant who is still employed by the Employer may elect to have any part of the below-listed portions of his Account, which is fully vested, not part of an outstanding loan balance pursuant to Article 9 of the Basic Plan Document, not currently distributable and not "designated Roth contributions" under the Plan, be considered "designated Roth contributions" for purposes of the Plan. This subsection (a) shall be effective to permit such conversions on and after the following effective date: January 1, 2013).
(can be no earlier than

(1) The following sub-accounts are available to be converted: **_.**

(2) **O** A Participant may not make an In-Plan Roth Conversion more frequently than: **.**

Amendment Execution

IN WITNESS WHEREOF, the Employer has caused this Amendment to be executed this
.

day of ,

Employer: The Children's Place, Inc. **Employer**: The Children's Place, Inc.

By: By: Title: Title:
Note: Only one authorized signature is required to execute this Adoption Agreement unless the Employer's corporate policy mandates two authorized signatures.

Accepted by: Fidelity Management Trust Company, as Trustee

By: Date:

EFFECTIVE DATES FOR INTERIM LEGAL COMPLIANCE SNAP OFF ADDENDUM

for

Plan Name: The Children's Place 401(k) Savings Plan

Notwithstanding any other provision of the Plan to the contrary, to comply with changes required by the final Treasury regulations under Code Section 401(k) and 415 ("final 415 Regulations"), the Katrina Emergency Tax Relief Act ("KETRA"), the Gulf Opportunity Zone Act of 2005 ("GOZA"), the Pension Protection Act of 2006 ("PPA"), Heroes Earnings Assistance and Relief Act of 2008 ("HEART"), the Worker, Retiree and Employee Recovery Act of 2008 ("WRERA"), Proposed Treasury regulations under Code Section 401(k) & (m) ("proposed 401(k)&(m) Regulations"), Emergency Economic Stabilization Act of 2008 ("EESA"), and Small Business Jobs Act of 2010 ("SBJA"), except to the extent provided otherwise in (g) and/or (h) below, the following provisions shall apply effective as of the dates set forth below:

(a) ***415 Compliance*** **-** Effective for Plan Years and Limitation Years beginning on and after July 1, 2007, "severance amounts" (as defined in Subsection 2.01(k) of the Basic Plan Document) shall not be included in the definition of Compensation. Amounts that would otherwise be considered "severance amounts" pursuant to Subsection 2.01(k) except for the timing or reason for the payment shall be included in the definition of Compensation to the extent required by Subsections 2.01(k)(2)(B), (C) and/or (D) of the Basic Plan Document, and not excluded by reason of Section 1.05(a) of this Adoption Agreement, beginning on the effective date described herein, unless a later effective date is specified below.

(1) O **Later Effective Date**. The Plan was amended to treat the payments described in Subsections 6.01(m)(4) and (5) of the Basic Plan Document as part of the definition of Compensation until Limitation Years beginning on or after:
was restated onto the Fidelity Volume Submitter).
(cannot be later than the date the Plan

(b) ***KETRA, GOZA and EESA Compliance*** **-** Except as otherwise indicated below, the Plan was amended to allow a Qualified Disaster Distribution to a Qualified Individual in accordance with Section 10.08 of the Basic Plan Document for the following events provided such distribution occurred prior to January 1, 2007:

(1) O Unless a later is specified below, effective August 25, 2005 for a Qualified Individual in the Hurricane Katrina disaster area (as defined in Code section 1400M(2)) who has sustained an economic loss by reason of Hurricane Katrina.

(A) O **Later Effective Date**:
2006)
(cannot be later than December 31,

(2) O Unless a later is specified below, effective September 23, 2005 for a Qualified Individual in the Hurricane Rita disaster area (as defined in Code section 1400M(4)) who has sustained an economic loss by reason of Hurricane Rita.

(A) O **Later Effective Date**:

(cannot be later than December 31, 2006)

(3) O Unless a later is specified below, effective October 23, 2005 for a Qualified Individual in the Hurricane Wilma disaster area (as defined in Code section 1400M(6)) who has sustained an economic loss by reason of Hurricane Wilma.

(A) O **Later Effective Date**:

(cannot be later than December 31, 2006)

(4) O For a distribution treated as a Qualified Disaster Distribution made prior to December 31, 2009 and, unless a later is specified below, effective on the date declared by the President on or after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin.

(A) O **Later Effective Date**:

(cannot be later than December 30, 2009)

(c) ***PPA Compliance*** **-** Unless a different date is specified below, the following changes for compliance with PPA were effective as of the first day of the first Plan Year beginning on or after January 1, 2007:

(1) ☑ **Qualified Reservist Distributions -** The Plan was amended to allow Participants to obtain a Qualified Reservist Distribution in accordance with Section 10.09 of the Basic Plan Document after the following date: 12/31/2007 *(cannot be prior to September 11, 2001)*.

(2) **Direct Rollovers -** Unless a later date is specified below, the Plan was amended to provide for the following changes:

(A) Unless a later date is specified below, effective for taxable years after December 31, 2006, the Plan was amended to separately account for amounts of Employee Contributions (and the earnings thereon) received as a direct rollover from a 403(b) plan and to allow rollovers to a 403(b) plan of such amounts provided such contract provides for separate accounting of amounts so transferred (and earnings thereon).

(i) O **Later Effective Date**: *(cannot be later than the earlier of (I) the date the Plan was restated onto the Fidelity Volume Submitter or (II) the day the Plan was first amended to allow rollovers of Employee Contributions from 403(b) plans)*

(B) Unless a later date is specified below, effective for distributions after December 31, 2006, the Plan was amended to allow a designated beneficiary (as defined in Code section 401(a)(9)(E)) of a Participant who is not the surviving Spouse of the Participant to elect to roll over such distribution to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) of Code section 402(c) established for the purposes of receiving such distribution.

(i) O **Later Effective Date**: *(cannot be later than the earlier of (I) the date the Plan was restated onto the Fidelity Volume Submitter or (II) the first day of the first Plan Year beginning on or after January 1, 2010)*

(C) Effective for distributions after December 31, 2007, the Plan was amended to make a Roth IRA described in Code section 408A an "eligible retirement plan," as defined in Section 13.04(b).

(3) Â **Pre-Normal Retirement Age Pension Plan Distributions -** The Plan was amended to allow Participants to obtain a distribution in accordance with Section 10.10 of the Basic Plan Document after the following date:
beginning after December 31, 2006).
(cannot be prior to first day of the first plan year

(4) Qualified Optional Survivor Annuity - Effective for Plan Years beginning after December 31, 2007 (subject to the effective date applicable in the event that the Plan is maintained pursuant to a collective bargaining agreement under certain circumstances, as described in (C) below), the Plan shall also permit the Participant, subject to the spousal consent rules described in Section 14.05, to elect a qualified optional survivor annuity, which provides for a life annuity payable to the Participant and a survivor annuity payable to the Participant's beneficiary equal to either 75% or 50% as described in (A) or (B) below, as applicable.

(A) If the survivor annuity portion of the Plan's qualified joint and survivor annuity (as defined in Section 14.01) is less than 75%, then the survivor annuity portion of the qualified optional survivor annuity shall be 75%.

(B) If the survivor annuity portion of the Plan's qualified joint and survivor annuity (as defined in Section 14.01) is greater than or equal to 75%, then the survivor annuity portion of the qualified optional survivor annuity shall be 50%.

(C) Notwithstanding the effective date described above in this Article 4, if the Plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006, then this Subsection (4) shall be effective for Plan Years beginning on and after the earlier of (i) the later of January 1, 2008 or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after August 17, 2006), or (ii) January 1, 2009.

(5) Transfers to the Pension Benefit Guarantee Corporation upon Plan Termination - Unless a later date is specified below, the Plan was amended effective January 1, 2007 to provide that, in the event that the Employer terminates the Plan, as described in Section 16.06, and, at the time, the whereabouts of one or more distributees are unknown, as described in Section 12.06, and the Employer so directs the Trustee, subject to applicable guidance, the Trustee shall transfer the Accounts of such distributees to the Pension Benefit Guarantee Corporation.

(A) O **Later Effective Date**: *(cannot be later than the date the Plan was restated onto the Fidelity Volume Submitter)*

(6) Modification of rules governing Hardship Distributions - Unless a later effective date is specified below, effective beginning on August 17, 2006, the Plan allowed hardship distributions pursuant to the reasons presented

in Subsections 10.05(a)(1), (3) and (5) of the Basic Plan Document on account of a hardship/expense of a primary beneficiary.

(A) o **Later Effective Date**: *(cannot be later than the date the Plan was restated onto the Fidelity Volume Submitter)*

(7) Removal of Gap Period Income - Effective for plan years beginning after December 31, 2007, the Plan does not allow the calculation of income or loss allocable to "excess deferrals", "excess contributions", and "excess aggregate contributions" for the period of time elapsing between the end of the “determination year” and the date of distribution (also known as the “gap period”).

(8) Â **Previous QACA -** Prior to the effective date in Section 1.01(g), the Plan previously utilized a QACA to meet the requirements of the ADP test for the following Plan Years (for each Plan Year list the Participants covered by the QACA, the automatic enrollment rate and the deferral increase structure):

(9) Â **Previous EACA -** Prior to the effective date in Section 1.01(g), the Plan had in place an EACA for the following Plan Years (for each Plan Year list the Participants covered by the EACA, whether there was a permissible withdrawal permitted of the automatic enrollment contributions and, if so, the date any such permissible withdrawal was eliminated and the date after which no automatic enrollment Deferral Contributions are included in the amount of such available withdrawal):

(10) Discontinuing 401(k) Safe Harbor Nonelective Employer Contributions - Unless a later effective date is provided below, effective on or after July 1, 2009, the Plan may be amended to reduce or eliminate
401(k) Safe Harbor Nonelective Employer Contributions in accordance with Section 6.12(d) of the Basic
Plan Document.

(A) o **Later Effective Date**: *(cannot be later than the date the Plan was restated onto the Fidelity Volume Submitter)*

(11) Notice Adjustments - Unless a later effective date is provided below, effective for Plan Years (and the notices issued therein) beginning after December 31, 2006, the Plan was amended to provide that the notice described in Section 13.05 would state consequences of a failure to defer and that the notice period in Sections 9.08, 12.03, 13.05 and 14.05 of the Basic Plan Document would be 180 days rather than 90 days.

(A) o **Later Effective Date**: *(cannot be later than the date the Plan was restated onto the Fidelity Volume Submitter)*

(12) Diversification out of Employer Securities - Unless a later date is provided below, the Plan was amended to provide that, if one of the Plan’s Permissible Investments is Employer Stock, all of the following apply:

(A) With respect to the portion of a Participant’s or Beneficiary’s Account attributable to:

(i) Deferral, Employee and/or Rollover Contributions and invested in Employer Stock, the Participant or Beneficiary shall immediately be permitted to exchange out of Employer Stock into any other Permissible Investment otherwise available.

(ii) Unless provided otherwise below, Matching and/or Nonelective Employer Contributions and invested in Employer Stock, the Participant or Beneficiary shall immediately be permitted to exchange out of Employer Stock into any other Permissible Investment otherwise available.

(I) O For a Participant, such exchanges shall only be permitted after the Participant has completed at least three years of service.

(B) The Plan must have no fewer than three Permissible Investments, other than Employer Stock, each of which must be diversified and have materially different risk and return characteristics. A Participant or Beneficiary who is permitted to exchange out of Employer Stock must be permitted to direct the investment of the proceeds from such an exchange out of Employer Stock into one of such Permissible Investments. Notwithstanding anything to the contrary, the following shall apply:

(i) The Plan shall not be treated as failing to meet the requirements of this section paragraph merely because the Plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly; and

(ii) Except as provided in otherwise applicable guidance, the Plan shall not impose restrictions or conditions with respect to the investment of Employer Stock that are not imposed on the investment of other assets of the Plan. However, the preceding sentence shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(C) For purposes of this paragraph, Employer Stock shall include any employer securities (as defined in Section 407(d)(1) of ERISA) of a publicly traded company or one treated as publicly traded pursuant to Section 401(a)(35)(F) of the Code.

(D) O Employer Stock was acquired in a Plan Year beginning before January 1, 2007 and the provisions of this paragraph shall only apply to the "applicable percentage" of such securities. This provision shall be applied separately with respect to each class of Employer Securities, but shall not apply to a Participant who has attained age 55 and completed at least three years of service (as defined in paragraph 13.1(a)(1) above) before the first Plan Year beginning after December 31, 2005.

(i) For purposes of election, the "applicable percentage" shall be determined as follows:

(I) For the first Plan Year to which this paragraph applies, the applicable percentage is 33.

(II) For the second Plan Year to which this paragraph applies, the applicable percentage is 66.

(III) For the third Plan Year to which this paragraph applies and following, the applicable percentage is 100.

(E) O Delayed Effective Date for Bargained Plan. The Plan was maintained pursuant to one or more collective bargaining agreements ratified by August 17, 2006 and the effective date of the provisions of this paragraph shall be the first day of the first Plan Year beginning on or after:

Effective Date: Plan Year beginning

(cannot be later than the earlier of

the Plan Year beginning after (i) December 31, 2008 or (ii) the later of the date on which the last of the collective bargaining agreements described above terminates (without regard to any extension on or after August 17, 2006) or December 31, 2007)

(d) ***HEART Compliance*** **-** Unless a different date is specified below, the following changes for compliance with HEART were effective as of the first day of the first Plan Year beginning on or after January 1, 2009:

(1) Death/Disability of Participant While Performing Qualified Military Service. The Plan was amended to provide that Participants dying and/or becoming disabled on or after January 1, 2007 while performing qualified military service as defined in Code Section 414(u)(5) ("QMS") shall be treated under the Plan for all purposes (other than benefit accruals described in paragraph (2) below), including vesting and any exceptions to applicable last day or Hours of Service requirements, in the same way as Active Participants who die and/or become disabled while employed, as if the Participant resumed employment with the Employer and then terminated employment on account of death or disability.

(A) O Later Effective Date for Disabled Participants: *(cannot be later than the date the Plan was restated onto the Fidelity Volume Submitter).* Participants becoming disabled before this date shall not be treated as having resumed employment pursuant to Section 18.06 of the Basic Plan Document on the day prior to dying or becoming.

Note: A later effective date may not be elected for Participants who die while performing QMS.

(2) Treatment of Qualified Military Service for Other Benefit Accrual Purposes. Unless a later effective date is specified below, the Plan was amended to provide that Participants dying and/or becoming disabled while performing QMS on or after January 1, 2007 shall not be treated as having resumed employment pursuant to Section 18.06 of the Basic Plan Document on the day prior to dying or becoming disabled for purposes of calculating contributions pursuant to Code Section 414(u)(9).

(A) O Later Effective Date: *(cannot be later than the later of (i) the date the Plan was restated onto the Fidelity Volume Submitter or (ii) the end of the first Plan Year beginning on or after January 1, 2010).* Participants dying and/or becoming disabled after this date shall not be treated as having resumed employment pursuant to Section 18.06 of the Basic Plan Document on the day prior to dying or becoming disabled for purposes of calculating contributions pursuant to Code Section 414(u)(9*).*

(3) Differential Wages. Unless a later effective date is specified below, effective for wages paid after December 31, 2008:

(A) The Plan was amended to include Differential Wages in the definition of Compensation under the Plan.

(i) O **Later Effective Date**. The Plan was amended to include Differential Wages in the definition of Compensation for wages paid after the following date:

(cannot be later than the later of (I) the date the Plan was restated onto the Fidelity Volume Submitter or (II) the end of the first Plan Year beginning on or after January 1, 2010)

(B) The Plan was amended to provide that Compensation shall not include Differential Wages for purposes of determining the amount or allocation of contributions under Article 5 of the Plan.

(i) O **Later Effective Date**. The Plan was amended to exclude Differential Wages from Compensation for purposes of determining contributions for wages paid after the following date:

(cannot be later than the later of (I) the date the Plan was restated onto the Fidelity Volume Submitter or (II) the end of the first Plan Year beginning on or after January 1, 2010)

(4) **Available In-Service Withdrawal**. Unless a later effective date is specified below, the Plan was amended to provide that a Participant performing service in the uniformed services as described in Code Section 3401(h)(2)(A) shall be treated as having been severed from employment with the Employer for purposes of Code Section 401(k)(2)(B)(i)(I) and shall, as long as that service in the uniformed services continues, have the option to request a distribution of all or any part of his or her Account restricted from distribution only due to Code Section 401(k)(2)(B)(i)(I).

(A) O **Later Effective Date**. The Plan was amended to allow the above-described distribution on and after the following date:

(cannot be later than the later of (i) the date the Plan was restated onto the Fidelity Volume Submitter or (ii) the end of the first Plan Year beginning on or after January 1, 2010)

(e) ***Modification of minimum distribution rules for 2009*** **-** The Plan was amended to provide all of the following with regard to required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"):

(1) A Participant or Beneficiary who would have been required to 2009 RMDs, and who would have satisfied that requirement by receiving distributions specifically equal to the 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions.

(2) Any Participant or Beneficiary who had elected a systematic withdrawal plan ("installments") pursuant to Section 13.01 of the Basic Plan Document to satisfy (in part or wholly) a 2009 RMD is hereby permitted to elect to stop those installments.

(3) For only those Participants and Beneficiaries who have made the election described in paragraph (2) immediately above, there is hereby added to the Plan a partial withdrawal to allow such a Participant or Beneficiary to withdraw any part of his or her Account prior to December 31, 2009.

(4) Participants and Beneficiaries described in paragraph (1) above will be given the opportunity to elect to receive 2009 RMDs as described in the preceding paragraphs of this Subsection.

(5) Solely for purposes of applying the direct rollover provisions of the plan, 2009 RMDs will be treated as eligible rollover distributions.

(f) ***SBJA Compliance*** **-** If selected below and on the effective date provided below, the Plan was amended to allow a conversion of pre-tax assets available for withdrawal to a Roth rollover subject to the same distribution requirements as Roth Deferral Contributions according to the following:

(1) Â **In-Plan Roth Conversion**. The Plan was amended, effective on the date provided below, to allow any Participant or Beneficiary, unless otherwise specified in (B) below, to elect to have otherwise distributable portions of his Account, which are not part of an outstanding loan balance pursuant to Article 9 of the Basic Plan Document and are not "designated Roth contributions" under the Plan, be considered "designated Roth contributions" for purposes of the Plan.

(A) **Effective Date**: *(cannot be prior to September 27, 2010)*

(B) ÂOn the same effective date as stated in (A) above, unless provided otherwise in (i) below,

only a Participant who is still employed by the Employer or an alternate payee or spousal Beneficiary of such a Participant may elect to make such an in-plan Roth Rollover.

(i)OLater Effective Date. The Plan was amended to only allow the transaction for

such Participants, alternate payees and beneficiaries on and after the following date:

(g) O Prior to the date specified in Subsection 1.01(g), the provisions of this amendment and restatement related to the provisions found within (a) through (f) of this Snap Off Addendum shall apply in accordance with the provisions of this amendment and restatement, except as otherwise provided below:

(h) O Prior to the date specified in Subsection 1.01(g), the provisions of this amendment and related to the provisions found within (a) through (f) of this Snap Off Addendum shall apply to all plans merged into the Plan during the period covered by this Addendum except to the extent any such merged plan is amended to provide otherwise or as provided below:

VOLUME SUBMITTER
DEFINED CONTRIBUTION PLAN

FIDELITY BASIC PLAN DOCUMENT NO. 17

VOLUME SUBMITTER

DEFINED CONTRIBUTION PLAN

Preamble.

This volume submitter plan consists of three parts: (1) an Adoption Agreement that is a separate document incorporated by reference into this Basic Plan Document; (2) this Basic Plan Document; and (3) a Trust Agreement that is a part of this Basic Plan Document and is found in Article 20. Each part of the volume submitter plan contains substantive provisions that are integral to the operation of the plan. The Adoption Agreement is the means by which an adopting Employer elects the optional provisions that shall apply under its plan. The Basic Plan Document describes the standard provisions elected in the Adoption Agreement. The Trust Agreement describes the powers and duties of the Trustee with respect to plan assets.

The volume submitter plan is intended to qualify under Code Section 401(a). Depending upon the Adoption Agreement completed by an adopting Employer, the volume submitter plan may be used to implement a profit sharing plan with or without a cash or deferred arrangement intended to qualify under Code Section 401(k). Provisions appearing on the Additional Provisions Addendum of the Adoption Agreement, if present, supplement or alter provisions appearing in the Adoption Agreement and Basic Plan Document in the manner described within that Addendum. Provisions appearing on the Plan Superseding Provisions Addendum of the Adoption Agreement, if present, supersede any conflicting provisions appearing in the Adoption Agreement, Basic Plan Document (other than Article 20) or any addendum to either in the manner described therein. Provisions appearing on the Trust Superseding Provisions Addendum of the Adoption Agreement, if present, supersede any conflicting provisions appearing in Article 20 of the Basic Plan Document in the manner described therein.

Article 1. Adoption Agreement.

Article 2. Definitions.

2.01. Definitions. Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

(a) **"Account"** means an account established for the purpose of recording any contributions made on behalf of a Participant and any income, expenses, gains, or losses incurred thereon. The Administrator shall establish and maintain sub-accounts within a Participant's Account as necessary to depict accurately a Participant's interest under the Plan.

(b) **"Active Participant"** means any Eligible Employee who has met the requirements of Article 4 to participate in the Plan and who may be entitled to receive allocations under the Plan.

(c) **"Administrator"** means the Employer adopting this Plan, as listed in Subsection 1.02(a) of the Adoption Agreement, or another person or entity designated by the Employer in Subsection 1.01(c) of the Adoption Agreement.

(d) **"Adoption Agreement"** means Article 1, under which the Employer establishes and adopts, or amends the Plan and Trust and designates the optional provisions selected by the Employer, and the Trustee accepts its responsibilities under Article 20. The provisions of the Adoption Agreement shall be an integral part of the Plan.

(e) **"Annuity Starting Date"** means the first day of the first period for which an amount is payable as an annuity or in any other form permitted under the Plan.

(f) **"Basic Plan Document"** means this Fidelity volume submitter plan document, qualified with the Internal Revenue Service as Basic Plan Document No. 17.

(g) **"Beneficiary"** means the person or persons (including a trust) entitled under Section 11.04 or 14.04 to receive benefits under the Plan upon the death of a Participant.

(h) **"Break in Vesting Service"** means a 12-consecutive-month period beginning on an Employee's Severance Date or any anniversary thereof in which the Employee is not credited with an Hour of Service. Notwithstanding the foregoing, the following special rules apply in determining whether an Employee who is on leave has incurred a Break in Vesting Service:

(1) If an individual is absent from work because of maternity/paternity leave on the first anniversary of his Severance Date, the 12-consecutive-month period beginning on the individual's Severance Date shall not constitute a Break in Vesting Service. For purposes of this paragraph, "maternity/paternity leave" means a leave of absence (i) by reason of the pregnancy of the individual, (ii) by reason of the birth of a child of the individual, (iii) by reason of the placement of a child with the individual in connection with the adoption of such child by the individual, or (iv) for purposes of caring for a child for the period beginning immediately following such birth or placement.

(2) If an individual is absent from work because of FMLA leave and returns to employment with the Employer or a Related Employer following such FMLA leave, he shall not incur a Break in Vesting Service due to such FMLA leave. For purposes of this paragraph, "FMLA leave" means an approved leave of absence pursuant to the Family and Medical Leave Act of 1993.

(i) **"Catch-Up Contribution"** means any Deferral Contribution made to the Plan by the Employer in accordance with the provisions of Subsection 5.03(a).

(j) **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

(k) **"Compensation"** means wages as defined in Code Section 3401(a) (for purposes of income tax withholding at the source) plus amounts that would be included in wages but for an election under Code Section
125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) and all other payments of compensation to an Eligible Employee by the Employer (in the course of the Employer's trade or business) for services to the Employer while employed as an Eligible Employee for which the Employer is required to furnish the Eligible Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. In addition, Compensation includes all amounts listed in paragraph (2) of this Subsection (k) below as exceptions to the definition of "severance amounts" therein. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(1) Self-Employed Individuals. Notwithstanding the foregoing, for any Self-Employed Individual, Compensation means Earned Income; provided, however, that if the Employer elects to exclude specified items from Compensation, such Earned Income shall be adjusted in a similar manner so that it is equivalent under regulations issued under Code Section 414(s) to Compensation for Participants who are not Self- Employed Individuals. "Earned Income" means the net earnings of a Self-Employed Individual derived from the trade or business with respect to which the Plan is established and for which the personal services of such individual are a material income-providing factor, excluding any items not included in gross income and the deductions allocated to such items, except that net earnings shall be determined with regard to the deduction allowed under Code Section 164(f), to the extent applicable to the Employer. Net earnings shall be reduced by contributions of the Employer to any qualified plan, to the extent a deduction is allowed to the Employer for such contributions under Code Section 404.

(2) Exclusions. Compensation excludes any amounts elected by the Employer in Subsection 1.05(a) or (b), as applicable, of the Adoption Agreement and any severance amounts. For purposes of this Section
2.01(k), "severance amounts" are any amounts paid after severance from employment, except the following:

(A) a payment of regular compensation for services during the Eligible Employee's regular working hours, or compensation for services outside the Eligible Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments to the extent such payment would have been made prior to a severance from employment if the Eligible Employee had continued in employment with the Employer, provided such amounts are paid within the post-severance period described below;

(B) payments for "unused leave" (i.e., unused accrued bona fide sick, vacation, or other leave, but only if the Eligible Employee would have been able to use the leave if employment had continued) that are paid within the post-severance period described below;

(C) payments received by a Participant within the post-severance period described below pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Participant at the same time if the Participant had not severed employment and only to the extent that the payment is includible in the Participant's gross income; and

(D) Differential Wages as defined below.

For purposes of this Section, the following terms have the following meanings:

(E) An Eligible Employee has a “severance from employment” when (i) the employee ceases to be an employee of an employer (applying the aggregation rules in Code Section 414) maintaining a plan and (ii) in connection with a change of employment, the individual’s new employer does not maintain such plan with respect to the individual. The determination of whether an Eligible Employee ceases to be an employee of an employer maintaining a plan is based on all of the relevant facts and circumstances.

(F) “Differential Wages” means Compensation paid to an Employee by the Employer with regard to military service meeting the definition of differential wage payment found in Code Section 3401(h)(2).

(G) The "post-severance period" means the period beginning on the Eligible Employee's severance from employment and ending on the later of (i) 2-1/2 months after or (ii) the end of the Limitation Year that includes the date of the Eligible Employee’s severance from employment.

(3) Timing Rules. Compensation shall generally be based on the amount actually paid to the Eligible Employee during the Plan Year or, for purposes of Article 5, if so elected by the Employer in Subsection 1.05(b) of the Adoption Agreement, during that portion of the Plan Year during which the Eligible Employee is an Active Participant. Compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code Section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

(4) Short Plan Years. If the initial Plan Year of a new plan consists of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan Year, Compensation for such initial Plan Year shall be determined from such Effective Date through the end of the initial Plan Year. If selected in Subsection 1.05 of the Adoption Agreement, for purposes of allocating Nonelective Employer Contributions under Section 1.12 of the Adoption Agreement (other than 401(k) Safe Harbor Nonelective Employer Contributions), Compensation for the initial Plan Year shall be determined by using the 12-month period ending on the last day of the Plan Year.

(5) Annual Compensation Limit (Code Section 401(a)(17) Limit). The annual Compensation of each Active Participant taken into account for determining benefits provided under the Plan for any 12-month determination period shall not exceed the annual Compensation limit under Code Section 401(a)(17) as in effect on the first day of the determination period (e.g., $255,000 for determination periods beginning in 2013). A "determination period" means the Plan Year or other 12-consecutive-month period over which Compensation is otherwise determined for purposes of the Plan (e.g., the Limitation Year).

The annual Compensation limit under Code Section 401(a)(17) shall be adjusted by the Secretary to reflect increases in the cost of living, as provided in Code Section 401(a)(17)(B); provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for determination periods beginning in such calendar year. If a Plan determines Compensation over a determination period that contains fewer than 12 calendar months (a "short determination period"), then the Compensation limit for such "short determination period" is equal to the Compensation limit for the calendar year in which the "short determination period" begins multiplied by the ratio obtained by dividing the number of full months in the "short determination period" by 12; provided, however, that such proration shall not apply if there is a "short determination period" due to the Employer’s election in Subsection 1.05(b) of the Adoption Agreement to determine contributions based only on Compensation paid during the portion of the Plan Year during which an individual was an Active Participant.

In lieu of requiring an Active Participant to cease making Deferral Contributions for a Plan Year after his Compensation has reached the annual Compensation limit under Code Section 401(a)(17), the annual Compensation limit shall be applied with respect to Deferral Contributions by limiting the total Deferral Contributions an Active Participant may make for a Plan Year to the product of (i) such Active Participant's Compensation for the Plan Year up to the annual Compensation limit multiplied by (ii) the deferral limit specified in Subsection 1.07(a)(1)(A) of the Adoption Agreement or Subsection 5.03(a), as applicable.

(l) **"Contribution Period"** means the period for which Matching Employer and Nonelective Employer Contributions are made and calculated. The Contribution Period for Matching Employer Contributions described in Subsection 1.11 of the Adoption Agreement is the period specified by the Employer in Subsection 1.11(d) of the Adoption Agreement.

The Contribution Period for Nonelective Employer Contributions is the Plan Year, unless the Employer designates a different Contribution Period in Subsection 1.12(c) of the Adoption Agreement.

(m) **"Deferral Contribution"** means any contribution made to the Plan by the Employer in accordance with the provisions of Section 5.03.

(n) **"Early Retirement Age"** means the early retirement age specified in Subsection 1.14(b) of the Adoption Agreement, if any.

(o) **"Effective Date"** means the effective date specified by the Employer in Subsection 1.01(g)(1). The Employer may select special Effective Dates with respect to specified Plan provisions, as set forth in Section (a) of the Special Effective Dates Addendum to the Adoption Agreement. In the event that another plan is merged into and made a part of the Plan, the effective date of the merger shall be reflected in the Plan Mergers Addendum to the Adoption Agreement.

(p) **"Eligibility Computation Period"** means each 12-consecutive-month period beginning with an Employee's Employment Commencement Date and each anniversary thereof.

(q) **"Eligibility Service"** means an Employee's service that is taken into account in determining his eligibility to participate in the Plan as may be required under Subsection 1.04(b) of the Adoption Agreement. Eligibility Service shall be credited in accordance with Article 3.

(r) **"Eligible Employee"** means any Employee of the Employer who is in the class of Employees eligible to participate in the Plan. The Employer must specify in Subsection 1.04(d) of the Adoption Agreement any Employee or class of Employees not eligible to participate in the Plan. Regardless of the provisions of Subsection 1.04(d) of the Adoption Agreement, the following Employees are automatically excluded from eligibility to participate in the Plan:

(1) any individual who is a signatory to a contract, letter of agreement, or other document that acknowledges his status as an independent contractor not entitled to benefits under the Plan or any individual (other than a Self-Employed Individual) who is not otherwise classified by the Employer as a common law employee, even if such independent contractor or other individual is later determined to be a common law employee; and

(2) any Employee who is a resident of Puerto Rico.

If the Employer elects, in Subsection 1.04(d)(2)(A) of the Adoption Agreement, to exclude collective bargaining employees from the eligible class, the exclusion applies to any Employee of the Employer included in any unit of Employees covered by a collective bargaining agreement between employee representatives and one or more employers, unless the

collective bargaining agreement requires the Employee to be covered under the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

If the Employer does not elect, in Subsection 1.04(d)(2)(C) of the Adoption Agreement, to exclude Leased Employees from the eligible class, contributions or benefits provided by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer and there shall be no duplication of benefits under this Plan.

Anything to the contrary herein notwithstanding, unless the Employer elects to exclude statutory employees who are full-time life insurance salespersons (as described in Code Section 7701(a)(20)) from the eligible class in Subsection 1.04(d)(2)(E) of the Adoption Agreement, such statutory employees are Eligible Employees.

(s) **"Employee"** means any common law employee (or statutory employee who is a full-time life insurance salesperson as described in Code Section 7701(a)(20)) of the Employer or a Related Employer, any Self-Employed Individual, and any Leased Employee. Notwithstanding the foregoing, a Leased Employee shall not be considered an Employee if Leased Employees do not constitute more than 20 percent of the Employer's non-highly compensated work-force (taking into account all Related Employers) and the Leased Employee is covered by a money purchase pension plan maintained by the leasing organization and providing (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined for purposes of Code Section 415(c)(3), (2) full and immediate vesting, and (3) immediate participation by each employee of the leasing organization.

(t) **"Employee Contribution"** means any after-tax contribution made by an Active Participant to the Plan.

(u) **"Employer"** means the employer named in Subsection 1.02(a) of the Adoption Agreement and any Related Employer designated in the Participating Employers Addendum to the Adoption Agreement. If the Employer has elected in Subsection (b) of the Participating Employers Addendum to the Adoption Agreement that the term "Employer" includes all Related Employers, an employer that becomes a Related Employer as a result of an asset or stock acquisition, merger or other similar transaction shall not be included in the term "Employer" for periods prior to the first day of the second Plan Year beginning after the date of such transaction, unless the Employer has designated therein to accept such Related Employer as a participating employer prior to that date. Notwithstanding the foregoing, the term "Employer" for purposes of authorizing any particular action under the Plan means solely the employer named in Subsection 1.02(a) of the Adoption Agreement.

If the organization or other entity named in the Adoption Agreement is a sole proprietor or a professional corporation and the sole proprietor of such proprietorship or the sole shareholder of the professional corporation dies, then the legal representative of such sole proprietor or shareholder shall be deemed to be the Employer until such time as, through the disposition of such sole proprietor's or sole shareholder's estate or otherwise, any organization or other entity succeeds to the interests of the sole proprietor in the proprietorship or the sole shareholder in the professional corporation. The legal representative of a sole proprietor or shareholder shall be (1) the person appointed as such by the sole proprietor or shareholder prior to his death under a legally enforceable power of attorney, or, if none, (2) the executor or administrator of the sole proprietor's or shareholder's estate.

If a participating Employer designated through Subsection 1.02(b) of the Adoption Agreement is not related to the Employer (hereinafter "un-Related Employer"), the term "Employer" includes such un-Related Employer and the provisions of Section 18.05 shall apply.

(v) **"Employment Commencement Date"** means the date on which an Employee first performs an Hour of Service.

(w) **"Entry Date"** means the date(s) specified by the Employer in Subsection 1.04(e) of the Adoption Agreement as of which an Eligible Employee who has met the applicable eligibility requirements begins to participate in the Plan. The Employer may specify different Entry Dates for purposes of eligibility to participate in the Plan for purposes of (1) making Deferral Contributions and (2) receiving allocations of Matching and/or Nonelective Employer Contributions.

(x) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as from time to time amended.

(y) "**401(k) Safe Harbor Matching Employer Contribution"** means any Matching Employer Contribution made by the Employer to the Plan in accordance with Subsection 1.11(a)(3) of the Adoption Agreement, the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement, and Section 5.08, that is intended to satisfy the requirements of Code Section 401(k)(12)(B) or 401(k)(13)(D)(i)(I).

(z) "**401(k) Safe Harbor Nonelective Employer Contribution"** means any Nonelective Employer Contribution made by the Employer to the Plan in accordance with Subsection 1.12(a)(3) of the Adoption Agreement, the 401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement, and Section 5.10, that is intended to satisfy the requirements of Code Section 401(k)(12)(C) or 401(k)(13)(D)(i)(II).

(aa) **"Fund Share"** means the share, unit, or other evidence of ownership in a Permissible Investment.

(bb) **"Highly Compensated Employee"** means both highly compensated active Employees and highly compensated former Employees.

A highly compensated active Employee includes any Employee who performs service for the Employer during the "determination year" and who (1) at any time during the "determination year" or the "look-back year" was a five percent owner or (2) received “415 Compensation” (as defined in Section 6.01(m)) from the Employer during the "look-back year" in excess of the dollar amount specified in Code Section 414(q)(1)(B)(i) adjusted pursuant to Code Section 415(d) (e.g., $115,000 for "determination years" beginning in 2013 and "look-back years" beginning in 2012) and, if elected by the Employer in Subsection 1.06(d)(1) of the Adoption Agreement, was a member of the top-paid group for such year.

For this purpose, the "determination year" shall be the Plan Year. The "look-back year" shall be the twelve-month period immediately preceding the "determination year", unless the Employer has elected in Subsection 1.06(c)(1) of the Adoption Agreement to make the "look-back year" the calendar year beginning within the preceding Plan Year.

A highly compensated former Employee includes any Employee who separated from service (or was deemed to have separated) prior to the "determination year", performs no service for the Employer during the "determination year", and was a highly compensated active Employee for either the separation year or any "determination year" ending on or after the Employee's 55th birthday, as determined under the rules in effect for determining Highly Compensated Employees for such separation year or "determination year".

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, shall be made in accordance with Code Section 414(q) and the Treasury Regulations issued thereunder.

For purposes of this Subsection 2.01(bb), if the initial Plan Year of a new plan consists of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such

initial Plan Year, Compensation for such initial Plan Year shall be determined over the 12-month period ending on the last day of the Plan Year.

(cc) **"Hour of Service"**, with respect to any individual, means:

(1) Each hour for which the individual is directly or indirectly paid, or entitled to payment, for the performance of duties for the Employer or a Related Employer, each such hour to be credited to the individual for the Eligibility Computation Period in which the duties were performed;

(2) Each hour for which the individual is directly or indirectly paid, or entitled to payment, by the Employer or a Related Employer (including payments made or due from a trust fund or insurer to which the Employer contributes or pays premiums) on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity, disability, layoff, jury duty, military duty, or leave of absence, each such hour to be credited to the individual for the Eligibility Computation Period in which such period of time occurs, subject to the following rules:

(A) No more than 501 Hours of Service shall be credited under this paragraph (2) on account of any single continuous period during which the individual performs no duties, unless the individual performs no duties because of military duty, the individual's employment rights are protected by law, and the individual returns to employment with the Employer or a Related Employer during the period that his employment rights are protected under Federal law;

(B) Hours of Service shall not be credited under this paragraph (2) for a payment which solely reimburses the individual for medically-related expenses, or which is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation or disability insurance laws; and

(C) If the period during which the individual performs no duties falls within two or more Eligibility Computation Periods and if the payment made on account of such period is not calculated on the basis of units of time, the Hours of Service credited with respect to such period shall be allocated between not more than the first two such Eligibility Computation Periods on any reasonable basis consistently applied with respect to similarly situated individuals;

(3) Each hour not counted under paragraph (1) or (2) for which he would have been scheduled to work for the Employer or a Related Employer during the period that he is absent from work because of military duty, provided the individual's employment rights are protected under Federal law and the individual returns to work with the Employer or a Related Employer during the period that his employment rights are protected, each such hour to be credited to the individual for the Eligibility Computation Period for which he would have been scheduled to work; and

(4) Each hour not counted under paragraph (1), (2), or (3) for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to be paid by the Employer or a Related Employer, shall be credited to the individual for the Eligibility Computation Period to which the award or agreement pertains rather than the Eligibility Computation Period in which the award, agreement, or payment is made.

For purposes of paragraphs (2) and (4) above, Hours of Service shall be calculated in accordance with the provisions of Section 2530.200b-2(b) and (c) of the Department of Labor regulations, which are incorporated herein by reference.

If the Employer does not maintain records that accurately reflect the actual Hours of Service to be credited to an Employee, 190 Hours of Service will be credited to the Employee for each month worked, unless the Employer has elected to credit Hours of Service in accordance with one of the other equivalencies set forth in paragraph (e) of Department of Labor Regulation Section 2530.200b-3, as provided in Subsection 1.04(b)(4) of the Adoption Agreement.

(dd) **"Inactive Participant"** means any individual who was an Active Participant, but is no longer an Eligible Employee and who has an Account under the Plan.

(ee) **"Leased Employee"** means any individual who provides services to the Employer or a Related Employer (the "recipient") but is not otherwise an employee of the recipient if (1) such services are provided pursuant to an agreement between the recipient and any other person (the "leasing organization"), (2) such individual has performed services for the recipient (or for the recipient and any related persons within the meaning of Code Section 414(n)(6)) on a substantially full-time basis for at least one year, and (3) such services are performed under primary direction of or control by the recipient. The determination of who is a Leased Employee shall be made in accordance with any rules and regulations issued by the Secretary of the Treasury or his delegate.

(ff) **"Limitation Year"** means the 12-consecutive-month period designated by the Employer in Subsection 1.01(f) of the Adoption Agreement. If no other Limitation Year is designated by the Employer, the Limitation Year shall be the calendar year. All qualified plans of the Employer and any Related Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive-month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(gg) **"Matching Employer Contribution"** means any contribution made by the Employer to the Plan in accordance with Section 5.08 or 5.09 on account of an Active Participant's eligible contributions, as elected by the Employer in Subsection 1.11(c) of the Adoption Agreement.

(hh) **"Nonelective Employer Contribution"** means any contribution made by the Employer to the Plan in accordance with Section 5.10.

(ii) **"Non-Highly Compensated Employee"** means any Employee who is not a Highly Compensated Employee.

(jj) **"Normal Retirement Age"** means the normal retirement age specified in Subsection 1.14(a) of the Adoption Agreement. If the Employer enforces a mandatory retirement age in accordance with Federal law, the Normal Retirement Age is the lesser of that mandatory age or the age specified in Subsection 1.14(a) of the Adoption Agreement.

(kk) **"Participant"** means any individual who is either an Active Participant or an Inactive Participant.

(ll) **"Permissible Investment"** means each investment available for investment of assets of the Plan and agreed to by the Trustee. The Permissible Investments under the Plan shall be described in the Service Agreement.

(mm) **"Plan"** means the plan established by the Employer in the form of the volume submitter plan, as set forth herein as a new plan or as an amendment to an existing plan, by executing the Adoption Agreement, together with any and all amendments hereto.

(nn) **"Plan Year"** means the 12-consecutive-month period ending on the date designated in Subsection 1.01(d) of the Adoption Agreement, except that the initial Plan Year of a new Plan may consist of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan

Year, in which event Compensation for such initial Plan Year shall be treated as provided in Subsection 2.01(k). Additionally, in the event the Plan has a short Plan year, *i.e.*, a Plan Year consisting of fewer than 12 months, otherwise applicable limits and requirements that are applied on a Plan Year basis shall be prorated, but only if and to the extent required by law.

(oo) **"Qualified Matching Employer Contribution"** means any contribution made by the Employer to the Plan on account of Deferral Contributions or Employee Contributions made by or on behalf of Active Participants in accordance with Section 5.09, that may be included in determining whether the Plan meets the "ADP" test described in Section 6.03.

(pp) **"Qualified Nonelective Employer Contribution"** means any contribution made by the Employer to the Plan in accordance with Section 5.07.

(qq) **"Reemployment Commencement Date"** means the date on which an Employee who terminates employment with the Employer and all Related Employers first performs an Hour of Service following such termination of employment.

(rr) **"Related Employer"** means any employer other than the Employer named in Subsection 1.02(a) of the Adoption Agreement if the Employer and such other employer are members of a controlled group of corporations (as defined in Code Section 414(b)) or an affiliated service group (as defined in Code Section 414(m)), or are trades or businesses (whether or not incorporated) which are under common control (as defined in Code Section 414(c)), or such other employer is required to be aggregated with the Employer pursuant to regulations issued under Code Section 414(o).

(ss) **"Required Beginning Date"** means:

(1) for a Participant who is not a five percent owner, April 1 of the calendar year following the calendar year in which occurs the later of (i) the Participant's retirement or (ii) the Participant's attainment of age 70 1/2; provided, however, that a Participant may elect to have his Required Beginning Date determined without regard to the provisions of clause (i).

(2) for a Participant who is a five percent owner, April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

Once the Required Beginning Date of a five percent owner or a Participant who has elected to have his Required Beginning Date determined in accordance with the provisions of Section 2.01(tt)(1)(ii) has occurred, such Required Beginning Date shall not be re-determined, even if the Participant ceases to be a five percent owner in a subsequent year or continues in employment with the Employer or a Related Employer.

For purposes of this Subsection 2.01(tt), a Participant is treated as a five percent owner if such Participant is a five percent owner as defined in Code Section 416(i) (determined in accordance with Code Section 416 but without regard to whether the Plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2.

(tt) **"Rollover Contribution"** means any distribution from an eligible retirement plan, as defined in Section 13.04, that an Employee elects to contribute to the Plan, or have considered as contributed, in accordance with the provisions of Section 5.06.

(uu) **"Roth 401(k) Contribution"** means any Deferral Contribution made to the Plan by the Employer in accordance with the provisions of Subsection 5.03(b) that is not excludable from gross income and is intended to satisfy the requirements of Code Section 402A.

(vv) **"Self-Employed Individual"** means an individual who has Earned Income for the taxable year from the Employer or who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year, including, but not limited to, a partner in a partnership, a sole proprietor, a member in a limited liability company or a shareholder in a subchapter S corporation.

(ww) **"Service Agreement"** means the agreement between the Employer and the Volume Submitter Sponsor (or an agent or affiliate of the Volume Submitter Sponsor) relating to the provision of investment and other services to the Plan and shall include any addendum to the agreement and any other separate written agreement between the Employer and the Volume Submitter Sponsor (or an agent or affiliate of the Volume Submitter Sponsor) relating to the provision of services to the Plan.

(xx) **"Severance Date"** means the earlier of (i) the date an Employee retires, dies, quits, or is discharged from employment with the Employer and all Related Employers or (ii) the 12-month anniversary of the date on which the Employee was otherwise first absent from employment; provided, however, that if an individual terminates or is absent from employment with the Employer and all Related Employers because of military duty, such individual shall not incur a Severance Date if his employment rights are protected under Federal law and he returns to employment with the Employer or a Related Employer within the period during which he retains such employment rights, but, if he does not return to such employment within such period, his Severance Date shall be the earlier of (1) the first anniversary of the date his absence commenced or (2) the last day of the period during which he retains such employment rights.

(yy) **"Spouse"** means the person to whom an individual is married for purposes of Federal income taxes. (zz) **"Trust"** means the trust created

by the Employer in accordance with the provisions of Section 20.01.

(aaa) **"Trust Agreement"** means the agreement between the Employer and the Trustee, as set forth in Article 20, under which the assets of the Plan are held, administered, and managed.

(bbb) **"Trustee"** means the trustee designated in Section 1.03 of the Adoption Agreement, or its successor or permitted assigns. The term Trustee shall include any delegate of the Trustee as may be provided in the Trust Agreement.

(ccc) **"Trust Fund"** means the property held in Trust by the Trustee for the benefit of Participants and their Beneficiaries.

(ddd) **"Vesting Service"** means an Employee's service that is taken into account in determining his vested interest in his Matching Employer and Nonelective Employer Contributions Accounts as may be required under Section 1.16 of the Adoption Agreement. Vesting Service shall be credited in accordance with Article 3.

(eee) **"Volume Submitter Sponsor"** means Fidelity Management & Research Company or its successor.

2.02. Interpretation and Construction of Terms. Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Pronouns used in the Plan are in the masculine gender but include the feminine gender unless the context clearly indicates otherwise. Wherever used herein, the singular shall include the plural, and the plural shall include the singular, unless the context requires otherwise. Any titles, headings and/or subheadings used in the Plan have been inserted for convenience of reference and are to be ignored in any construction of the Plan's provisions.

2.03. Special Effective Dates. Some provisions of the Plan are only effective beginning as of a specified date or until a specified date. Any such special effective dates are specified within Plan text where applicable and are exceptions to the general Plan Effective Date as defined in Section 2.01(o).

Article 3. Service.

3.01. Crediting of Eligibility Service. If the Employer has selected an Eligibility Service requirement in Subsection 1.04(b) of the Adoption Agreement for an Eligible Employee to become an Active Participant, Eligibility Service shall be credited to an Employee as follows:

(a) If the Employer has selected the one year or two years of Eligibility Service requirement described in Subsection 1.04(b) of the Adoption Agreement, an Employee shall be credited with a year of Eligibility Service for each Eligibility Computation Period during which the Employee has been credited with the number of Hours of Service specified in that Subsection, as applicable. An Eligible Employee who has attained the required number of Hours of Service shall be credited with that year of service on the last day of that Eligibility Computation Period.

(b) If the Employer has selected a days or months of Eligibility Service requirement described in Subsection 1.04(b) of the Adoption Agreement, an Employee shall be credited with Eligibility Service for the aggregate of the periods beginning with the Employee's Employment Commencement Date (or Reemployment Commencement Date) and ending on his subsequent Severance Date; provided, however, that an Employee who has a Reemployment Date within the 12-consecutive-month period following the earlier of the first date of his absence or his Severance Date shall be credited with Eligibility Service for the period between his Severance Date and his Reemployment Date. A day of Eligibility Service shall be credited for each day on which an Employee is credited with Eligibility Service. Months of Eligibility Service shall be measured from the Employee's Employment Commencement Date or Reemployment Commencement Date to the corresponding date in the applicable following month.

3.02. Re-Crediting of Eligibility Service Following Termination of Employment. An Employee whose employment with the Employer and all Related Employers terminates and who is subsequently reemployed by the Employer or a Related Employer shall be re-credited upon reemployment with his Eligibility Service earned prior to his termination of employment.

3.03. Crediting of Vesting Service. If the Plan provides for Matching Employer and/or Nonelective Employer Contributions that are not 100 percent vested when made, Vesting Service shall be credited to an Employee, subject to any exclusions elected by the Employer in Subsection 1.16(b) of the Adoption Agreement, for the aggregate of the periods beginning with the Employee's Employment Commencement Date (or Reemployment Commencement Date) and ending on his subsequent Severance Date; provided, however, that an Employee who has a Reemployment Date within the 12- consecutive-month period following the earlier of the first date of his absence or his Severance Date shall be credited with Vesting Service for the period between his Severance Date and his Reemployment Date. Fractional periods of a year shall be expressed in terms of days.

3.04. Application of Vesting Service to a Participant's Account Following a Break in Vesting Service. The following rules describe how Vesting Service earned before and after a Break in Vesting Service shall be applied for purposes of determining a Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Accounts:

(a) If a Participant incurs five-consecutive Breaks in Vesting Service, all years of Vesting Service earned by the Employee after such Breaks in Service shall be disregarded in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment before such Breaks in Vesting Service. However, Vesting Service earned both before and after such Breaks in Vesting Service shall be included in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment after such Breaks in Vesting Service.

(b) If a Participant incurs fewer than five-consecutive Breaks in Vesting Service, Vesting Service earned both before and after such Breaks in Vesting Service shall be included in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment both before and after such Breaks in Vesting Service.

3.05. Service with Predecessor Employer. If the Plan is the plan of a predecessor employer, an Employee's Eligibility and Vesting Service shall include years of service with such predecessor employer. In any case in which the Plan is not the plan maintained by a predecessor employer, service for any employer as specifically described in Section 1.17 of the Adoption Agreement shall be treated as Eligibility and Vesting Service as indicated in Subsection 1.17(a) of the Adoption Agreement.

3.06. Change in Service Crediting. If an amendment to the Plan or a transfer from employment as an Employee covered under another qualified plan maintained by the Employer or a Related Employer results in a change in the method of crediting Eligibility and/or Vesting Service with respect to a Participant between the Hours of Service crediting method set forth in Section 2530.200b-2 of the Department of Labor Regulations and the elapsed-time crediting method set forth in Section 1.410(a)-7 of the Treasury Regulations, each Participant with respect to whom the method of crediting Eligibility and/or Vesting Service is changed shall have his Eligibility and/or Vesting Service determined in the manner set forth in Section 1.410(a)-7(f)(1) of the Treasury Regulations.

Article 4. Participation.

4.01. Date of Participation. If the Plan is an amendment, as indicated in Subsection 1.01(g)(2)(B) of the Adoption Agreement, all employees who were active participants in the Plan immediately prior to the Effective Date shall continue as Active Participants on the Effective Date, provided that they are Eligible Employees on the Effective Date. If elected by the Employer in Subsection 1.04(f) of the Adoption Agreement, all Eligible Employees who are in the service of the Employer on the date specified in Subsection 1.04(f) (and, if this is an amendment, as indicated in Subsection 1.01(g)(2)(B) of the Adoption Agreement, were not active participants in the Plan immediately prior to that date) shall become Active Participants on the date elected by the Employer in Subsection 1.04(f) of the Adoption Agreement. Any other Eligible Employee shall become an Active Participant in the Plan on the Entry Date coinciding with or immediately following the date on which he first satisfies the eligibility requirements set forth in Subsections 1.04(a) and (b) of the Adoption Agreement.

Any age and/or Eligibility Service requirement that the Employer elects to apply in determining an Eligible Employee's eligibility to make Deferral Contributions shall also apply in determining an Eligible Employee's eligibility to make Employee Contributions, if Employee Contributions are permitted under the Plan, and to receive Qualified Nonelective Employer Contributions. An Eligible Employee who has met the eligibility requirements with respect to certain contributions, but who has not met the eligibility requirements with respect to other contributions, shall become an Active Participant in accordance with the provisions of the preceding paragraph, but only with respect to the contributions for which he has met the eligibility requirements.

Notwithstanding any other provision of the Plan, if the Employer selects in Subsection 1.01(g)(5) of the Adoption Agreement that the Plan is a frozen plan, no Employee who was not already an Active Participant on the date the Plan was frozen shall become an Active Participant while the Plan is frozen. If the Employer amends the Plan to remove the freeze, Employees shall again become Active Participants in accordance with the provisions of the amended Plan.

4.02. Transfers Out of Covered Employment. If any Active Participant ceases to be an Eligible Employee, but continues in the employ of the Employer or a Related Employer, such Employee shall cease to be an Active Participant, but shall continue as an Inactive Participant until his entire Account balance is forfeited or distributed. An Inactive Participant shall not be entitled to receive an allocation of contributions or forfeitures under the Plan for the period that he is not an Eligible Employee and wages and other payments made to him by the Employer or a Related Employer for services other than as an Eligible Employee shall not be included in Compensation for purposes of determining the amount and allocation of any contributions to the Account of

such Inactive Participant. Such Inactive Participant shall continue to receive credit for Vesting Service completed during the period that he continues in the employ of the Employer or a Related Employer.

4.03. Transfers Into Covered Employment. If an Employee who is not an Eligible Employee becomes an Eligible Employee, such Eligible Employee shall become an Active Participant immediately as of his transfer date if such Eligible Employee has already satisfied the eligibility requirements and would have otherwise previously become an Active Participant in accordance with Section 4.01. Otherwise, such Eligible Employee shall become an Active Participant in accordance with Section 4.01.

Wages and other payments made to an Employee prior to his becoming an Eligible Employee by the Employer or a Related Employer for services other than as an Eligible Employee shall not be included in Compensation for purposes of determining the amount and allocation of any contributions to the Account of such Eligible Employee.

4.04. Resumption of Participation Following Reemployment. If a Participant who terminates employment with the Employer and all Related Employers is reemployed as an Eligible Employee, he shall again become an Active Participant on his Reemployment Commencement Date. If a former Employee is reemployed as an Eligible Employee on or after an Entry Date coinciding with or following the date on which he met the age and service requirements elected by the Employer in Section 1.04 of the Adoption Agreement, he shall become an Active Participant on his Reemployment Commencement Date.

Any other former Employee who is reemployed as an Eligible Employee shall become an Active Participant as provided in Section 4.01 or 4.03. Any distribution which a Participant is receiving under the Plan at the time he is reemployed by the Employer or a Related Employer shall cease, except as otherwise required under Section 12.04.

Article 5. Contributions.

5.01. Contributions Subject to Limitations. All contributions made to the Plan under this Article 5 shall be subject to the limitations contained in Article 6.

5.02. Compensation Taken into Account in Determining Contributions. Compensation, as defined in Section 2.01(k), shall not include any amounts elected by the Employer with respect to such contributions in Subsection 1.05(a) or (b), as applicable, of the Adoption Agreement.

5.03 Deferral Contributions. If so provided in Subsection 1.07(a) of the Adoption Agreement, each Active Participant may elect to execute a salary reduction agreement with the Employer to reduce his Compensation by an amount, as specified in Subsection 1.07(a) of the Adoption Agreement, for each payroll period. Except as specifically elected by the Employer within Subsections 1.07(a) of the Adoption Agreement, with respect to each payroll period, an Active Participant may not elect to make Deferral Contributions in excess of the percentage of Compensation specified by the Employer in Subsection 1.07(a)(1)(A) of the Adoption Agreement and Subsection 5.03(a) below. Notwithstanding the foregoing, if the Employer has elected 401(k) Safe Harbor Matching Contributions in Option 1.11(a)(3) of the Adoption Agreement, a Participant must be permitted to make Deferral Contributions under the Plan sufficient to receive the full 401(k) Safe Harbor Matching Employer Contribution provided under Subsection (a)(1) or (2), as applicable of the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement.

An Active Participant's salary reduction agreement shall become effective on the first day of the first payroll period for which the Employer can reasonably process the request, but not earlier than the later of (a) the effective date of the provisions permitting Deferral Contributions or (b) the date the Employer adopts such provisions. The Employer shall make a Deferral Contribution on behalf of the Participant corresponding to the amount of said reduction. Under no circumstances may a salary reduction agreement be adopted retroactively.

An Active Participant may elect to change or discontinue the amount by which his Compensation is reduced by notice to the Employer as provided in Subsection 1.07(a)(1)(C) or (D) of the Adoption Agreement. Notwithstanding the Employer's election in Subsection 1.07(a)(1)(C) or (D) of the Adoption Agreement, if the Employer has elected 401(k) Safe Harbor Matching Employer Contributions in Subsection 1.11(a)(3) of the Adoption Agreement or 401(k) Safe Harbor Nonelective Employer Contributions in Subsection 1.12(a)(3) of the Adoption Agreement, an Active Participant may elect to change or discontinue the amount by which his Compensation is reduced by notice to the Employer within a reasonable period, as specified by the Employer (but not less than 30 days), of receiving the notice described in Section 6.09.

Based upon the Employer's elections in Subsection 1.07(a) of the Adoption Agreement, the following special types of Deferral Contributions may be made to the Plan:

(a) Catch-Up Contributions. If elected by the Employer in Subsection 1.07(a)(4) of the Adoption Agreement, an Active Participant who has attained or is expected to attain age 50 before the close of the taxable year shall be eligible to make Catch-Up Contributions to the Plan in excess of an otherwise applicable Plan limit, but not in excess of (i) the dollar limit in effect under Code Section 414(v)(2)(B)(i) for the taxable year or (ii) when added to the other Deferral Contributions made by the Participant for the taxable year, 100 percent of the Participant's "effectively available Compensation," as defined in this Section 5.03. An otherwise applicable Plan limit is a limit that applies to Deferral Contributions without regard to Catch-Up Contributions, including, but not limited to, (1) the dollar limitation on Deferral Contributions under Code Section 402(g), described in Section 6.02, (2) the limitations on annual additions in effect under Code Section 415, described in Section 6.12, (3) the limitation on Deferral Contributions for Highly Compensated Employees under Code Section 401(k)(3), described in Section 6.03, and (4) the limitation on Deferral Contributions for Highly Compensated Employees which the Administrator may impose, in accordance with the provisions of Section 6.05

In the event that the deferral limit described in Subsection 1.07(a)(1)(A) of the Adoption Agreement or the administrative limit described in Section 6.05, as applicable, is changed during the Plan Year, for purposes of determining Catch-Up Contributions for the Plan Year, such limit shall be determined using the time-weighted

average method described in Section 1.414(v)-1(b)(2)(i)(B)(1) of the Treasury Regulations, applying the alternative definition of compensation permitted under Section 1.414(v)-1(b)(2)(i)(B)(2) of the Treasury Regulations.

(b) Roth 401(k) Contributions. Notwithstanding any other provision of the Plan to the contrary, if the Employer elects in Subsection 1.07(a)(5) of the Adoption Agreement to permit Roth 401(k) Contributions, then a Participant may irrevocably designate all or a portion of his Deferral Contributions made pursuant to Subsection
1.07(a) of the Adoption Agreement as Deferral Contributions that are includible in the Participant’s gross income at the time deferred, pursuant to Code Section 402A and any applicable guidance or regulations issued thereunder (“Roth 401(k) Contributions”). A Participant may change his designation prospectively with respect to future Deferral Contributions as of the date or dates elected by the Employer in Subsection 1.07(a)(1)(C) of the Adoption Agreement. The Administrator will maintain all such contributions made pursuant to Code Section 402A separately and make distributions in accordance with the Plan unless required to do otherwise by Code Section 402A and any applicable guidance or regulations issued thereunder.

(c) Automatic Enrollment Contributions. If the Employer elected Option 1.07(a)(6) of the Adoption Agreement, for each Eligible Employee to whom the Employer has elected to apply the automatic enrollment contribution provisions, such Eligible Employee's Compensation shall be reduced by the percentage specified by the Employer through Section 1.07(b) of the Additional Provisions Addendum to the Adoption Agreement as soon as administratively feasible following the date specified therein. These amounts shall be contributed to the Plan on behalf of such an Eligible Employee as Deferral Contributions. If the Employer has designated the Plan as having an EACA within Subsection 1.07(a)(6) of the Adoption Agreement, then the Employer shall also provide to each Eligible Employee covered by the EACA a comprehensive notice, written in a manner calculated to be understood by the average Participant, of the Eligible

Employee’s rights and obligations under the Plan within the time described in Section 6.09 for a safe harbor contribution notice. In addition, an Eligible Employee who is otherwise covered by the EACA but who makes an affirmative election regarding the amount of Deferral Contributions shall remain covered by the EACA solely for purposes of receiving any required notice from the Plan Administrator in connection with the EACA and for purposes of determining the period applicable to the distribution of certain excess contributions pursuant to Sections 6.04 and 6.07 of the Basic Plan Document. If the Employer has elected through Section 1.07(b) of the Additional Provisions Addendum to the Adoption Agreement, then a Participant who has made automatic enrollment contributions pursuant to the EACA has a permissible withdrawal available pursuant to the following:

(1) The EACA Participant must make any such election within ninety days of the date of his automatic enrollment pursuant to Section 1.07(b)(1) of the Additional Provisions Addendum to the Adoption Agreement. Upon making such an election, the EACA Participant’s Deferral Contribution election will be set to zero until such time as the EACA Participant’s Deferral Contribution rate has changed pursuant to Section 1.07(a)(1) of the Adoption Agreement.

(2) The amount of such withdrawal shall be equal to the amount of the EACA Deferrals through the end of the fifteen day period beginning on the date the Participant makes the election described in (1) above, adjusted for allocable gains and losses to the date of such withdrawal.

(3) Any amounts attributable to Employer Matching Contributions allocated to the Account of an EACA Participant with respect to EACA Deferrals that have been withdrawn pursuant to Section 1.07(b)(3) of the Additional Provisions Addendum to the Adoption Agreement shall be forfeited. In the event that Employer Matching Contributions would otherwise be allocated to the EACA Participant’s Account with respect to EACA Deferrals that have been so withdrawn, the Employer shall not contribute such Employer Matching Contributions to the Plan.

(4) In the event such withdrawal provision is removed from the Plan via an amendment, the transaction continues to be available to EACA Participants who were covered by this provision and who were enrolled automatically prior to the effective date of the provision’s removal.

Except as provided in paragraph (1) above with respect to an EACA Participant who elects a permissible withdrawal, an Active Participant's Compensation shall continue to be reduced and Deferral Contributions made to the Plan on his behalf until the Active Participant elects to change or discontinue the percentage by which his Compensation is reduced by notice to the Plan Administrator in accordance with procedures the Plan Administrator has developed for that purpose. An Eligible Employee may affirmatively elect not to have his Compensation reduced in accordance with this Subsection 5.03(c) by notice to the Plan Administrator within a reasonable period ending no later than the date Compensation subject to reduction hereunder becomes available to the Eligible Employee.

If the Employer elected through, and in accordance with the provisions of, Section 1.07(b) of the Additional Provisions Addendum to the Adoption Agreement, the deferral election of an Active Participant on whose behalf Deferral Contributions are being made shall be increased annually by the percentage of Compensation specified therein, unless and until the percentage of Compensation being contributed on behalf of the Active Participant reaches the limit specified therein. Eligible Employees subject to automatic enrollment will be notified and have opportunity to affirmatively elect otherwise in accordance with procedures established by the Plan Administrator; however, such Employees may be subject to automatic enrollment again in accordance with provisions of Section 1.07(b) of the Additional Provisions Addendum to the Adoption Agreement.

Notwithstanding any other provision of this Section or of any Participant's salary reduction agreement, in no event shall a Participant be permitted to make Deferral Contributions in excess of his "effectively available Compensation." A Participant's

"effectively available Compensation" is his Compensation remaining after all applicable amounts have been withheld (e.g., tax-withholding and withholding of contributions to a cafeteria plan).

5.04. Employee Contributions. If so provided by the Employer in Subsection 1.08(a) of the Adoption Agreement, each Active Participant may elect to make non-deductible Employee Contributions to the Plan in accordance with the rules and procedures established by the Employer and subject to the limits provided through Subsection 1.08(a) of the Adoption Agreement.

5.05. No Deductible Employee Contributions. No deductible Employee Contributions may be made to the Plan. Deductible Employee Contributions made prior to January 1, 1987 shall be maintained in a separate Account. No part of the deductible Employee Contributions Account shall be used to purchase life insurance.

5.06. Rollover Contributions. If so provided by the Employer in Subsection 1.09(a) of the Adoption Agreement, subject to any limits provided therein, an Eligible Employee who is or was entitled to receive a distribution that is eligible for rollover to a qualified plan under Code Section 408(d)(3) or an eligible rollover distribution, as defined in Code Section 402(c)(4) and Treasury Regulations issued thereunder, including an eligible rollover distribution received by the Eligible Employee as a surviving Spouse or as a Spouse or former Spouse who is an alternate payee under a qualified domestic relations order, from an eligible retirement plan, as defined in Section 13.04, may elect to contribute all or any portion of such distribution to the Trust directly from such eligible retirement plan (a "direct rollover") or within 60 days of receipt of such distribution to the Eligible Employee. Except as otherwise provided in Subsection 1.09(b) of the Adoption Agreement, Rollover Contributions shall only be made in the form of cash, allowable Fund Shares, or promissory notes evidencing a plan loan to the Eligible Employee; provided, however, that Rollover Contributions shall only be permitted in the form of promissory notes if the Plan otherwise provides for loans.

Notwithstanding the foregoing, the Plan shall not accept the following as Rollover Contributions:

(a) the contributions excluded by the Employer, if any, in Subsection 1.09(a) of the Adoption Agreement; (b) any rollover of after-tax employee

contributions that is not made by a direct rollover;

(c) any rollover from an individual retirement account or annuity described in Code Section 408(a) or (b) (including a Roth IRA under Code Section 408A) to the extent such amount would not otherwise be includible in the Employee's income; or

(i) except as provided in Subsection 1.09(b), any rollover amounts which are not “designated Roth contributions” which are to be contributed to the Plan as “designated Roth contributions.”

To the extent the Plan accepts Rollover Contributions of after-tax employee contributions, the Plan will separately account for such contributions, including separate accounting for the portion of the Rollover Contribution that is includible in gross income and the portion that is not includible in gross income.

Except with regard to a rollover made pursuant to Subsection 1.09(b), any rollover of "designated Roth contributions", as defined in Subsection 6.01(e), shall be subject to the requirements of Code Section 402(c). To the extent the Plan accepts Rollover Contributions of "designated Roth contributions", the Plan will separately account for such contributions in accordance with the provisions of Section 7.01, including separate accounting for the portion of the Rollover

Contribution that is includible in gross income and the portion that is not includible in gross income, if applicable. If the Plan accepts a direct rollover of "designated Roth contributions", the Trustee and the Plan Administrator shall be entitled to rely on a statement from the distributing plan's administrator identifying (i) the Eligible Employee's basis in the rolled over amounts and

(ii) the date on which the Eligible Employee's 5-taxable-year period of participation (as required under Code Section 402A(d)(2) for a qualified distribution of "designated Roth contributions") started under the distributing plan. If the
5-taxable-year period of participation under the distributing plan would end sooner than the Eligible Employee's 5-taxable- year period of participation under the Plan, the 5-taxable-year period of participation applicable under the distributing plan shall continue to apply with respect to the Rollover Contribution.

Notwithstanding the above, if so provided in Subsection 1.09(b), and as limited as provided therein, a Participant or Beneficiary may elect to have any portion of his Account otherwise distributable under the terms of the Plan, which is not “designated Roth contributions” under the Plan and meets the definition of an “eligible rollover distribution” found in Section
13.04(c), be considered “designated Roth contributions” for purposes of the Plan. Any assets converted in such a way shall be separately accounted for and shall still be subject to distribution constraints found in Article 14 applicable to them prior to the conversion. Such assets shall also retain any distribution rights, such as those found in Article 10, applicable to them prior to the conversion and shall be treated as Rollover Contributions for purposes of withdrawal pursuant to Section 10.03. Each such in-plan rollover shall be subject to its own 5-taxable year period of participation and subject to the requirements of Code Section 408A(d)(3)(F).

An Eligible Employee who has not yet become an Active Participant in the Plan in accordance with the provisions of Article 3 may make a Rollover Contribution to the Plan. Such Eligible Employee shall be treated as a Participant under the Plan for all purposes of the Plan, except eligibility to have Deferral Contributions made on his behalf and to receive an allocation of Matching Employer or Nonelective Employer Contributions.

The Administrator shall require such information from Eligible Employees as it deems necessary to ensure that amounts contributed under this Section 5.06 meet the requirements for tax-deferred rollovers established by this Section 5.06 and by Code Section 402(c) and develop procedures to govern the Plan’s acceptance of Rollover Contributions.

If a Rollover Contribution made under this Section 5.06 is later determined by the Administrator not to have met the requirements of this Section 5.06 or of the Code or Treasury regulations, the Trustee shall, within a reasonable time after such determination is made, and on instructions from the Administrator, distribute to the Employee the amounts then held in the Trust attributable to such Rollover Contribution.

A Participant's Rollover Contributions Account shall be subject to the terms of the Plan, including Article 14, except as otherwise provided in this Section 5.06.

5.07. Qualified Nonelective Employer Contributions. The Employer may, in its discretion, make a Qualified Nonelective Employer Contribution for the Plan Year in any amount it deems necessary for a permissible purpose. Unless another allocation method will be utilized to address a correction in accordance with the Employee Plans Compliance Resolution System (EPCRS, as described in Revenue Procedure 2013-12 and any subsequent guidance), any Qualified Nonelective Employer Contribution shall be allocated to Participants in accordance with Subsection 1.10(a) of the Adoption Agreement.

Participants shall not be required to satisfy any Hours of Service or employment requirement for the Plan Year in order to receive an allocation of Qualified Nonelective Employer Contributions.

Qualified Nonelective Employer Contributions shall be distributable only in accordance with the distribution provisions that are applicable to Deferral Contributions; provided, however, that a Participant shall not be permitted to take a hardship withdrawal of amounts credited to his Qualified Nonelective Employer Contributions Account after the later of December 31, 1988 or the last day of the Plan Year ending before July 1, 1989 and that a Participant shall not be permitted to take Qualified Nonelective Employer Contributions as part of a Qualified Reservist Distribution pursuant to Section 10.09.

5.08. Matching Employer Contributions. If so provided by the Employer in Section 1.11 of the Adoption Agreement, the Employer shall make Matching Employer Contributions on behalf of each of its "eligible" Participants as indicated therein. The amount of the Matching Employer Contribution shall be determined in accordance with Subsection 1.11(a) and/or (b) of the Adoption Agreement and/or the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement, as applicable.

Notwithstanding the foregoing, unless otherwise elected in Subsection 1.11(c)(1)(A) of the Adoption Agreement, the Employer shall ***not*** make Matching Employer Contributions, other than 401(k) Safe Harbor Matching Employer Contributions, with respect to an "eligible" Participant's Catch-Up Contributions. If, due to application of a Plan limit, Matching Employer Contributions other than 401(k) Safe Harbor Matching Employer Contributions are attributable to Catch- Up Contributions, such Matching Employer Contributions, plus any income and minus any loss allocable thereto, shall be forfeited and applied as provided in Section 11.09.

5.09. Qualified Matching Employer Contributions. If so provided by the Employer in Subsection 1.11(f) of the Adoption Agreement, prior to making its Matching Employer Contribution (other than any 401(k) Safe Harbor Matching Employer Contribution) to the Plan, the Employer may designate all or a portion of such Matching Employer Contribution as a Qualified Matching Employer Contribution. The Employer shall notify the Trustee of such designation at the time it makes its Matching Employer Contribution. Qualified Matching Employer Contributions shall be distributable only in accordance with the distribution provisions that are applicable to Deferral Contributions; provided, however, that a Participant shall not be permitted to take a hardship withdrawal of amounts credited to his Qualified Matching Employer Contributions Account after the later of December 31, 1988 or the last day of the Plan Year ending before July 1, 1989 and that a Participant shall not be permitted to take Qualified Matching Employer Contributions as part of a Qualified Reservist Distribution pursuant to Section 10.09.

If the amount of an Employer's Qualified Matching Employer Contribution is determined based on a Participant's Compensation, and the Qualified Matching Employer Contribution is necessary to satisfy the "ADP" test described in Section 6.03, the compensation used in determining the amount of the Qualified Matching Employer Contribution shall be "testing compensation", as defined in Subsection 6.01(s). If the Qualified Matching Employer Contribution is not necessary to satisfy the "ADP" test described in Section 6.03, the compensation used to determine the amount of the Qualified Matching Employer Contribution shall be Compensation as defined in Subsection 2.01(k).

5.10. Nonelective Employer Contributions. If so provided by the Employer in Subsection 1.12(a) and/or (b) of the Adoption Agreement, the Employer shall make Nonelective Employer Contributions to the Trust in accordance with Section 1.12 of the Adoption Agreement to be allocated among "eligible" Participants as indicated therein. Nonelective Employer Contributions shall be allocated as follows:

(a) If the Employer has elected a fixed contribution formula, Nonelective Employer Contributions shall be allocated among "eligible" Participants in the manner specified in Section 1.12 of the Adoption Agreement or the
401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement, as applicable.

(b) If the Employer has elected a discretionary contribution amount, Nonelective Employer Contributions shall be allocated among "eligible" Participants, as determined in accordance with Section 1.12 of the Adoption Agreement, as follows:

(1) If the non-integrated formula is elected in Subsection 1.12(b)(1) of the Adoption Agreement, Nonelective Employer Contributions shall be allocated to "eligible" Participants in the ratio that each "eligible" Participant's Compensation bears to the total Compensation paid to all "eligible" Participants for the Contribution Period.

(2) If the integrated formula is elected in Subsection 1.12(b)(2) of the Adoption Agreement, Nonelective Employer Contributions shall be allocated in the following steps:

(A) First, to each "eligible" Participant in the same ratio that the sum of the "eligible" Participant's Compensation and "excess Compensation" for the Plan Year bears to the sum of the Compensation and "excess Compensation" of all "eligible" Participants for the Plan Year. This allocation as a percentage of the sum of each "eligible" Participant's Compensation and "excess Compensation" shall not exceed the "permitted disparity limit", as defined in Section 1.12 of the Adoption Agreement.

Notwithstanding the foregoing, if in any Plan Year an "eligible" Participant has reached the "cumulative permitted disparity limit", such "eligible" Participant shall receive an allocation under this Subsection 5.10(b)(2)(A) based on two times his Compensation for the Plan Year, rather than the sum of his Compensation and "excess Compensation" for the Plan Year. If an "eligible" Participant did not benefit under a qualified defined benefit plan or target benefit plan

for any Plan Year beginning on or after January 1, 1994, the "eligible" Participant shall have no "cumulative disparity limit".

(B) Second, if any Nonelective Employer Contributions remain after the allocation in Subsection 5.10(b)(2)(A), the remaining Nonelective Employer Contributions shall be allocated to each "eligible" Participant in the same ratio that the "eligible" Participant's Compensation for the Plan Year bears to the total Compensation of all "eligible" Participants for the Plan Year.

Notwithstanding the provisions of Subsections 5.10(b)(2)(A) and (B) above, if in any Plan Year an "eligible" Participant benefits under another qualified plan or simplified employee pension, as defined in Code Section 408(k), that provides for or imputes permitted disparity, the Nonelective Employer Contributions for the Plan Year allocated to such "eligible" Participant shall be in the ratio that his Compensation for the Plan Year bears to the total Compensation paid to all "eligible" Participants.

For purposes of this Subsection 5.10(b)(2), the following definitions shall apply:

(C) **"Cumulative permitted disparity limit"** means 35 multiplied by the sum of an "eligible" Participant's annual permitted disparity fractions, as defined in Sections 1.401(l)-5(b)(3) through (b)(7) of the Treasury Regulations, attributable to the "eligible" Participant's total years of service under the Plan and any other qualified plan or simplified employee pension, as defined in Code Section 408(k), maintained by the Employer or a Related Employer. For each Plan Year commencing prior to January 1, 1989, the annual permitted disparity fraction shall be deemed to be one, unless the Participant never accrued a benefit under any qualified plan or simplified employee pension maintained by the Employer or a Related Employer during any such Plan Year. In determining the annual permitted disparity fraction for any Plan Year, the Employer may elect to assume that the full disparity limit has been used for such Plan Year.

(D) **"Excess Compensation"** means Compensation in excess of the "integration level" specified by the Employer in Subsection 1.12(b)(2) of the Adoption Agreement.

5.11. Vested Interest in Contributions.

(a) Participant's vested interest in the following sub-accounts shall be 100 percent: (1) his Deferral Contributions Account;

(2) his Qualified Nonelective Employer Contributions Account; (3) his Qualified Matching Employer Contributions Account;

(4) his 401(k) Safe Harbor Nonelective Employer Contributions Account (unless QACA has been selected on the 401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement);

(5) his 401(k) Safe Harbor Matching Employer Contributions Account (unless QACA has been selected on the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement);

(6) his Rollover Contributions Account;

(7) his Employee Contributions Account; and

(8) his deductible Employee Contributions Account.

(b) Contributions attributable to a QACA must vest at least as rapidly as 100% once the Participant is credited with two Years of Service.

Except as otherwise specifically provided in the Vesting Schedule Addendum to the Adoption Agreement or as may be required under Section 15.05, a Participant's vested interest in his Nonelective Employer Contributions Account attributable to Nonelective Employer Contributions other than those described in Subsection 5.11(a)(4)

above, shall be determined in accordance with the vesting schedule elected by the Employer in Subsection 1.16(c)(1) of the Adoption Agreement. Except as otherwise specifically provided in the Vesting Schedule Addendum to the Adoption Agreement, a Participant's vested interest in his Matching Employer Contributions Account attributable to Matching Employer Contributions other than those described in Subsection 5.11(a)(5) above, shall be determined in accordance with the vesting schedule elected by the Employer in Subsection 1.16(c)(2) of the Adoption Agreement.

5.12. Time for Making Contributions. The Employer shall pay its contribution for each Plan Year not later than the time prescribed by law for filing the Employer's Federal income tax return for the fiscal (or taxable) year with or within which such Plan Year ends (including extensions thereof).

If the Employer has elected the payroll period as the Contribution Period in Subsection 1.11(d) of the Adoption Agreement, the Employer shall remit any 401(k) Safe Harbor Matching Employer Contributions made during a Plan Year quarter to the Trustee no later than the last day of the immediately following Plan Year quarter.

The Employer should remit Employee Contributions and Deferral Contributions to the Trustee as of the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, but not later than the 15th business day of the calendar month following the month in which such amount otherwise would have been paid to the Participant, or within such other time frame as may be determined by applicable regulation or legislation.

The Trustee shall have no authority to inquire into the correctness of the amounts contributed and remitted to the Trustee or to determine whether any contribution is payable under this Article 5. The Administrator shall be the named fiduciary responsible for ensuring the Employer remits contributions and loan repayments to the Trust and shall have the duty and responsibility for the

collection of such contributions and repayments when not timely made by the Employer, provided that the Administrator may appoint another named fiduciary to handle such responsibility and notify the Trustee of such appointment in writing. The Trustee shall be authorized to provide information and records regarding contributions it has received to the Administrator or other named fiduciary, and may accept contributions and/or carry out related allocation instructions from, such named fiduciary upon its request, as may be further described in the Service Agreement. As a directed trustee pursuant to ERISA Section 403(a)(1) for all purposes, the Trustee shall only pursue any claim that the Plan might have with respect to delinquent loan repayments or Plan contributions as specifically directed to do so by the Administrator or other named fiduciary.

5.13. Return of Employer Contributions. The Trustee shall, upon request by the Employer, return to the Employer the amount (if any) determined under Section 20.23. Such amount shall be reduced by amounts attributable thereto which have been credited to the Accounts of Participants who have since received distributions from the Trust, except to the extent such amounts continue to be credited to such Participants' Accounts at the time the amount is returned to the Employer. Such amount shall also be reduced by the losses of the Trust attributable thereto, if and to the extent such losses exceed the gains and income attributable thereto, but shall not be increased by the gains and income of the Trust attributable thereto, if and to the extent such gains and income exceed the losses attributable thereto. To the extent such gains exceed losses, the gains shall be forfeited and applied as provided in Section 11.09. In no event shall the return of a contribution hereunder cause the balance of the individual Account of any Participant to be reduced to less than the balance which would have been credited to the Account had the mistaken amount not been contributed.

5.14. Frozen Plan. If the Employer has elected Subsection 1.01(g)(5) of the Adoption Agreement, then in accordance therewith and notwithstanding any other provision of the Plan to the contrary, the Plan is a frozen plan. If the Employer amends the Plan to remove the freeze, contributions shall resume in accordance with the provisions of the amended Plan.

Article 6. Limitations on Contributions.

6.01. Special Definitions. For purposes of this Article, the following definitions shall apply:

(a) **"Annual additions"** mean the sum of the following amounts allocated to an Active Participant for a Limitation Year:

(1) all employer contributions allocated to an Active Participant's account under qualified defined contribution plans maintained by the "415 employer", including amounts applied to reduce employer contributions as provided under Section 11.09, but excluding amounts treated as Catch-Up Contributions;

(2) all employee contributions allocated to an Active Participant's account under a qualified defined contribution plan or a qualified defined benefit plan maintained by the "415 employer" if separate accounts are maintained with respect to such Active Participant under the defined benefit plan;

(3) all forfeitures allocated to an Active Participant's account under a qualified defined contribution plan maintained by the "415 employer";

(4) all amounts allocated to an "individual medical benefit account" which is part of a pension or annuity plan maintained by the "415 employer";

(5) all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a "welfare benefit fund" maintained by the "415 employer"; and

(6) all allocations to an Active Participant under a "simplified employee pension".

(b) **"Contribution percentage"** means the ratio (expressed as a percentage) of (1) the "contribution percentage amounts" allocated to an "eligible participant's" Accounts for the Plan Year to (2) the "eligible participant's" "testing compensation" for the Plan Year.

(c) **"Contribution percentage amounts"** mean those amounts included in applying the "ACP" test. (1) "Contribution percentage amounts" include the following:

(A) any Employee Contributions made by an "eligible participant" to the Plan;

(B) any Matching Employer Contributions on eligible contributions as elected by the Employer in Subsection 1.11(c) of the Adoption Agreement, made for the Plan Year, but excluding (A) Qualified Matching Employer Contributions that are taken into account in satisfying the "ADP" test described in Section 6.03 and (B) Matching Employer Contributions that are forfeited either to correct "excess aggregate contributions" or because the contributions to which they relate are "excess deferrals", "excess contributions", "excess aggregate contributions", or Catch-Up Contributions (in the event the Plan does not provide for Matching Employer Contributions with respect to Catch-Up Contributions);

(C) Qualified Nonelective Employer Contributions allocated as of a date within the “testing year” and designated at the time of contribution as applying for the “ACP” test;

(D) 401(k) Safe Harbor Nonelective Employer Contributions may be included to the extent such contributions are not required to satisfy the safe harbor contribution requirements under Section 1.401(k)-3(b) of the Treasury Regulations, excluding 401(k) Safe Harbor Nonelective Employer Contributions that are taken into account in satisfying the "ADP" test described in Section 6.03; and

(E) Deferral Contributions, when necessary to pass the “ACP” test, provided that the "ADP" test described in Section 6.03 is satisfied or treated as satisfied (except as in accordance with Section 6.09) both including Deferral Contributions included as "contribution percentage amounts" and excluding such Deferral Contributions.

(2) Notwithstanding the foregoing, for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.09 with respect to some or all Deferral Contributions, "contribution percentage amounts":

(A) shall not include any Deferral Contributions with respect to which the "ADP" test is deemed satisfied; and

(B) may have the following Matching Employer Contributions excluded:

(i) if the requirements described in Section 6.10 for deemed satisfaction of the "ACP" test with respect to some or all Matching Employer Contributions are met, those Matching Employer Contributions with respect to which the "ACP" test is deemed satisfied; or

(ii) if the "ADP" test is deemed satisfied using 401(k) Safe Harbor Matching Employer Contributions, but the requirements described in Section 6.10 for deemed satisfaction of the "ACP" test with respect to Matching Employer Contributions are not met, any Matching Employer Contributions made on behalf of an "eligible participant" for the Plan Year that do not exceed four percent of the "eligible participant's" Compensation for the Plan Year.

(3) Notwithstanding any other provisions of this Subsection, if an Employer elects to change from the current year testing method described in Subsection 1.06(a)(1) of the Adoption Agreement to the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, the following shall not be considered "contribution percentage amounts" for purposes of determining the "contribution percentages" of Non-Highly Compensated Employees for the prior year immediately preceding the Plan Year in which the change is effective:

(A) Qualified Matching Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 for such prior year;

(B) Qualified Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year; and

(C) 401(k) Safe Harbor Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year or that were required to satisfy the safe harbor contribution requirements under Section 1.401(k)-3(b) of the Treasury Regulations for such prior year.;

To be included in determining an "eligible participant's" "contribution percentage" for a Plan Year, Employee Contributions must be made to the Plan before the end of such Plan Year and other "contribution percentage amounts" must be allocated to the "eligible participant's" Account as of a date within such Plan Year and made before the last day of the 12-month period immediately following the Plan Year to which the "contribution percentage amounts" relate. If an Employer has elected the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, "contribution percentage amounts" that are taken into account for purposes of determining the "contribution percentages" of Non-Highly Compensated Employees for the prior year relate to such prior year. Therefore, such "contribution percentage amounts" must be made before the last day of the Plan Year being tested.

(d) **"Deferral ratio"** means the ratio (expressed as a percentage) of (1) the amount of "includable contributions" made on behalf of an Active Participant for the Plan Year to (2) the Active Participant's "testing compensation" for such Plan Year. An Active Participant who does not receive "includable contributions" for a Plan Year shall have a "deferral ratio" of zero.

(e) **"Designated Roth contributions"** mean any Roth 401(k) Contributions made to the Plan and any "elective deferrals" made to another plan that would be excludable from a Participant's income, but for the Participant's election to designate such contributions as Roth contributions and include them in income.

(f) **"Determination year"** means (1) for purposes of determining income or loss with respect to "excess deferrals", the calendar year in which the "excess deferrals" were made and (2) for purposes of determining income or loss with respect to "excess contributions", and "excess aggregate contributions", the Plan Year in which such "excess contributions" or "excess aggregate contributions" were made.

(g) **"Elective deferrals"** mean all employer contributions, other than Deferral Contributions, made on behalf of a Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any simplified employee pension cash or deferred arrangement as described in Code Section 402(h)(1)(B), any eligible deferred compensation plan under Code Section 457, any plan as described under Code Section 501(c)(18), and any employer contributions made on behalf of a Participant pursuant to a salary reduction agreement for the purchase of an annuity contract under Code Section 403(b). "Elective deferrals" include

"designated Roth contributions" made to another plan. "Elective deferrals" do not include any deferrals properly distributed as excess "annual additions" or any deferrals treated as catch-up contributions in accordance with the provisions of Code Section 414(v).

(h) **"Eligible participant"** means any Active Participant who is eligible to make Employee Contributions, or Deferral Contributions (if the Employer takes such contributions into account in calculating "contribution percentages"), or to receive a Matching Employer Contribution. Notwithstanding the foregoing, the term "eligible participant" shall not include any Active Participant who is included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers.

(i) **"Excess aggregate contributions"** with respect to any Plan Year mean the excess of

(1) The aggregate "contribution percentage amounts" actually taken into account in computing the average "contribution percentages" of "eligible participants" who are Highly Compensated Employees for such Plan Year, over

(2) The maximum amount of "contribution percentage amounts" permitted to be made on behalf of Highly Compensated Employees under Section 6.06 (determined by reducing "contribution percentage amounts" made for the Plan Year on behalf of "eligible participants" who are Highly Compensated Employees in order of their "contribution percentages" beginning with the highest of such "contribution percentages").

"Excess aggregate contributions" shall be determined after first determining "excess deferrals" and then determining "excess contributions".

(j) **"Excess contributions"** with respect to any Plan Year mean the excess of

(1) The aggregate amount of "includable contributions" actually taken into account in computing the average "deferral percentage" of Active Participants who are Highly Compensated Employees for such Plan Year, over

(2) The maximum amount of "includable contributions" permitted to be made on behalf of Highly Compensated Employees under Section 6.03 (determined by reducing "includable contributions" made for the Plan Year on behalf of Active Participants who are Highly Compensated Employees in order of their "deferral ratios", beginning with the highest of such "deferral ratios").

(k) **"Excess deferrals"** mean those Deferral Contributions and/or "elective deferrals" that are includable in a Participant's gross income under Code Section 402(g) to the extent such Participant's Deferral Contributions and/or "elective deferrals" for a calendar year exceed the dollar limitation under such Code Section for such calendar year.

(l) **"Excess 415 amount"** means the excess of an Active Participant's "annual additions" for the Limitation Year over the "maximum permissible amount".

(m) **"415 compensation"** means Compensation (as defined in Section 2.01(k)), subject to the following:

(1) "415 compensation" does ***not*** exclude any amounts elected by the Employer in Subsection 1.05(a) of the Adoption Agreement except moving expenses paid or reimbursed by the Employer if it is reasonable to believe they are deductible by the Employee.

(2) “415 compensation” shall be based on compensation for all services to the "415 employer."

(3) “415 compensation” shall be based on the amount actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) during the Limitation Year.

(4) An Eligible Employee's severance from employment, as defined in Section 2.01(k), shall be applied using the modification to the employer aggregation rules prescribed in Code Section 415(h).

(5) “415 compensation” may include amounts earned, but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided

(A) such amounts are paid during the first few weeks of the next Limitation Year;

(B) such amounts are included on a uniform and consistent basis with respect to all similarly situated Participants; and

(C) no such amounts are included in more than one Limitation Year.

(6) If the initial Plan Year of a new plan consists of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan Year and if the Employer has designated in Subsection 1.01(f) of the Adoption Agreement that the Limitation Year is based on the Plan Year, for purposes of determining Compensation for such initial Plan Year, the Limitation Year shall be the 12-month period ending on the last day of the Plan Year.

In addition, “415 compensation” shall not reflect compensation for a year greater than the limit under Code Section 401(a)(17) that applies to that year.

(n) **"415 employer"** means the Employer and any other employers which constitute a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)) or which constitute trades or businesses (whether or not incorporated) which are under common control (as defined in Code Section 414(c) as modified by Code Section 415(h)) or which constitute an affiliated service group (as defined in Code Section 414(m)) and any other entity required to be aggregated with the Employer pursuant to regulations issued under Code Section 414(o).

(o) **"Includable contributions"** mean those amounts included in applying the "ADP" test. (1) "Includable contributions" include the following:

(A) any Deferral Contributions made on behalf of an Active Participant, including "excess deferrals" of Highly Compensated Employees and "designated Roth contributions", except as specifically provided in Subsection 6.01(o)(2);

(B) Qualified Nonelective Employer Contributions allocated as of a date within the “testing year” and designated at the time of contribution as applying for the "ADP" test; and

(C) Qualified Matching Employer Contributions on Deferral Contributions or Employee Contributions made for the Plan Year allocated as of a date within the “testing year” and so designated at the time of contribution; provided, however, that the maximum amount of Qualified Matching Employer Contributions included in "includable contributions" with respect to an Active Participant shall not exceed the greater of 5% of the Active Participant's "testing compensation" or
100% of his Deferral Contributions for the Plan Year.

(2) "Includable contributions" shall not include the following:

(A) Catch-Up Contributions, except to the extent that a Participant's Deferral Contributions are classified as Catch-Up Contributions as provided in Section 6.04 solely because of a failure of the "ADP" test described in Section 6.03;

(B) "excess deferrals" of Non-Highly Compensated Employees that arise solely from Deferral Contributions made under the Plan or plans maintained by the Employer or a Related Employer;

(C) Deferral Contributions that are taken into account in satisfying the "ACP" test described in Section 6.06;

(D) additional elective contributions made pursuant to Code Section 414(u) that are treated as
Deferral Contributions;

(E) for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.09 with respect to some or all Deferral Contributions, the following:

(i) any Deferral Contributions with respect to which the "ADP" test is deemed satisfied; and

(ii) Qualified Matching Employer Contributions, except to the extent that the "ADP" test described in Section 6.03 must be satisfied with respect to some Deferral Contributions and such Qualified Matching Employer Contributions are used in applying the "ADP" test.

(3) Notwithstanding any other provision of this Subsection, if an Employer elects to change from the current year testing method described in Subsection 1.06(a)(1) of the Adoption Agreement to the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, the following shall not be considered "includable contributions" for purposes of determining the "deferral ratios" of Non-Highly Compensated Employees for the prior year immediately preceding the Plan Year in which the change is effective:

(A) Deferral Contributions that were taken into account in satisfying the "ACP" test described in Section 6.06 for such prior year pursuant to Subsection 6.01(c)(1)(E) above;

(B) Qualified Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year;

(C) 401(k) Safe Harbor Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year or that were required to satisfy the safe harbor contribution requirements under Section 1.401(k)-3(b) of the Treasury Regulations for such prior year;

(D) 401(k) Safe Harbor Matching Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 for such prior year or that were required to satisfy the safe harbor contribution requirements under Section 1.401(k)-3(c) of the Treasury Regulations for such prior year; and

(E) Qualified Matching Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year.

To be included in determining an Active Participant's "deferral ratio" for a Plan Year, "includable contributions" must be allocated to the Participant's Account as of a date within such Plan Year and made before the last day of the 12-month period immediately following the Plan Year to which the "includable contributions" relate. If an Employer has elected the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, "includable contributions" that are taken into account for purposes of determining the "deferral ratios" of Non-Highly Compensated Employees for the prior year relate to such prior year. Therefore, such "includable contributions" must be made before the last day of the Plan Year being tested.

(p) **"Individual medical benefit account"** means an individual medical benefit account as defined in Code Section 415(l)(2).

(q) **"Maximum permissible amount"** means for a Limitation Year with respect to any Active Participant the lesser of (1) the maximum dollar amount permitted for the Limitation Year under Code Section 415(c)(1)(A) adjusted as provided in Code Section 415(d) (e.g., $51,000 for the Limitation Year ending in 2013) or (2) 100 percent of the Active Participant's “415 compensation” for the Limitation Year. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive-month period, the dollar limitation specified in clause (1) above shall be adjusted by multiplying it by a fraction the numerator of which is the number of months in the short Limitation Year and the denominator of which is 12.

The limitation specified in clause (2) above shall not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or 419A(f)(2) after separation from service which is otherwise treated as an "annual addition" under Code Section 419A(d)(2) or 415(l)(1).

(r) **"Simplified employee pension"** means a simplified employee pension as defined in Code Section 408(k). (s) **"Testing compensation"** means compensation as defined in Code Section 414(s). "Testing compensation" shall be based on the amount actually paid to a Participant during the "testing year" or, at the option of the Employer, during that portion of the "testing year" during which the Participant is an Active Participant; provided, however, that if the Employer elected different Eligibility Service requirements for purposes of eligibility to make Deferral Contributions and to receive Matching Employer Contributions, then "testing compensation" must be based on the amount paid to a Participant during the full "testing year".

The annual "testing compensation" of each Active Participant taken into account in applying the "ADP" test described in Section 6.03 and the "ACP" test described in Section 6.06 for any "testing year" shall not exceed the annual compensation limit under Code Section 401(a)(17) as in effect on the first day of the "testing year" (e.g., $255,000 for the "testing year" beginning in 2013). This limit shall be adjusted by the Secretary to reflect increases in the cost of living, as provided in Code Section 401(a)(17)(B); provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for "testing years" beginning in such calendar year. If a Plan determines "testing compensation" over a period that contains fewer than 12 calendar months (a "short determination period"), then the Compensation limit for such "short determination period" is equal to the Compensation limit for the calendar

year in which the "short determination period" begins multiplied by the ratio obtained by dividing the number of full months in the "short determination period" by 12; provided, however, that such proration shall not apply if there is a "short determination period" because an election was made, in accordance with any rules and regulations issued by the Secretary of the Treasury or his delegate, to apply the "ADP" test described in Section 6.03 and/or the "ACP" test described in Section 6.06 based only on “testing compensation” paid during the portion of the "testing year" during which an individual was an Active Participant.

(t) **"Testing year"** means:

(1) if the Employer has elected the current year testing method in Subsection 1.06(a)(1) of the Adoption Agreement, the Plan Year being tested.

(2) if the Employer has elected the prior year testing method in Subsection 1.06(a)(2) of the Adoption Agreement, the Plan Year immediately preceding the Plan Year being tested.

(u) **"Welfare benefit fund"** means a welfare benefit fund as defined in Code Section 419(e).

To the extent that types of contributions defined in Section 2.01 are referred to in this Article 6, the defined term includes similar contributions made under other plans where the context so requires.

6.02. Code Section 402(g) Limit on Deferral Contributions. In no event shall the amount of Deferral Contributions, other than Catch-Up Contributions, made under the Plan for a calendar year, when aggregated with the "elective deferrals" made under any other plan maintained by the Employer or a Related Employer, exceed the dollar limitation contained in Code Section 402(g) in effect at the beginning of such calendar year.

A Participant may assign to the Plan any "excess deferrals" made during a calendar year by notifying the Administrator on or before March 15 following the calendar year in which the "excess deferrals" were made of the amount of the "excess deferrals" to be assigned to the Plan. A Participant is deemed to notify the Administrator of any "excess deferrals" that arise by taking into account only those Deferral Contributions made to the Plan and those "elective deferrals" made to any other plan maintained by the Employer or a Related Employer. Notwithstanding any other provision of the Plan, "excess deferrals", plus any income and minus any loss allocable thereto, as determined under Section 6.08, shall be distributed no later than April 15 to any Participant to whose Account "excess deferrals" were so assigned for the preceding calendar year and who claims "excess deferrals" for such calendar year. In the event that "excess deferrals" are allocated to a Participant's Deferral Contributions Accounts, such "excess deferrals" will be distributed first from the Participant's Deferral Contributions for the Plan Year other than his Roth 401(k) Contributions then from his Roth 401(k) Contributions.

"Excess deferrals" to be distributed to a Participant for a calendar year shall be reduced by any "excess contributions" for the Plan Year beginning within such calendar year that were previously distributed or re-characterized in accordance with the provisions of Section 6.04.

Any Matching Employer Contributions attributable to "excess deferrals", plus any income and minus any loss allocable thereto, as determined under Section 6.08, shall be forfeited and applied as provided in Section 11.09.

"Excess deferrals" shall be treated as "annual additions" under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the calendar year in which the "excess deferrals" were made.

6.03. Additional Limit on Deferral Contributions ("ADP" Test). Except to the extent the Employer has elected in Subsection 1.11(a)(3) or Subsection 1.12(a)(3) of the Adoption Agreement to make 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions for a Plan Year and the "ADP" test is deemed satisfied in accordance

with Section 6.09, notwithstanding any other provision of the Plan to the contrary, the Deferral Contributions, excluding additional elective contributions made pursuant to Code Section 414(u) that are treated as Deferral Contributions and Catch-Up Contributions (except to the extent that a Participant's Deferral Contributions are classified as Catch-Up Contributions as provided in Section 6.04 solely because of a failure of the "ADP" test described herein), made with respect to the Plan Year on behalf of Active Participants who are Highly Compensated Employees for such Plan Year may not result in an average "deferral ratio" for such Active Participants that exceeds the greater of:

(a) the average "deferral ratio" for the "testing year" of Active Participants who are Non-Highly Compensated Employees for the "testing year" multiplied by 1.25; or

(b) the average "deferral ratio" for the "testing year" of Active Participants who are Non-Highly Compensated Employees for the "testing year" multiplied by two, provided that the average "deferral ratio" for Active Participants who are Highly Compensated Employees for the Plan Year being tested does not exceed the average "deferral ratio" for Participants who are Non-Highly Compensated Employees for the "testing year" by more than two percentage points.

For the first Plan Year in which the Plan provides a cash or deferred arrangement, the average "deferral ratio" for Active Participants who are Non-Highly Compensated Employees used in determining the limits applicable under Subsections 6.03(a) and (b) shall be either three percent or the actual average "deferral ratio" for such Active Participants for such first Plan Year, as elected by the Employer in Section 1.06(b) of the Adoption Agreement.

The "deferral ratios" of Active Participants who are included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement shall be disaggregated from the "deferral ratios" of other Active Participants and the provisions of this Section 6.03 shall be applied separately with respect to each group.

The "deferral ratio" for any Active Participant who is a Highly Compensated Employee for the Plan Year being tested and who is eligible to have "includable contributions" allocated to his accounts under two or more cash or deferred arrangements described in Code Section 401(k) that are maintained by the Employer or a Related Employer, shall be determined as if such "includable contributions" were made under the Plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all "includable contributions" made during the Plan Year under all such arrangements shall be treated as having been made under the Plan. Notwithstanding the foregoing, certain plans, and contributions made thereto, shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(k).

If this Plan satisfies the requirements of Code Section 401(k), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section 6.03 shall be applied by determining the "deferral ratios" of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same plan year and use the same method to satisfy the "ADP" test.

Notwithstanding anything herein to the contrary, if the Plan permits Employees to make Deferral Contributions prior to the time the Employees have completed the minimum age and service requirements of Code Section 410(a)(1)(A) and the Employer elects, pursuant to Code Section 410(b)(4)(B), to disaggregate the Plan into two component plans for purposes of complying with Code Section 410(b)(1), one benefiting Employees who have completed such minimum age and service requirements and the other benefiting Employees who have not, the Plan must be disaggregated in the same manner for ADP testing purposes, unless the Plan applies the alternative rule in Code Section 401(k)(3)(F). In determining the component plans for purposes of such disaggregation, the Employer may apply the maximum entry dates permitted under Code Section 410(a)(4).

The Employer shall maintain records sufficient to demonstrate satisfaction of the "ADP" test and the amount of Qualified Nonelective Employer Contributions and/or Qualified Matching Employer Contributions used in such test.

6.04. Allocation and Distribution of "Excess Contributions". Notwithstanding any other provision of this Plan, the "excess contributions" allocable to the Account of a Participant, plus any income and minus any loss allocable thereto, as determined under Section 6.08, shall be distributed to the Participant no later than the last day of the Plan Year immediately

following the Plan Year in which the "excess contributions" were made, unless the Employer elected Catch-Up Contributions in Subsection 1.07(a)(4) of the Adoption Agreement and such "excess contributions" are classified as Catch-Up Contributions.

If "excess contributions" are to be distributed from the Plan and such "excess contributions" are distributed more than 2 1/2 months (or 6 months if the Plan has been designated as an EACA within Subsection 1.07(a)(6) of the Adoption Agreement) after the last day of the Plan Year in which the "excess contributions" were made, a ten percent excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts.

The "excess contributions" allocable to a Participant's Account shall be determined by reducing the "includable contributions" made for the Plan Year on behalf of Active Participants who are Highly Compensated Employees in order of the dollar amount of such "includable contributions", beginning with the highest such dollar amount. "Excess contributions" allocated to a Participant for a Plan Year shall be reduced by the amount of any "excess deferrals" previously distributed for the calendar year ending in such Plan Year.

"Excess contributions" shall be treated as "annual additions".

For purposes of distribution, "excess contributions" shall be considered allocated among a Participant's Deferral Contributions Accounts and, if applicable, the Participant's Qualified Nonelective Employer Contributions Account and/or Qualified Matching Employer Contributions Account in the order prescribed and communicated to the Trustee, which order shall be uniform with respect to all Participants and nondiscriminatory. In the event that "excess contributions" are allocated to a Participant's Deferral Contributions Accounts, such "excess contributions" will be distributed first from the Participant's Deferral Contributions for the Plan Year other than his Roth 401(k) Contributions then from his Roth 401(k) Contributions.

Any Matching Employer Contributions attributable to "excess contributions", plus any income and minus any loss allocable thereto, as determined under Section 6.08, shall be forfeited and applied as provided in Section 11.09.

6.05. Reductions in Deferral Contributions to Meet Code Requirements. If the Administrator anticipates that the Plan will not satisfy the "ADP" and/or "ACP" test for the year, the Administrator may reduce the rate of Deferral Contributions of Participants who are Highly Compensated Employees to an amount determined by the Administrator to be necessary to satisfy the "ADP" and/or "ACP" test.

6.06. Limit on Matching Employer Contributions and Employee Contributions ("ACP" Test). The provisions of this Section 6.06 shall not apply to Active Participants who are included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers. The provisions of this Section shall not apply to Matching Employer Contributions made on account of amounts deferred pursuant to Code Section 457 under a separate eligible deferred compensation plan.

Except to the extent the Employer has elected in Subsection 1.11(a)(3) or Subsection 1.12(a)(3) of the Adoption Agreement to make 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions for a Plan Year and the "ACP" test is deemed satisfied in accordance with Section 6.10, notwithstanding any other provision of the Plan to the contrary, Matching Employer Contributions and Employee Contributions made with respect to a Plan Year by or on behalf of "eligible participants" who are Highly Compensated Employees for such Plan Year may not result in an average "contribution percentage" for such "eligible participants" that exceeds the greater of:

(a) the average "contribution percentage" for the "testing year" of "eligible participants" who are Non-Highly Compensated Employees for the "testing year" multiplied by 1.25; or

(b) the average "contribution percentage" for the "testing year" of "eligible participants" who are Non-Highly Compensated Employees for the "testing year" multiplied by two, provided that the average "contribution percentage" for the Plan Year being tested of "eligible participants" who are Highly Compensated Employees does not exceed the average "contribution percentage" for the "testing year" of "eligible participants" who are Non- Highly Compensated Employees for the "testing year" by more than two percentage points.

For the first Plan Year in which the Plan provides for "contribution percentage amounts" to be made, the "ACP" for "eligible participants" who are Non-Highly Compensated Employees used in determining the limits applicable under paragraphs (a) and (b) of this Section 6.06 shall be either three percent or the actual "ACP" of such eligible participants for such first Plan Year, as elected by the Employer in Section 1.06(b) of the Adoption Agreement.

The "contribution percentage" for any "eligible participant" who is a Highly Compensated Employee for the Plan Year and who is eligible to have "contribution percentage amounts" allocated to his accounts under two or more plans described in Code Section 401(a) that are maintained by the Employer or a Related Employer, shall be determined as if such "contribution percentage amounts" were contributed to the Plan. If a Highly Compensated Employee participates in two or more such plans that have different plan years, all "contribution percentage amounts" made during the Plan Year under such other plans shall be treated as having been contributed to the Plan. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Treasury Regulations issued under Code Section 401(m).

If this Plan satisfies the requirements of Code Section 401(m), 401(a)(4) or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section 6.06 shall be applied by determining the "contribution percentages" of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same plan year and use the same method to satisfy the "ACP" test.

Notwithstanding anything herein to the contrary, if the Plan permits Employees to make Employee Contributions and/or receive Matching Employer Contributions prior to the time the Employees have completed the minimum age and service requirements of Code Section 410(a)(1)(A) and the Employer elects, pursuant to Code Section 410(b)(4)(B), to disaggregate the Plan into two component plans for purposes of complying with Code Section 410(b)(1), one benefiting Employees who have completed such minimum age and service requirements and the other benefiting Employees who have not, the Plan must be disaggregated in the same manner for ACP testing purposes, unless the Plan applies the alternative rule in Code Section 401(m)(5)(C). In determining the component plans for purposes of such disaggregation, the Employer may apply the maximum entry dates permitted under Code Section 410(a)(4).

The Employer shall maintain records sufficient to demonstrate satisfaction of the "ACP" test and the amount of Deferral Contributions, Qualified Nonelective Employer Contributions, and/or Qualified Matching Employer Contributions used in such test.

6.07. Allocation, Distribution, and Forfeiture of "Excess Aggregate Contributions". Notwithstanding any other provision of the Plan, the "excess aggregate contributions" allocable to the Account of a Participant, plus any income and minus any loss allocable thereto, as determined under Section 6.08, shall be forfeited, if forfeitable, or if not forfeitable, distributed to the Participant no later than the last day of the Plan Year immediately following the Plan Year in which the "excess aggregate contributions" were made. If such excess amounts are distributed more than 2 1/2 months (or 6 months if the Plan has been designated as an EACA within Subsection 1.07(a)(6) of the Adoption Agreement) after the last day of the Plan Year in which such "excess aggregate contributions" were made, a ten percent excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts.

The "excess aggregate contributions" allocable to a Participant's Account shall be determined by reducing the "contribution percentage amounts" made for the Plan Year on behalf of "eligible participants" who are Highly Compensated Employees in order of the dollar amount of such "contribution percentage amounts", beginning with the highest such dollar amount.

"Excess aggregate contributions" shall be treated as "annual additions".

"Excess aggregate contributions" shall be forfeited or distributed from a Participant's Employee Contributions Account, Matching Employer Contributions Account and, if applicable, the Participant's Deferral Contributions Account and/or Qualified Nonelective Employer Contributions Account in the order prescribed and communicated to the Trustee, which order shall be uniform with respect to all Participants and nondiscriminatory. In the event that "excess aggregate contributions" are allocated to a Participant's Deferral Contributions Accounts, such "excess aggregated contributions" will be distributed first from the Participant's Deferral Contributions for the Plan Year other than his Roth 401(k) Contributions then from his Roth 401(k) Contributions.

Forfeitures of "excess aggregate contributions" shall be applied as provided in Section 11.09.

6.08. Income or Loss on Distributable Contributions. The income or loss allocable to "excess deferrals", "excess contributions", and "excess aggregate contributions" shall be determined under one of the following methods:

(a) the income or loss attributable to such distributable contributions shall be the income or loss for the "determination year" allocable to the Participant's Account to which such contributions were made multiplied by a fraction, the numerator of which is the amount of the distributable contributions and the denominator of which is the

balance of the Participant's Account to which such contributions were made, determined as of the end of the "determination year" without regard to any income or loss occurring during the "determination year"; or

(b) the income or loss attributable to such distributable contributions shall be the income or loss on such contributions for the "determination year", determined under any other reasonable method. Any reasonable method used to determine income or loss hereunder shall be used consistently for all Participants in determining the income or loss allocable to distributable contributions hereunder and shall be the same method that is used by the Plan in allocating income or loss to Participants' Accounts.

6.09. Deemed Satisfaction of "ADP" Test. Notwithstanding any other provision of this Article 6 to the contrary, if the Employer has elected in Subsection 1.11(a)(3) or Subsection 1.12(a)(3) of the Adoption Agreement to make 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions, the portion of the Plan for which the election applies shall be deemed to have satisfied the "ADP" test described in Section 6.03 for a Plan Year provided all of the following requirements are met with regard to the Active Participants within such portion of the Plan:

(a) The 401(k) Safe Harbor Matching Employer Contribution or 401(k) Safe Harbor Nonelective Employer Contribution must be allocated to an Active Participant's Account as of a date within such Plan Year and must be made before the last day of the 12-month period immediately following such Plan Year.

(b) If the Employer has elected to make 401(k) Safe Harbor Matching Employer Contributions, such 401(k) Safe Harbor Matching Employer Contributions must be made with respect to Deferral Contributions made by the Active Participant for such Plan Year.

(c) The Employer shall provide to each Active Participant during the Plan Year a comprehensive notice, written in a manner calculated to be understood by the average Active Participant, of the Active Participant's rights and obligations

under the Plan. If the Employer either (i) is considering amending its Plan to satisfy the "ADP" test using 401(k) Safe Harbor Nonelective Employer Contributions, as provided in Section 6.11, or (ii) has selected
401(k) Safe Harbor Nonelective Employer Contributions under Subsection 1.12(a)(3) of the Adoption Agreement and selected Subsection (a)(2), but not Subsection (a)(2)(A) of the 401(k) Safe Harbor Nonelective Employer Contributions Addendum, the notice shall include a statement that the Plan may be amended to provide a 401(k) Safe Harbor Nonelective Employer Contribution for the Plan Year. The notice shall be provided to each Active Participant within one of the following periods, whichever is applicable:

(1) if the Employee is an Active Participant 90 days before the beginning of the Plan Year, within the period beginning 90 days and ending 30 days, or any other reasonable period, before the first day of the Plan Year; or

(2) if the Employee becomes an Active Participant after the date described in paragraph (1) above, within the period beginning 90 days before and ending on the date he becomes an Active Participant.

However, in the case of a notice for an automatic contribution arrangement pursuant to Code Section
401(k)(13), the notice must be provided sufficiently early to allow an Eligible Employee to make an election to avoid the contribution pursuant to Section 5.03(c). Notwithstanding the preceding requirement, the Administrator cannot make a Participant’s default contribution pursuant to Section 5.03(c) effective any later than the earlier of (i) the pay date for the second payroll period that begins after the date the notice is provided; or, (ii) the first pay date that occurs at least 30 days after the notice is provided.

If the notice provides that the Plan may be amended to provide a 401(k) Safe Harbor Nonelective Employer Contribution for the Plan Year and the Plan is amended to provide such contribution, a supplemental notice shall be provided to all Active Participants stating that a 401(k) Safe Harbor Nonelective Employer Contribution in the specified amount shall be made for the Plan Year. Such supplemental notice shall be provided to Active Participants at least 30 days before the last day of the Plan Year.

(d) If the Employer has elected to make 401(k) Safe Harbor Matching Employer Contributions, the ratio of Matching Employer Contributions made on behalf of each Highly Compensated Employee for the Plan Year to each such Highly Compensated Employee's eligible contributions for the Plan Year is not greater than the ratio of Matching Employer Contributions to eligible contributions that would apply to any Non-Highly Compensated Employee for whom such eligible contributions are the same percentage of Compensation, adjusted as provided in Section 5.02, for the Plan Year.

(e) Except as otherwise provided in Subsection 6.11(b) or with respect to a Plan Year described in (2) below, the Plan is amended to provide for 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions before the first day of such Plan Year and, except as otherwise provided in Subsection 6.11(d) or with respect to a Plan Year described in (1) through (4) below, such provisions remain in effect for an entire 12-month Plan Year. The 12-month Plan Year requirement shall not apply to:

(1) The first Plan Year of a newly established Plan (other than a successor plan) if such Plan Year is at least 3 months long, provided that the 3-month requirement shall not apply in the case of a newly established employer that establishes a plan as soon as administratively feasible;

(2) The Plan Year in which a cash or deferred arrangement is first added to an existing plan (other than a successor plan) if the cash or deferred arrangement is effective no later than 3 months before the end of such Plan Year;

(3) Any short Plan Year resulting from a change in Plan Year if (i) the Plan satisfied the safe harbor requirements for the immediately preceding Plan Year and (ii) the Plan satisfies the safe harbor

requirements for the immediately following Plan Year (or the immediately following 12 months, if the following Plan Year has fewer than 12 months);

(4) The final Plan Year of a terminating Plan if any of the following applies: (i) the Plan would satisfy the provisions of paragraph Subsection 6.11(d) below, other than the provisions of paragraph Subsection 6.11(d)(3), treating the termination as an election to reduce or suspend 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions; (ii) the termination is in connection with a transaction described in Code Section 410(b)(6)(C); or (iii) the Employer incurs a substantial business hardship comparable to a substantial business hardship described in Code Section 412(d).

Notwithstanding any other provision of this Section, if the Employer has elected a more stringent eligibility requirement in Section 1.04 of the Adoption Agreement for 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions than for Deferral Contributions, the Plan shall be disaggregated and treated as two separate plans pursuant to Code Section 410(b)(4)(B). The separate disaggregated plan that satisfies Code Section 401(k)(12) shall be deemed to have satisfied the "ADP" test. The other disaggregated plan shall be subjected to the "ADP" test described in Section 6.03. If the Employer has elected in Subsection (b) of the 401(k) Safe Harbor Matching Employer Contributions Addendum to the Adoption Agreement or Section (b) of the 401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement to exclude some Participants from receiving 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions, the Plan shall be deemed to have satisfied the "ADP" test only with respect to those employees who are eligible to receive such contributions. The remainder of the Plan shall be subjected to the "ADP" test described in Section 6.03.

Except as otherwise provided in Subsection 6.11(d) regarding amendments suspending or eliminating 401(k) Safe Harbor Matching Contributions or 401(k) Safe Harbor Nonelective Employer Contributions, a plan that does not meet the requirements specified in (a) through (e) above with respect to a Plan Year may not default to ADP testing in accordance with Section 6.03 above.

6.10. Deemed Satisfaction of "ACP" Test With Respect to Matching Employer Contributions. The portion of the Plan that is deemed to satisfy the "ADP" test pursuant to Section 6.09 shall also be deemed to have satisfied the "ACP" test described in Section 6.06 with respect to Matching Employer Contributions, if Matching Employer Contributions to the Plan for the Plan Year meet all of the following requirements:

(a) Matching Employer Contributions meet the requirements of Subsections 6.09(a) and (b) as if they were 401(k) Safe Harbor Matching Employer Contributions;

(b) the percentage of eligible contributions matched does not increase as the percentage of Compensation contributed increases;

(c) the ratio of Matching Employer Contributions made on behalf of each Highly Compensated Employee for the Plan Year to each such Highly Compensated Employee's eligible contributions for the Plan Year is not greater than the ratio of Matching Employer Contributions to eligible contributions that would apply to each Non-Highly Compensated Employee for whom such eligible contributions are the same percentage of Compensation, adjusted as provided in Section 5.02, for the Plan Year;

(d) eligible contributions matched do not exceed six percent of a Participant's Compensation; and

(e) if the Employer elected in Subsection 1.11(a)(2) or 1.11(b) of the Adoption Agreement to provide discretionary Matching Employer Contributions, the Employer also elected in Subsection 1.11(a)(2)(A) or 1.11(b)(1) of the Adoption Agreement, as applicable, to limit the dollar amount of such discretionary Matching Employer Contributions allocated to a Participant for the Plan Year to no more than four percent of such Participant's Compensation for the Plan Year.

The portion of the Plan not deemed to have satisfied the "ACP" test pursuant to this Section shall be subject to the "ACP" test described in Section 6.06 with respect to Matching Employer Contributions.

If the Plan provides for Employee Contributions, the "ACP" test described in Section 6.06 must be applied with respect to such Employee Contributions.

6.11. Changing Testing Methods. In accordance with Treas. Regs. 1.401(k)-1(e)(7) and 1.401(m)-1(c)(2), it is impermissible for the Employer to use "ADP" and "ACP" testing for a Plan Year in which it is intended for the plan through its written terms to be a Code Section 401(k) safe harbor plan and Code Section 401(m) safe harbor plan and the Employer fails to satisfy the requirements of such safe harbors for the Plan Year. Notwithstanding any other provisions of the Plan, if the Employer elects to change between the "ADP" testing method and the safe harbor testing method, the following shall apply:

(a) Except as otherwise specifically provided in this Section or Subsection 6.09, or applicable regulation, the Employer may not change from the "ADP" testing method to the safe harbor testing method unless Plan provisions adopting the safe harbor testing method are adopted before the first day of the Plan Year in which they are to be effective and remain in effect for an entire 12-month Plan Year.

(b) A Plan may be amended during a Plan Year to make 401(k) Safe Harbor Nonelective Employer Contributions to satisfy the testing rules for such Plan Year if:

(1) The Employer provides both the initial and subsequent notices described in Section 6.09 for such Plan Year within the time period prescribed in Section 6.09.

(2) The Employer amends its Adoption Agreement no later than 30 days prior to the end of such Plan Year to provide for 401(k) Safe Harbor Nonelective Employer Contribution in accordance with the provisions of the 401(k) Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement.

(c) Except as otherwise specifically provided in this Section, a Plan may not be amended during the Plan Year to discontinue 401(k) Safe Harbor Nonelective or Matching Employer Contributions and revert to the "ADP" testing method for such Plan Year.

(d) A Plan may be amended to reduce or suspend 401(k) Safe Harbor Matching Contributions on future contributions during a Plan Year or, for an Employer which has incurred a substantial business hardship (comparable to a substantial business hardship described in Code Section 412(c)), 401(k) Safe Harbor Nonelective Employer Contributions and revert to the "ADP" testing method for such Plan Year if:

(1) All Active Participants are provided notice of the reduction or suspension describing (i) the consequences of the amendment, (ii) the procedures for changing their salary reduction agreements, and (iii) the effective date of the reduction or suspension.

(2) The reduction or suspension of such contributions is no earlier than the later of (i) 30 days after the date the notice described in paragraph (1) is provided to Active Participants or (ii) the date the amendment is adopted.

(3) Active Participants are given a reasonable opportunity before the reduction or suspension occurs, including a reasonable period after the notice described in paragraph (1) is provided to Active Participants, to change their salary reduction agreements elections.

(4) The Plan satisfies the 401(k) Safe Harbor Matching Employer Contributions provisions of the Adoption Agreement in effect prior to the amendment with respect to Deferral Contributions made through the effective date of the amendment.

(5) The Plan satisfies the 401(k) Safe Harbor Nonelective Employer Contributions provisions of the Adoption Agreement in effect prior to the amendment with respect to the safe harbor compensation (compensation meeting the requirements of Section 1.401(k)-3(b)(2) of the Treasury Regulations) paid through the effective date of the amendment.

If the Employer amends its Plan in accordance with the provisions of this paragraph (d), the "ADP" test described in Section 6.03 shall be applied as if it had been in effect for the entire Plan Year using the current year testing method in Subsection 1.06(a)(1) of the Adoption Agreement.

6.12. Code Section 415 Limitations. Notwithstanding any other provisions of the Plan, the following limitations shall apply:

(a) Employer Maintains Single Plan: If the "415 employer" does not maintain any other qualified defined contribution plan or any "welfare benefit fund", "individual medical benefit account", or "simplified employee pension" in addition to the Plan, the provisions of this Subsection 6.12(a) shall apply.

(1) If a Participant does not participate in, and has never participated in any other qualified defined contribution plan, "welfare benefit fund", "individual medical benefit account", or "simplified employee pension" maintained by the "415 employer", which provides an "annual addition", the amount of "annual additions" to the Participant's Account for a Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in the Plan. If a contribution that would otherwise be contributed or allocated to the Participant's Account would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount", the amount contributed or allocated shall be reduced so that the "annual additions" for the Limitation Year shall equal the "maximum permissible amount".

(2) Prior to the determination of a Participant's actual “415 compensation” for a Limitation Year, the "maximum permissible amount" may be determined on the basis of a reasonable estimation of the Participant's “415 compensation” for such Limitation Year, uniformly determined for all Participants similarly situated. Any Employer contributions to be made based on estimated annual “415 compensation” shall be reduced by any "excess 415 amounts" carried over from prior Limitation Years.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for such Limitation Year shall be determined on the basis of the Participant's actual "415 compensation" for such Limitation Year.

(b) Employer Maintains Multiple Defined Contribution Type Plans: Unless the Employer specifies another method for limiting "annual additions" in the 415 Correction Addendum to the Adoption Agreement, if the "415 employer" maintains any other qualified defined contribution plan or any "welfare benefit fund", "individual medical benefit account", or "simplified employee pension" in addition to the Plan, the provisions of this Subsection 6.12(b) shall apply.

(1) If a Participant is covered under any other qualified defined contribution plan or any "welfare benefit fund", "individual medical benefit account", or "simplified employee pension" maintained by the "415 employer", that provides an "annual addition", the amount of "annual additions" to the Participant's Account for a Limitation Year shall not exceed the lesser of:

(A) the "maximum permissible amount", reduced by the sum of any "annual additions" to the Participant's accounts for the same Limitation Year under such other qualified defined contribution plans and "welfare benefit funds", "individual medical benefit accounts", and "simplified employee pensions", or

(B) any other limitation contained in the Plan.

If the "annual additions" with respect to a Participant under other qualified defined contribution plans, "welfare benefit funds", "individual medical benefit accounts", and "simplified employee pensions"

maintained by the "415 employer" are less than the "maximum permissible amount" and a contribution that would otherwise be contributed or allocated to the Participant's Account under the Plan would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount", the amount to be contributed or allocated shall be reduced so that the "annual additions" for the Limitation Year shall equal the "maximum permissible amount". If the "annual additions" with respect to the Participant under such other qualified defined contribution plans, "welfare benefit funds", "individual medical benefit accounts", and "simplified employee pensions" in the aggregate are equal to or greater than the "maximum permissible amount", no amount shall be contributed or allocated to the Participant's Account under the Plan for the Limitation Year.

(2) Prior to the determination of a Participant's actual “415 compensation” for the Limitation Year, the amounts referred to in Subsection 6.12(b)(1)(A) above may be determined on the basis of a reasonable estimation of the Participant's “415 compensation” for such Limitation Year, uniformly determined for all Participants similarly situated. Any Employer contribution to be made based on estimated annual “415 compensation” shall be reduced by any "excess 415 amounts" carried over from prior Limitation Years.

(3) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Subsection 6.12(b)(1)(A) shall be determined on the basis of the Participant's actual "415 compensation" for such Limitation Year.

(c) Corrections: In correcting an “excess 415 amount” in a Limitation Year, the Employer may use any appropriate correction under the Employee Plans Compliance Resolution System, or any successor thereto.

(d) Exclusion from Annual Additions: Restorative payments allocated to a Participant’s Account, which include payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under Title I of ERISA or under other applicable federal or state law, where similarly situated Participants are similarly treated do not give rise to an “annual addition” for any Limitation Year.

Article 7. Participants' Accounts.

7.01. Individual Accounts. The Administrator shall establish and maintain an Account for each Participant that shall reflect Employer and Employee contributions made on behalf of the Participant and earnings, expenses, gains and losses attributable thereto, and investments made with amounts in the Participant's Account. The Administrator shall separately account for any Deferral Contributions made on behalf of a Participant and the earnings, expenses, gains and losses attributable thereto. The

Administrator shall establish and maintain such other accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan. The Administrator shall notify the Trustee of all Accounts established and maintained under the Plan.

If "designated Roth contributions", as defined in Section 6.01, are held under the Plan either as Rollover Contributions or because of an Active Participant's election to make Roth 401(k) Contributions under the terms of the Plan, separate accounts shall be maintained with respect to such "designated Roth contributions." Contributions and withdrawals of "designated Roth contributions" will be credited and debited to the "designated Roth contributions" sub-account maintained for each Participant within the Participant's Account. The Plan will maintain a record of the amount of "designated Roth contributions" in each such sub-account. Gains, losses, and other credits or charges will be separately allocated on a reasonable and consistent basis to each Participant's "designated Roth contributions" sub-account and the Participant's other sub-accounts within the Participant's Account under the Plan. No contributions other than "designated Roth contributions" and properly attributable earnings will be credited to each Participant's "designated Roth contributions" sub-account.

7.02. Valuation of Accounts. Participant Accounts shall be valued at their fair market value at least annually as of a "determination date", as defined in Subsection 15.01(a), in accordance with a method consistently followed and uniformly applied, and on such date earnings, expenses, gains and losses on investments made with amounts in each Participant's Account shall be allocated to such Account.

Article 8. Investment of Contributions.

8.01. Manner of Investment. All contributions made to the Accounts of Participants shall be held for investment by the Trustee. The Accounts of Participants shall be invested and reinvested only in Permissible Investments designated in the Service Agreement. The Trustee shall have no responsibility for the selection of Permissible Investments and shall not render investment advice to any person in connection with the selection of such options.

8.02. Investment Decisions. Investments shall be directed by the Employer or by each Participant or both, in accordance with the Employer's election in Subsection 1.24 of the Adoption Agreement. Pursuant to Section 20.04, the Trustee shall have no discretion or authority with respect to the investment of the Trust Fund; however, the Trustee or an affiliate may exercise investment management authority in accordance with Subsection (e) below.

(a) With respect to those Participant Accounts for which Employer investment direction is elected, the Employer (in its capacity as a named fiduciary under ERISA) has the right to direct the Trustee in writing with respect to the investment and reinvestment of assets in the Permissible Investments designated in the Service Agreement.

(b) With respect to those Participant Accounts for which Participant investment direction is elected, each Participant shall direct the investment of his Account among the Permissible Investments designated in the Service Agreement. The Participant shall file initial investment instructions using procedures established by the Administrator, selecting the Permissible Investments in which amounts credited to his Account shall be invested. If the Plan has in place a qualified default investment alternative as described in ERISA Section 404(c)(5) and the regulations issued thereunder, the Trustee may be directed to change a Participant’s or Beneficiary’s investment election, with respect to amounts already held under the Trust and/or future contributions, to the qualified default investment alternative if the Plan’s investment fiduciary notifies the Participant or Beneficiary, in accordance with the aforementioned regulations, that the investment change will occur absent an affirmative election and the Participant or Beneficiary fails to make such election after receiving the notice.

(1) While any balance remains in the Account of a Participant after his death, the Beneficiary of the Participant shall make decisions as to the investment of the Account as though the Beneficiary were the Participant. To

the extent required by a qualified domestic relations order as defined in Code Section 414(p), an alternate payee shall make investment decisions with respect to any segregated account established in the name of the alternate payee as provided in Section 18.04.

(2) If the Trustee receives any contribution under the Plan as to which investment instructions have not been provided, such amount shall be invested in the Permissible Investment selected for such purposes in the Service Agreement.

To the extent that the Employer elects to allow Participants to direct the investment of their Account in Section 1.24 of the Adoption Agreement, the Plan is intended to constitute a plan described in ERISA Section 404(c)(1) and regulations issued thereunder. The fiduciaries of the Plan shall be relieved of liability for any losses that are the direct and necessary result of investment instructions given by the Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order.

If one of the Permissible Investments for the Plan is employer securities (as defined in Section 407(d)(1) of ERISA) of a publicly traded company or one treated as publicly traded pursuant to Section 401(a)(35)(F) of the Code, the Plan must have no fewer than three Permissible Investments, other than such employer securities, each of which must be diversified and have materially different risk and return characteristics. To the extent contributions to the Plan have been required to be invested in such employer securities through Section 1.24(b) and subject to any restrictions described therein, a Participant or Beneficiary must be permitted to direct the investment of the proceeds from an exchange out of employer securities into one of the Permissible Investments described in this paragraph. Except as provided in Reg. Section 1.401(a)(35)-1 and other applicable guidance, the Plan shall not impose restrictions or conditions with respect to the investment of employer securities that are not imposed on the other Permissible Investments, except any restrictions or conditions imposed by reason of the application of securities laws.

(c) All dividends, interest, gains and distributions of any nature received in respect of Fund Shares shall be reinvested in additional shares of that Permissible Investment, except as otherwise designated in the Service Agreement.

(d) Expenses attributable to the acquisition of investments shall, in accordance with the Service Agreement, be charged to the Account of the Participant for which such investment is made.

(e) The Administrator, as named fiduciary for the Plan, may appoint one or more investment managers (as defined under Section 3(38) of ERISA) who may have such duties, up to and including any authority to determine what shall be the Permissible Investments for the Plan at any given time, what restrictions will exist upon those and how unallocated accounts under the Plan and contributions described in Section 8.02(b)(2) of the Plan shall be invested, as the Administrator in its sole discretion shall determine in its appointment and agreement with such investment manager(s). Such agreement(s) may limit, to the extent permissible under ERISA, the Administrator’s authority and responsibility for the Plan’s Permissible Investments so delegated to the investment manager(s). The Administrator and the Trustee shall describe in the Service Agreement the extent to which any such investment manager may direct the Trustee regarding the Permissible Investments for the Plan. The Administrator shall retain the authority to revoke any such appointment of an investment manager and shall notify the Trustee of any such revocation in such form or manner as required under the Service Agreement. The Administrator may appoint an investment manager (which may be an affiliate of the Trustee) to determine the allocation of amounts held in Participants' Accounts among various investment options (the "Managed Account" option) for Participants who direct the Trustee to invest any portion of their accounts in the Managed Account option. The investment options utilized under the Managed Account option may be those generally available under the Plan or may be as selected by the investment manager for use under the Managed Account option. Participation in the Managed Account option shall be subject to such conditions and limitations (including account minimums) as may be imposed by the investment manager. An investment manager (which may be the Trustee or an affiliate) may also be appointed to manage any Permissible Investment subject to management by such investment manager.

8.03. Participant Directions to Trustee. The method and frequency for change of investments shall be determined under the rules applicable to the Permissible Investments, including any additional rules limiting the frequency of investment changes, which are designated in the Service Agreement (except where the asset(s) are subject to Section 20.10 and agreements described therein). The Trustee shall have no duty to inquire into the investment decisions of a Participant or to advise him regarding the purchase, retention, or sale of assets credited to his Account.

Article 9. Participant Loans.

9.01. Special Definition. For purposes of this Article, a "**participant**" is any Participant or Beneficiary, including an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), who is a party-in-interest (as determined under ERISA Section 3(14)) with respect to the Plan.

9.02. Participant Loans. If so provided by the Employer in Section 1.18 of the Adoption Agreement, the Administrator shall allow "participants" to apply for a loan from their Accounts under the Plan, subject to the provisions of this Article 9.

9.03. Separate Loan Procedures. All Plan loans shall be made and administered in accordance with separate loan procedures that are hereby incorporated into the Plan by reference. The separate loan procedures shall describe the portions of a Participant's Account from which loans may be taken.

9.04. Availability of Loans. Loans shall be made available to all "participants" on a reasonably equivalent basis. Loans shall not be made available to "participants" who are Highly Compensated Employees in an amount greater than the amount made available to other "participants".

9.05. Limitation on Loan Amount. No loan to any "participant" shall be made to the extent that such loan when added to the outstanding balance of all other loans to the "participant" would exceed the lesser of (a) $50,000 reduced by the excess (if any) of the highest outstanding balance of plan loans during the one-year period ending on the day before the loan is made over the outstanding balance of plan loans on the date the loan is made, or (b) one-half the present value of the "participant's" vested interest in his Account. For purposes of the above limitation, plan loans include all loans from all plans maintained by the Employer and any Related Employer.

9.06. Interest Rate. Subject to the requirements of the Servicemembers Civil Relief Act, all loans shall bear a reasonable rate of interest as determined by the Administrator based on the prevailing interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. The determination of a reasonable rate of interest must be based on appropriate regional factors unless the Plan is administered on a national basis in which case the Administrator may establish a uniform reasonable rate of interest applicable to all regions.

9.07. Level Amortization. All loans shall by their terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan

unless such loan is for the purchase of a "participant's" primary residence. Notwithstanding the foregoing, the amortization requirement may be waived while a "participant" is on a leave of absence from employment with the Employer and any Related Employer either without pay or at a rate of pay which, after withholding for employment and income taxes, is less than the amount of the installment payments required under the terms of the loan, provided that the period of such waiver shall not exceed one year, unless the "participant" is absent because of military leave during which the "participant" performs services with the uniformed services (as defined in chapter 43 of title 38 of the United States Code), regardless of whether such military leave is a qualified military leave in accordance with the provisions of Code Section 414(u). Installment payments must resume after such leave of absence ends or, if earlier, after the first year of such leave of absence, in an amount that is not less than the amount of the installment payments required under the terms of the original loan. Unless a "participant" is absent because of military leave, as discussed

below, no waiver of the amortization requirements shall extend the period of the loan beyond five years from the date of the loan, unless the loan is for purchase of the "participant's" primary residence. If a "participant" is absent because of military leave during which the "participant" performs services with the uniformed services (as defined in chapter 43 of title 38 of the United States Code), regardless of whether such military leave is a qualified military leave in accordance with the provisions of Code Section 414(u), waiver of the amortization requirements may extend the period of the loan to the maximum period permitted for such loan under the separate loan procedures extended by the period of such military leave.

9.08. Security. Loans must be secured by the "participant's" vested interest in his Account not to exceed 50 percent of such vested interest. If the provisions of Section 14.04 apply to a Participant, a Participant must obtain the consent of his or her Spouse, if any, to use his vested interest in his Account as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 180-day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. Any revision of such a loan permitted by Q & A 24(c) of Section 1.401(a)-20 of the Treasury Regulations and the Plan's separate loan procedures shall be treated as a new loan made on the date of such revision for purposes of spousal consent.

9.09. Loan Repayments. If a "participant's" loan is being repaid through payroll withholding, the Employer shall remit any such loan repayment to the Trustee as of the earliest date on which such amount can reasonably be segregated from the Employer's general assets, but not later than the earlier of (a) the close of the period specified in the separate loan procedures for preventing a default or (b) the 15th business day of the calendar month following the month in which such amount otherwise would have been paid to the "participant".

9.10. Default. The Administrator shall treat a loan in default if:

(a) any scheduled repayment remains unpaid at the end of the cure period specified in the separate loan procedures (unless payment is not made due to a waiver of the amortization schedule for a "participant" who is on a leave of absence, as described in Section 9.07), or

(b) there is an outstanding principal balance existing on a loan after the last scheduled repayment date.

Upon default, the entire outstanding principal and accrued interest shall be immediately due and payable. If a distributable event (as defined by the Code) has occurred, the Administrator shall direct the Trustee to foreclose on the promissory note and offset the "participant's" vested interest in his Account by the outstanding balance of the loan. If a distributable event has not occurred, the Administrator shall direct the Trustee to foreclose on the promissory note and offset the "participant's" vested interest in his Account as soon as a distributable event occurs. The Trustee shall have no obligation to foreclose on the promissory note and offset the outstanding balance of the loan except as directed by the Administrator.

9.11. Effect of Termination Where Participant has Outstanding Loan Balance. If a Participant has an outstanding loan balance at the time his employment terminates, the entire outstanding principal and accrued interest shall be due and payable by the end of the cure period specified in the separate loan procedures. Any outstanding loan amounts that are immediately due and payable hereunder shall be treated in accordance with the provisions of Sections 9.10 and 9.12 as if the Participant had defaulted on the outstanding loan. Notwithstanding the foregoing, if a Participant with an outstanding loan balance terminates employment with the Employer and all Related Employers under circumstances that do not constitute a separation from service, as described in Subsection 12.01(b), such Participant may elect, within 60 days of such termination, to roll over the outstanding loan to an eligible retirement plan, as defined in Section 13.04, that accepts such rollovers.

9.12. Deemed Distributions Under Code Section 72(p). Notwithstanding the provisions of Section 9.10, if a "participant's" loan is in default, the "participant" shall be treated as having received a taxable "deemed distribution" for

purposes of Code Section 72(p), whether or not a distributable event has occurred. The tax treatment of that portion of a defaulted loan that is secured by Roth 401(k) Contributions shall be determined in accordance with Code Section 402A and guidance issued thereunder.

The amount of a loan that is a deemed distribution ceases to be an outstanding loan for purposes of Code Section 72, except as otherwise specifically provided herein, and a Participant shall not be treated as having received a taxable distribution when the Participant's Account is offset by the outstanding balance of the loan amount as provided in Section 9.10. In addition, interest that accrues on a loan after it is deemed distributed shall not be treated as an additional loan to the Participant and shall not be included in the income of the Participant as a deemed distribution. Notwithstanding the foregoing, unless a Participant repays a loan that has been deemed distributed, with interest thereon, the amount of such loan, with interest, shall be considered an outstanding loan under Code Section 72(p) for purposes of determining the applicable limitation on subsequent loans under Section 9.05.

If a Participant makes payments on a loan that has been deemed distributed, payments made on the loan after the date it was deemed distributed shall be treated as Employee Contributions to the Plan for purposes of increasing the Participant's tax basis in his Account, but shall not be treated as Employee Contributions for any other purpose under the Plan, including application of the "ACP" test described in Section 6.06 and application of the Code Section 415 limitations described in Section 6.12.

The provisions of this Section 9.12 regarding treatment of loans that are deemed distributed shall not apply to loans made prior to January 1, 2002, except to the extent provided under the transition rules in Q & A 22(c)(2) of Section 1.72(p)-l of the Treasury Regulations.

9.13. Determination of Vested Interest Upon Distribution Where Plan Loan is Outstanding. Notwithstanding any other provision of the Plan, the portion of a "participant's" vested interest in his Account that is held by the Plan as security for a loan outstanding to the "participant" in accordance with the provisions of this Article shall reduce the amount of the Account payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than
100 percent of a "participant's" vested interest in his Account (determined without regard to the preceding sentence) is payable to the "participant's" surviving Spouse or other Beneficiary, then the Account shall be adjusted by first reducing the "participant's" vested interest in his Account by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse or other Beneficiary.

Article 10. In-Service Withdrawals.

10.01. Availability of In-Service Withdrawals. Except as otherwise permitted under Section 11.02 with respect to Participants who continue in employment past Normal Retirement Age, or as required under Section 12.04 with respect to Participants who continue in employment past their Required Beginning Date, a Participant shall not be permitted to make a withdrawal from his Account under the Plan prior to retirement or termination of employment with the Employer and all Related Employers, if any, except as provided in this Article.

(a) Active Military Distribution (HEART Act): A Participant performing service in the uniformed services as described in Code Section 3401(h)(2)(A) shall be treated as having been severed from employment with the Employer for purposes of Code Section 401(k)(2)(B)(i)(I) and shall, as long as that service in the uniformed services continues, have the option to request a distribution of all or any part of his or her Account restricted from distribution only due to Code Section 401(k)(2)(B)(i)(I). Any distribution taken by a Participant pursuant to the previous sentence shall be considered an eligible rollover distribution pursuant to Section 13.04(c) of the Plan and any Participant taking a distribution under this Subsection shall be suspended from making Deferral Contributions and Employee Contributions under the Plan for a period of 6 months following the date of any such distribution.

10.02. Withdrawal of Employee Contributions. A Participant may elect to withdraw up to 100 percent of the amount then credited to his Employee Contributions Account. Such withdrawals may be made in accordance with the frequency constraints selected through Subsection 1.19(c) of the Adoption Agreement.

10.03. Withdrawal of Rollover Contributions. A Participant may elect to withdraw up to 100 percent of the amount then credited to his Rollover Contributions Account. Such withdrawals may be made at any time.

and who has attained the age of 59 1/2 is permitted to withdraw upon request all or any portion of his Accounts specified by the Employer in Subsection 1.19(b) of the Adoption Agreement or the In-Service Withdrawals Addendum to the Adoption Agreement, as applicable and as may be limited therein.

10.05. Hardship Withdrawals. If so provided by the Employer in Subsection 1.19(a) of the Adoption Agreement, a Participant who continues in employment as an Employee may apply for a hardship withdrawal. Unless provided otherwise in the Service Agreement, the Participant may apply by certifying to the Administrator all of the required criteria specified in this Section. Such certification shall represent that the Participant has documentation substantiating the hardship. Such a hardship withdrawal may include all or any portion of the Accounts specified by the Employer in Subsection 1.19(a)(1) of the Adoption Agreement and Section (c) of the In-Service Withdrawals Addendum to the Adoption Agreement, if applicable, excluding any earnings on the Deferral Contributions Account accrued after the later of December 31, 1988 or the last day of the last Plan Year ending before July 1, 1989. The minimum amount, if any, that a Participant may withdraw because of hardship is the dollar amount specified by the Employer in Subsection 1.19(a) of the Adoption Agreement.

For purposes of this Section 10.05, a withdrawal is made on account of hardship if made on account of an immediate and heavy financial need of the Participant where such Participant lacks other available resources. The Administrator shall direct the Trustee with respect to hardship withdrawals and those withdrawals shall be based on the following special rules:

(a) The following are the only financial needs considered immediate and heavy:

(1) expenses incurred or necessary for medical care (that would be deductible under Code Section 213(d), determined without regard to whether the expenses exceed any applicable income limit) of the Participant, the Participant's Spouse, children, or dependents, or a primary beneficiary of the Participant;

(2) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition, related educational fees, and room and board for the next 12 months of post- secondary education for the Participant, the Participant's Spouse, children or dependents (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) , or a primary beneficiary of the Participant;

(4) payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage on, the Participant's principal residence;

(5) payments for funeral or burial expenses for the Participant's deceased parent, Spouse, child, or dependent (as defined in Code Section 152, without regard to subsection (d)(1)(B) thereof) , or a primary beneficiary of the Participant;

(6) expenses for the repair of damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds any applicable income limit); or

(7) any other financial need determined to be immediate and heavy under rules and regulations issued by the Secretary of the Treasury or his delegate; provided, however, that any such financial need shall constitute an immediate and heavy need under this paragraph (7) no sooner than administratively practicable following the date such rule or regulation is issued.

For purposes of this Section, the term “primary beneficiary” means a Beneficiary under the Plan who has an unconditional right to all or a portion of the Participant’s Account upon the death of the Participant.

(b) A distribution shall be considered as necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The Participant has obtained all distributions, other than the hardship withdrawal, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer or any Related Employer;

contributions and employee contributions to all other qualified plans and non-qualified plans maintained by the Employer or any Related Employer, other than any mandatory employee contribution portion of a defined benefit plan, including stock option, stock purchase, and other similar plans, but not including health and welfare benefit plans (other than the cash or deferred arrangement portion of a cafeteria plan); and

(3) The withdrawal amount is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

10.06. Additional In-Service Withdrawal Rules. To the extent required under Code Section 411(d)(6), in-service withdrawals that were available under a prior plan shall be available under the Plan and indicated using Subsection 1.19(g) of the Adoption Agreement. The Employer may also elect additional in-service withdrawal options using Section 1.19(g) of the Adoption Agreement.

10.07. Restrictions on In-Service Withdrawals. The following restrictions apply to any in-service withdrawal made from a Participant's Account under this Article:

(a) Except with regard to a rollover made pursuant to Subsection 1.09(b), if the provisions of Section 14.04 apply to a Participant's Account, the Participant must obtain the consent of his Spouse, if any, to obtain an in-service withdrawal.

(b) In-service withdrawals under this Article shall be made in a lump sum payment, except that if the provisions of Section 14.04 apply to a Participant's Account, the Participant shall receive the in-service withdrawal in the form of a "qualified joint and survivor annuity", as defined in Subsection 14.01(a), unless the consent rules in Section 14.05 are satisfied, or the Participant may elect to receive the in-service withdrawal in the form of a "qualified optional survivor annuity", as defined in Subsection 14.01(b).

(c) Notwithstanding any other provision of the Plan to the contrary other than the provisions of Section 11.02 or 12.04, a Participant shall not be permitted to make an in-service withdrawal from his Account of amounts attributable to

contributions made to a money purchase pension plan, except employee and/or rollover contributions that were held in a separate account(s) under such plan.

10.08 Qualified Disaster Distributions. To the extent that the Employer has so provided by selecting Section 1.19(d) of the Adoption Agreement and completing Section (d) of the In-Service Withdrawals Addendum to the Adoption Agreement, Qualified Individuals (as defined in subsection (b) below) may designate all or a portion of a qualifying distribution as a Qualified Disaster Distribution (as defined in subsection (a) below).

(a) A "Qualified Disaster Distribution" means any distribution made on or after the QDD Effective Date (as defined in subsection (c) below) and before the QDD Distribution Date (as defined in subsection (d) below) to a Qualified Individual, to the extent that such distribution, when aggregated with all other Qualified Disaster Distributions to the Qualified Individual made under the Plan (and under any other plan maintained by the Employer or a Related Employer), does not exceed $100,000. A Qualified Disaster Distribution must be made in accordance with and pursuant to the distribution provisions of the Plan, except that:

(1) A Qualified Disaster Distribution of amounts attributable to Nonelective Employer Contributions, Deferral Contributions and Qualified Nonelective Employer contributions shall be deemed to be made after the occurrence of any distributable events otherwise applicable under Code section 401(k)(2)(B)(i), such as termination of employment (and shall be deemed permissible under Section 12.01), and

(2) The requirements of Code sections 401(a)(31), 402(f) and 3405 and Section 13.04 shall not apply. (b) A "Qualified Individual"

means any individual described in Section (d) of the In-Service Withdrawal

Addendum to the Adoption Agreement whose principal place of abode is within a federally declared disaster area on the date so indicated pursuant to Code Section 1400M or other federal law which treats such a person as if Code Section 1400M applied.

(c) The "QDD Effective Date" means the date described in Section (d) of the In-Service Withdrawal Addendum to the Adoption Agreement upon which Code Section 1400M would be made applicable to the Qualified Individual in accordance with (b) above.

(d) The "QDD Distribution Date" means the date described in Section (d) of the In-Service Withdrawal Addendum to the Adoption Agreement upon which the Qualified Individual is no longer able to take the distribution pursuant to Code Section 1400M in accordance with (b) above due to his or her principal place of abode at the time.

(e) If the Employer elected to provide for Rollover Contributions in Subsection 1.09(a) of the Adoption Agreement, an Eligible Employee who received a Qualified Disaster Distribution, as defined herein, may repay to the Plan the Qualified Disaster Distribution, provided the Qualified Disaster Distribution is eligible for tax-free rollover treatment. Any such re-contribution will be treated as having been made in a direct rollover to the Plan, provided it is made during the three-year period beginning on the day after the date on which the Qualified Disaster Distribution was received and does not exceed the amount of such distribution.

10.09. Qualified Reservist Distributions. If so elected by the Employer in Section 1.19(e) of the Adoption Agreement, and notwithstanding anything herein to the contrary, a Participant ordered or called to active duty for a period in excess of
179 days or for an indefinite period by reason of being a member of a reserve component (as defined in section 101 of title
37, United States Code), shall be eligible to elect to receive a Qualified Reservist Distribution. A "Qualified Reservist Distribution" means a distribution from the Participant's Account of amounts attributable to Deferral Contributions, provided such distribution is made during the period beginning on the date of the order or call to active duty and ending at the close of the active duty period.

10.10. Age 62 Distribution of Money Purchase Benefits. If so elected by the Employer in Section 1.19(f) of the Adoption Agreement, a Participant who has attained at least age 62 shall be eligible to elect to receive a distribution of vested benefit amounts accrued as a result of the Participant's participation in a money purchase pension plan (due to a merger into this Plan of money purchase pension plan assets), if any.

Article 11. Right to Benefits.

11.01. Normal or Early Retirement. Each Participant who continues in employment as an Employee until his Normal Retirement Age or, if so provided by the Employer in Subsection 1.14(b) of the Adoption Agreement, Early Retirement Age, shall have a vested interest in his Account of 100 percent regardless of any vesting schedule elected in Section 1.16 of the Adoption Agreement. If a Participant retires upon the attainment of Normal or Early Retirement Age, such retirement is referred to as a normal retirement.

11.02. Late Retirement. If a Participant continues in employment as an Employee after his Normal Retirement Age, he shall continue to have a 100 percent vested interest in his Account and shall continue to participate in the Plan until the date he establishes with the Employer for his late retirement. Until he retires, he has a continuing right to elect to receive distribution of all or any portion of his Account in accordance with the provisions of Articles 12 and 13; provided, however, that a Participant may not receive any portion of his Deferral Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions, or 401(k) Safe Harbor Nonelective Employer Contributions Accounts prior to his attainment of age 59 1/2.

11.03. Disability Retirement. If so provided by the Employer in Subsection 1.14(c) of the Adoption Agreement, a Participant who becomes disabled while employed as an Employee shall have a 100 percent vested interest in his Account regardless of any vesting schedule elected in Section 1.16 of the Adoption Agreement. An Employee is considered disabled if he satisfies any of the requirements for disability retirement selected by the Employer in Section 1.15 of the Adoption Agreement and terminates his employment with the Employer. Such termination of employment is referred to as a disability retirement.

11.04. Death. A Participant who dies while employed as an Employee, or while performing qualified military service as defined in Code Section 414(u)(5), shall have a 100 percent vested interest in his Account and his designated Beneficiary shall be entitled to receive the balance of his Account, plus any amounts thereafter credited to his Account. If a Participant whose employment as an Employee has terminated dies, his designated Beneficiary shall be entitled to receive the Participant's vested interest in his Account.

A copy of the death notice or other sufficient documentation must be provided to the Administrator using procedures established by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's Account, such amount shall be paid to his surviving Spouse or, if none, to his estate (such Spouse or estate shall be deemed to be the Beneficiary for purposes of the Plan). If a Beneficiary dies after benefits to such Beneficiary have commenced, but before they have been completed, and, in the opinion of the

Administrator, no person has been designated to receive such remaining benefits, then such benefits shall be paid in a lump sum to the deceased Beneficiary's estate.

Subject to the requirements of Section 14.04, a Participant may designate a Beneficiary, or change any prior designation of Beneficiary by giving notice to the Administrator using procedures established by the Administrator. If more than one person is designated as the Beneficiary, their respective interests shall be as indicated on the designation form. In the case of a married Participant, the Participant's Spouse shall be deemed to be the designated Beneficiary unless the Participant's Spouse has consented to another designation in the manner described in Section 14.06. Notwithstanding the foregoing, if a Participant's Account is subject to the requirements of Section 14.04 and the Employer has specified in Subsection 1.20(d)(2)(B)(ii) of the Adoption Agreement that less than 100 percent of the Participant's Account that is subject to Section 14.04 shall be used to purchase the "qualified preretirement survivor annuity", as defined in Section 14.01, the Participant may designate a Beneficiary other than his

Spouse for the portion of his Account that would not be used to purchase the “qualified preretirement survivor annuity,” regardless of whether the Spouse consents to such designation.

11.05. Other Termination of Employment. If a Participant terminates his employment with the Employer and all Related Employers, if any, for any reason other than death or normal, late, or disability retirement, he shall be entitled to a termination benefit equal to the sum of (a) his vested interest in the balance of his Matching Employer and/or Nonelective Employer Contributions Account(s), such vested interest to be determined in accordance with Section 5.11 and the vesting schedule(s) selected by the Employer in Section 1.16 of the Adoption Agreement and/or the Vesting Addendum to the Adoption Agreement, and (b) the balance of his Deferral, Employee, Qualified Nonelective Employer, Qualified Matching Employer, and Rollover Contributions sub-accounts.

11.06. Application for Distribution. Except as provided in Subsection 1.21(a) of the Adoption Agreement, a Participant (or his Beneficiary, if the Participant has died) who is entitled to a distribution hereunder must request such distribution, using procedures established by the Administrator, unless the Employer has elected in Subsection 1.20(e)(1) of the Adoption Agreement to cash out de minimus Accounts and the Participant's vested interest in his Account does not exceed the amount subject to automatic distribution pursuant to Section 13.02.

11.07. Application of Vesting Schedule Following Partial Distribution. If a distribution from a Participant's Matching Employer and/or Nonelective Employer Contributions Account has been made to him at a time when his vested interest in such Account balance is less than 100 percent, the vesting schedule(s) in Section 1.16 of the Adoption Agreement shall thereafter apply only to the balance of his Account attributable to Matching Employer and/or Nonelective Employer Contributions allocated after such distribution. The balance of the Account from which such distribution was made shall be transferred to a separate account immediately following such distribution.

At any relevant time prior to a forfeiture of any portion thereof under Section 11.08, a Participant's vested interest in such separate account shall be equal to P(AB+(RxD))-(RxD), where P is the Participant's vested interest expressed as a percentage at the relevant time determined under Section 11.05; AB is the account balance of the separate account at the relevant time; D is the amount of the distribution; and R is the ratio of the account balance at the relevant time to the account balance after distribution. Following a forfeiture of any portion of such separate account under Section 11.08 below, the Participant's vested interest in any balance in such separate account shall remain 100 percent.

11.08. Forfeitures. If a Participant terminates his employment with the Employer and all Related Employers before his vested interest in his Matching Employer and/or Nonelective Employer Contributions Accounts is 100 percent, the non- vested portion of his Account (including any amounts credited after his termination of employment) shall be forfeited by him as follows:

(a) If the Inactive Participant elects to receive distribution of his entire vested interest in his Account, the non- vested portion of his Account shall be forfeited upon the complete distribution of such vested interest, subject to the possibility of reinstatement as provided in Section 11.10. For purposes of this Subsection, if the value of an Employee's vested interest in his Account balance is zero, the Employee shall be deemed to have received a distribution of his vested interest immediately following termination of employment.

(b) If the Inactive Participant elects not to receive distribution of his vested interest in his Account following his termination of employment, the non-vested portion of his Account shall be forfeited after the Participant has incurred five consecutive Breaks in Vesting Service.

No forfeitures shall occur solely as a result of a Participant's withdrawal of Employee Contributions.

11.09. Application of Forfeitures. Any forfeitures occurring during a Plan Year shall be applied to reduce the contributions of the Employer. Notwithstanding any other provision of the Plan to the contrary, forfeitures shall first be used to pay administrative expenses under the Plan, if so directed by the Employer. To the extent that forfeitures are not used to reduce administrative expenses under the Plan, as directed by the Employer, forfeitures will be applied in accordance with this Section 11.09.

Pending application, forfeitures shall be held in the Permissible Investment selected for such purpose pursuant to the Service Agreement.

Except as permitted pursuant to EPCRS and notwithstanding any other provision of the Plan to the contrary, in no event may forfeitures be used to reduce the Employer's obligation to remit to the Trust (or other appropriate Plan funding vehicle) loan repayments made pursuant to Article 9, Deferral Contributions, Employee Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions.

11.10. Reinstatement of Forfeitures. If a Participant forfeits any portion of his Account under Subsection 11.08(a) because of distribution of his complete vested interest in his Account, but again becomes an Eligible Employee, then the amount so forfeited, without any adjustment for the earnings, expenses, losses, or gains of the assets credited to his Account since the date forfeited, shall be recredited to his Account (or to a separate account as described in Section 11.07, if applicable) if he repays the entire amount of his distribution not attributable to Employee Contributions before the earlier of:

(a) his incurring five-consecutive Breaks in Vesting Service following the date complete distribution of his vested interest was made to him; or

(b) five years after his Reemployment Date.

If an Employee is deemed to have received distribution of his complete vested interest as provided in Section 11.08, the Employee shall be deemed to have repaid such distribution on his Reemployment Date.

Upon such an actual or deemed repayment, the provisions of the Plan (including Section 11.07) shall thereafter apply as if no forfeiture had occurred. The amount to be recredited pursuant to this paragraph shall be derived first from the forfeitures, if any, which as of the date of recrediting have yet to be applied as provided in Section 11.09 and, to the extent such forfeitures are insufficient, from a special contribution to be made by the Employer.

11.11. Adjustment for Investment Experience. If any distribution under this Article 11 is not made in a single payment, the amount retained by the Trustee after the distribution shall be subject to adjustment until distributed to reflect the income and gain or loss on the investments in which such amount is invested and any expenses properly charged under the Plan and Trust to such amounts.

Article 12. Distributions.

12.01. Restrictions on Distributions.

(a) Severance from Employment Rule. A Participant, or his Beneficiary, may not receive a distribution from the Participant's Deferral Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions Accounts earlier than upon the Participant's severance from employment with the Employer and all Related Employers, death, or disability, except as otherwise provided in Article 10, Section 11.02 or Section

12.04. If the Employer elected Subsection 1.21(c) of the Adoption Agreement, distribution from the Participant's Deferral Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions Accounts may be further postponed in accordance with the provisions of Subsection 12.01(b) below.

(b) Same Desk Rule. If the Employer elected in Subsection 1.21(b) of the Adoption Agreement to preserve the separation from service rules in effect for Plan Years beginning before January 1, 2002, a Participant, or his Beneficiary, may not receive a distribution from the Participant's Deferral Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Employer Contributions, 401(k) Safe Harbor Matching Employer Contributions or 401(k) Safe Harbor Nonelective Employer Contributions Accounts earlier than upon the

otherwise provided in Article 10, Section 11.02 or Section 12.04. Notwithstanding the foregoing, amounts may also be distributed from such Accounts, in the form of a lump sum only, upon:

(1) The disposition by a corporation to an unrelated corporation of substantially all of the assets (within the meaning of Code Section 409(d)(2)) used in a trade or business of such corporation if such corporation continues to maintain the Plan with respect to the Participant after the disposition, but only with respect to former Employees who continue employment with the corporation acquiring such assets.

(2) The disposition by a corporation to an unrelated entity of such corporation's interest in a subsidiary (within the meaning of Code Section 409(d)(3)) if such corporation continues to maintain the Plan with respect to the Participant, but only with respect to former Employees who continue employment with such subsidiary.

In addition to the distribution events described in paragraph (a) or (b) above, as applicable, such amounts may also be distributed upon the termination of the Plan provided that the Employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7) or 409(a), a simplified employee pension plan as defined in Code Section 408(k), a SIMPLE IRA plan as defined in Code Section 408(p), a plan or contract described in Code Section 403(b) or a plan described in Code Section 457(b) or (f)) at any time during the period beginning on the date of plan termination and ending 12 months after all assets have been distributed from the Plan. Subject to Section 14.04, such a distribution must be made in a lump sum.

12.02. Timing of Distribution Following Retirement or Termination of Employment. The balance of a Participant's vested interest in his Account shall be distributable upon his termination of employment with the Employer and all Related Employers, if any, because of death, normal, early, or disability retirement (as permitted under the Plan), or other termination of employment. Notwithstanding the foregoing, a Participant may elect to postpone distribution of his Account until the date in Subsection 1.21(a) of the Adoption Agreement, unless the Employer has elected in Subsection 1.20(e)(1) of the Adoption Agreement to cash out de minimus Accounts and the Participant's vested interest in his Account does not exceed the amount subject to automatic distribution pursuant to Section 13.02. A Participant who elects to postpone distribution has a continuing election to receive such distribution prior to the date as of which distribution is required, unless such Participant is reemployed as an Employee.

Consistent with the provisions of Section 11.06, if a Participant (or his Beneficiary, if the Participant has died) whose Account is not subject to cash out in accordance with Section 13.02 does not request a distribution when his Account becomes distributable hereunder, he shall be deemed to have elected to postpone distribution of his Account until the earlier of the date he requests distribution or the date in Subsection 1.21(a) of the Adoption Agreement.

12.03. Participant Consent to Distribution. As required under Code Section 411(a)(11)(A) and consistent with Section 11.06, no distribution shall be made to the Participant before he reaches his Normal Retirement Age (or age 62, if later) without the Participant's consent, unless the Employer has elected in Subsection 1.20(e)(1) of the Adoption Agreement to cash out de

minimus Accounts and the Participant's vested interest in his Account does not exceed the amount subject to automatic distribution pursuant to Section 13.02. Such consent shall be made within the 180-day period ending on the Participant's Annuity Starting Date. Once a Participant reaches his Normal Retirement Age (or age 62, if later), distribution shall be made upon the Participant's request, as provided in Section 12.02.

If a Participant's vested interest in his Account exceeds the maximum cash out limit permitted under Code Section 411(a)(11)(A) ($5,000 as of January 1, 2013), the consent of the Participant's Spouse must also be obtained if the Participant's Account is subject to the provisions of Section 14.04 and distribution is made before the Participant reaches his Normal Retirement Age (or age 62, if later), unless the distribution shall be made in the form of a "qualified joint and survivor annuity" or "qualified preretirement survivor annuity" as those terms are defined in Section 14.01. A Spouse's consent to early distribution, if required, must satisfy the requirements of Section 14.06.

Notwithstanding any other provision of the Plan to the contrary, neither the consent of the Participant nor the Participant's Spouse shall be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or Code Section 415. In addition, upon termination of the Plan if it does not offer an annuity option (purchased from a commercial provider) and if the Employer or any Related Employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) the Participant's Account shall, without the Participant's consent, be distributed to the Participant. However, if any Related Employer maintains another defined

Account shall be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

12.04. Required Commencement of Distribution to Participants. In no event shall distribution to a Participant commence later than the date in Section 1.21(a) of the Adoption Agreement, which date shall not be later than the earlier of the dates described in (a) and (b) below:

(a) unless the Participant (and his Spouse, if appropriate) elects otherwise, the 60th day after the close of the Plan Year in which occurs the latest of (i) the date on which the Participant attains Normal Retirement Age, or age 65, if earlier, (ii) the date on which the Participant's employment with the Employer and all Related Employers ceases, or (iii) the 10th anniversary of the year in which the Participant commenced participation in the Plan; and

(b) the Participant's Required Beginning Date.

Notwithstanding the provisions of Subsection 12.04(a) above, the failure of a Participant (and the Participant's Spouse, if applicable) to consent to a distribution shall be deemed to be an election to defer commencement of payment as provided in Section 12.02 above.

12.05. Required Commencement of Distribution to Beneficiaries. Subject to the requirements of Subsection 12.05(a) below, if a Participant dies before his Annuity Starting Date, the Participant’s Beneficiary shall receive distribution of the Participant’s vested interest in his Account in the form provided under Article 13 or 14, as applicable, beginning as soon as reasonably practicable following the date the Beneficiary’s application for distribution is filed with the Administrator. If distribution is to be made to a Participant’s Spouse, it shall be made available within a reasonable period of time after the Participant’s death that is no less favorable than the period of time applicable to other distributions.

(a) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant’s entire vested interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving Spouse is the Participant's sole "designated beneficiary," then, except as otherwise elected under Subsection 12.05(b), minimum distributions, as described in Section 13.03, will begin to the surviving Spouse by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(2) If the Participant's surviving Spouse is not the Participant's sole "designated beneficiary," then, except as otherwise elected under Subsection 12.05(b), minimum distributions, as described in Section 13.03, will begin to the "designated beneficiary" by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no "designated beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's entire vested interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving Spouse is the Participant's sole "designated beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Subsection 12.05(a), other than Subsection 12.05(a)(1), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection 12.05(a), unless Subsection 12.05(a)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Subsection 12.05(a)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Subsection 12.05(a)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Subsection 12.05(a)(1)), the date distributions are considered to begin is the date distributions actually commence.

(b) Election of 5-Year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule described in Subsection 12.05(a)(3) or the minimum distribution rule described in Section 13.03 applies to distributions after the death of a Participant who has a "designated beneficiary." The election must be made no later

Subsection 12.05(a), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, the surviving Spouse's) death. If neither the Participant nor the Beneficiary makes an election under this Subsection 12.05(b), distributions will be made in accordance with Subsection 12.05(a) and Section 13.03.

Subject to the requirements of Subsection 12.05(a) above, if a Participant dies on or after his Annuity Starting Date, but before his entire vested interest in his Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Account beginning as soon as reasonably practicable following the Participant's date of death in a form that provides for distribution at least as rapidly as under the form in which the Participant was receiving distribution.

For purposes of this Section 12.05, "designated beneficiary" is as defined in Subsection 13.03(c)(1).

12.06. Whereabouts of Participants and Beneficiaries. The Administrator shall at all times be responsible for determining the whereabouts of each Participant or Beneficiary who may be entitled to benefits under the Plan and shall direct the Trustee as to the maintenance of a current address of each such Participant or Beneficiary. The Trustee shall be under no duty to make any distributions other than those for which it has received satisfactory direction from the Administrator.

Notwithstanding the foregoing, if the Trustee attempts to make a distribution in accordance with the Administrator's instructions but is unable to make such distribution because the whereabouts of the distributee is unknown, the Trustee shall notify the Administrator of such situation and thereafter the Trustee shall be under no duty to make any further distributions to such distributee, except as otherwise provided in written instructions from the Administrator.

If the Administrator is unable after diligent attempts to locate a Participant or Beneficiary who is entitled to a benefit under the Plan, the benefit otherwise payable to such Participant or Beneficiary shall be forfeited and applied as provided in Section 11.09. If a benefit is forfeited because the Administrator determines that the Participant or Beneficiary cannot be found, such benefit shall be reinstated by the Employer if a claim is filed by the Participant or Beneficiary with the Administrator and the Administrator confirms the claim to the Employer.

Article 13. Form of Distribution.

13.01. Normal Form of Distribution Under Profit Sharing Plan. Unless a Participant's Account is subject to the requirements of Section 14.03 or 14.04, distributions to a Participant or to the Beneficiary of the Participant shall be made in a lump sum or, if elected by the Participant (or the Participant's Beneficiary, if applicable) and provided by the Employer in Section 1.20 of the Adoption Agreement, under a systematic withdrawal plan (installments). Subject to the requirements of Article 14, if applicable, a Participant or Beneficiary may elect other forms of distribution which appear on the Forms of Payment Addendum to the Adoption Agreement. A Participant (or the Participant's Beneficiary, if applicable) who is receiving distribution under a systematic withdrawal plan may elect to accelerate installment payments, or any portion thereof, or to receive a lump sum distribution of the remainder of his Account balance.

Notwithstanding anything herein to the contrary, if distribution to a Participant commences on the Participant's Required Beginning Date as determined under Subsection 2.01(tt), the Participant may elect to receive distributions under a systematic withdrawal plan that provides the minimum distributions required under Code Section 401(a)(9), as described in Section 13.03.

A Participant whose distribution includes an outstanding loan balance may roll over that outstanding loan in-kind to a plan which agrees to accept such an outstanding loan in accordance with the provisions of Section 9.11.

13.02. Cash Out Of Small Accounts. Notwithstanding any other provision of the Plan to the contrary, if the Employer elected to cash out small Accounts as provided in and pursuant to Subsection 1.20(e)(1) of the Adoption Agreement, the Participant's vested interest in his Account shall be distributed following the Participant's termination of employment because of retirement, disability, or other termination of employment. For purposes of determining whether an amount being distributed pursuant to this Section 13.02 will be subject to a direct rollover by the Administrator, a Participant's “designated Roth contributions”, as defined in Subsection 6.01(e), will be considered separately from the amount within the Participant's non-Roth Account.

If the Employer elected to cash out small Accounts as provided in Subsection 1.20(e)(1) of the Adoption Agreement and if distribution is to be made to a Participant's Beneficiary following the death of the Participant and the Beneficiary's

vested interest in the Participant's Account does not exceed the maximum cash out limit permitted under Code Section 411(a)(11)(A), distribution shall be made to the Beneficiary in a lump sum following the Participant's death.

13.03. Minimum Distributions. Unless a Participant’s vested interest in his Account is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Participant’s Required Beginning Date, as of the first “distribution calendar year” distributions will be made in accordance with this Section. If a Participant's Account is subject to the provisions of Section 14.04, in lieu of the minimum distribution required hereunder, the Administrator may distribute the Participant’s full vested interest in his Account in the form of an annuity purchased from an insurance company. Any annuity purchased on behalf of a Participant will provide for distributions thereunder to be made in accordance with the requirements

of Code Section 401(a)(9) and the Treasury Regulations issued thereunder and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

Notwithstanding the foregoing or any other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of Subsection 13.03(d) below.

(a) Required Minimum Distributions During a Participant's Lifetime. During a Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of:

(1) the quotient obtained by dividing the Participant's "account balance" by the distribution period in the Uniform Lifetime Table set forth in Q & A 2 of Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(2) if the Participant's sole "designated beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the Participant's "account balance" by the number in the Joint and Last Survivor Table set forth in Q & A 3 of Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

Required minimum distributions will be determined under this Subsection 13.03(a) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death. A Participant who has retired may elect at any time to take any portion of his Account in excess of the amount required to be paid pursuant to this Subsection 13.03(a).

(b) Required Minimum Distributions After Participant's Death.

(1) If a Participant dies on or after the date distributions begin and there is a "designated beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated beneficiary," the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated beneficiary," the "designated beneficiary's" remaining "life expectancy" is calculated using the age of the "designated beneficiary" in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no "designated beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount

that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(3) Unless the Participant or Beneficiary elects otherwise in accordance with Subsection 12.05(b), if the Participant dies before the date distributions begin and there is a "designated beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the remaining "life expectancy" of the Participant's "designated beneficiary," determined as provided in Subsection 13.03(b)(1).

(4) If the Participant dies before the date distributions begin and there is no "designated beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's full vested interest in his Account will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(5) If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Subsection 12.05(a)(1), Subsections 13.03(b)(3) and (4) will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection 13.03(b), unless Subsection 13.03(b)(5) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Subsection 13.03(b)(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Subsection 12.05(a)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Subsection 12.05(a)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Definitions. For purposes of this Section 13.03, the following special definitions shall apply:

(1) "**Designated beneficiary**" means the individual who is the Participant's Beneficiary as defined under Section 2.01(g) and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury Regulations.

(2) "**Distribution calendar year**" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Subsection 12.05(a). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "**Life expectancy**" means life expectancy as computed by use of the Single Life Table in Q & A -

1 of Section 1.401(a)(9)-9 of the Treasury Regulations.

(4) A Participant's "**account balance**" means the balance of the Participant's vested interest in his Account as of the last valuation date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The "account balance" for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(d) Section 242(b)(2) Elections. Notwithstanding any other provisions of this Section and subject to the requirements of Article 14, if applicable, distribution on behalf of a Participant, including a five-percent owner, may be made pursuant to an election under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 and in accordance with all of the following requirements:

(1) The distribution is one which would not have disqualified the Trust under Code Section 401(a)(9), if applicable, or any other provisions of Code Section 401(a), as in effect prior to the effective date of Section 242(a) of the Tax Equity and Fiscal Responsibility Act of 1982.

(2) The distribution is in accordance with a method of distribution elected by the Participant whose vested interest in his Account is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(3) Such election was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(4) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(5) The method of distribution elected by the Participant or the Beneficiary specifies the form of the distribution, the time at which distribution will commence, the period over which distribution will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

A distribution upon death shall not be made under this Subsection 13.03(d) unless the information in the election contains the required information described above with respect to the distributions to be made upon the death of the Participant. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant or the Beneficiary to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made, if this method of distribution was specified in writing and the distribution satisfies the requirements in Subsections 13.03(d)(1) and (5). If an election is revoked, any subsequent distribution will be in accordance with the other provisions of the Plan. Any changes in the election will be considered to be a revocation of the election. However, the mere substitution or addition of another Beneficiary (one not designated as a Beneficiary in the election), under the election will not be considered to be a revocation of the election, so long as such substitution or addition does not alter the period over which distributions are to be made under the election directly, or indirectly (for example, by altering the relevant measuring life).

The Administrator shall direct the Trustee regarding distributions necessary to comply with the minimum distribution rules set forth in this Section 13.03.

13.04. Direct Rollovers. Notwithstanding any other provision of the Plan to the contrary, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have any portion or all of an "eligible rollover distribution" paid directly

to an "eligible retirement plan" specified by the "distributee" in a direct rollover; provided, however, that a "distributee" may not elect a direct rollover with respect to a portion of an "eligible rollover distribution" if such portion totals less than $500. In applying the $500 minimum on rollovers of a portion of a distribution, any "eligible rollover distribution" from a Participant's “designated Roth contributions”, as defined in Subsection 6.01(e), will be considered separately from any "eligible rollover distribution" from the Participant's non-Roth Account.

The portion of any "eligible rollover distribution" consisting of Employee Contributions may only be rolled over to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a), 403(a) or 403(b) that provides for separate accounting with respect to such accounts, including separate accounting for the portion of such "eligible rollover distribution" that is includible in income (including the earnings on the portion that is not so includible) and the portion that is not includible in income. That portion of any "eligible rollover distribution" consisting of Roth 401(k) Contributions, may only be rolled over to another designated Roth account established for the individual under an applicable retirement plan described in Code Section 402A(e)(1) that provides for "designated Roth contributions", as defined in Section 6.01, or to a Roth individual retirement account described in Code Section 408A, subject to the rules of Code Section 402(c).

For purposes of this Section 13.04, the following definitions shall apply:

(a) "Distributee" means a Participant, the Participant's surviving Spouse, and the Participant's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, who is entitled to receive a distribution from the Participant's vested interest in his Account. The term “distributee” shall also include a designated beneficiary (as defined in Code section 401(a)(9)(E)) of a Participant who is not the surviving Spouse of the Participant who may only elect to roll over such a distribution to an individual retirement plan described in clause (i) or (ii) of paragraph (8) (B) of Code section 402(c) established for the purposes of receiving such distribution.

(b) "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified defined contribution plan described in Code Section 401(a), an annuity contract described in Code Section
403(b), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, provided that such 457 plan provides for separate accounting with respect to such rolled over amounts, that accepts "eligible rollover distributions", or a Roth individual retirement account described in Code Section 408A However, for a “distributee” who is a designated beneficiary of the Participant (and not the Participant’s surviving Spouse), the definition of “eligible retirement plan” shall be limited as described in (a) above.

(c) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the "distributee", except that an "eligible rollover distribution" does not include the following:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9); or

(3) any hardship withdrawal made in accordance with the provisions of Section 10.05 or the In- Service Withdrawals Addendum to the Adoption Agreement.

13.05. <u>Notice Regarding Timing and Form of Distribution</u>. Within the period beginning 180 days before a Participant's Annuity Starting Date and ending 30 days before such date, the Administrator shall provide such Participant with written notice

containing a general description of the material features of each form of distribution available under the Plan and an explanation of the financial effect of electing each form of distribution available under the Plan. The notice shall also inform the Participant of his right to defer receipt of the distribution until the date in Subsection 1.21(a) of the Adoption Agreement, the consequences of failing to defer, and his right to make a direct rollover.

Distribution may commence fewer than 30 days after such notice is given, provided that:

(a) the Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option);

(b) the Participant, after receiving the notice, affirmatively elects a distribution, with his Spouse's written consent, if necessary;

(c) if the Participant's Account is subject to the requirements of Section 14.04, the following additional requirements apply:

(1) the Participant is permitted to revoke his affirmative distribution election at any time prior to the later of (A) his Annuity Starting Date or (B) the expiration of the seven-day period beginning the day after such notice is provided to him; and

(2) distribution does not begin to such Participant until such revocation period ends.

13.06. Determination of Method of Distribution. Subject to Section 13.02, the Participant shall determine the method of distribution of benefits to himself and may determine the method of distribution to his Beneficiary. If the Participant does not determine the method of distribution to his Beneficiary or if the Participant permits his Beneficiary to override his determination, the Beneficiary, in the event of the Participant's death, shall determine the method of distribution of benefits to himself as if he were the Participant. A determination by the Beneficiary must be made no later than the close of the calendar year in which distribution would be required to begin under Section 12.05 or, if earlier, the close of the calendar year in which the fifth anniversary of the death of the Participant occurs.

13.07. Notice to Trustee. The Administrator shall notify the Trustee in any medium acceptable to the Trustee, which may be specified in the Service Agreement, whenever any Participant or Beneficiary is entitled to receive benefits under the Plan. To facilitate distributions, the Administrator shall develop processes and procedures to communicate to the Trustee the form of payment of benefits that such Participant or Beneficiary shall receive, the name of any designated Beneficiary or Beneficiaries, and any such other information as the Trustee shall require.

Article 14. Superseding Annuity Distribution Provisions.

14.01. Special Definitions. For purposes of this Article, the following special definitions shall apply:

(a) **"Qualified joint and survivor annuity"** means (1) if the Participant is not married on his Annuity Starting Date, an immediate annuity payable for the life of the Participant or (2) if the Participant is married on his Annuity Starting Date, an immediate annuity for the life of the Participant with a survivor annuity for the life of the Participant's Spouse (to whom the Participant was married on the Annuity Starting Date) equal to 50 percent (or the percentage designated in the Forms of Payment Addendum to the Adoption Agreement) of the amount of the annuity which is payable during the joint lives of the Participant and such Spouse, provided that the survivor annuity shall not be payable to a Participant's Spouse if such Spouse is not the same Spouse to whom the Participant was married on his Annuity Starting Date.

(b) **"Qualified optional survivor annuity"** means a joint and survivor annuity that the Participant, subject to the spousal consent rules described in Section 14.05, may elect and which (1) if the survivor annuity portion of the Plan's qualified joint and survivor annuity (as defined in (a) above) is less than 75%, then has a survivor annuity portion of 75% or (2) if the survivor annuity portion of the Plan's qualified joint and survivor annuity (as defined in (a) above) is greater than or equal to 75%, then has a survivor annuity portion of 50%. The "qualified optional survivor annuity" shall be designated in the Forms of Payment Addendum as a joint and survivor annuity.

(c) **"Qualified preretirement survivor annuity"** means an annuity purchased with at least 50 percent of a Participant's vested interest in his Account that is payable for the life of a Participant's surviving Spouse. The Employer shall specify that portion of a Participant's vested interest in his Account that is to be used to purchase the "qualified preretirement survivor annuity" in the Forms of Payment Addendum to the Adoption Agreement.

14.02. Applicability. Except as otherwise specifically provided in the Plan, the provisions of this Article shall apply to a Participant's Account only if:

(a) the Plan includes assets transferred from a money purchase pension plan;

(b) the Plan is an amendment and restatement of a plan that provided an annuity form of payment and such form of payment has ***not*** been eliminated;

(c) the Plan is an amendment and restatement of a plan that provided an annuity form of payment and such form of payment ***has*** been eliminated, but the Participant elected a life annuity form of payment before the effective date of the elimination;

(d) the Participant's Account contains assets attributable to amounts directly or indirectly transferred from a plan that provided an annuity form of payment and such form of payment has ***not*** been eliminated;

(e) the Participant's Account contains assets attributable to amounts directly or indirectly transferred from a plan that provided an annuity form of payment and such form of payment ***has*** been eliminated, but the Participant elected a life annuity form of payment before the effective date of the elimination.

14.03. Annuity Form of Payment. To the extent provided through Section 1.20 of the Adoption Agreement, a Participant may elect distributions made in whole or in part in the form of an annuity contract. Any annuity contract distributed under the Plan shall be subject to the provisions of this Section 14.03 and, to the extent provided therein, Sections 14.04 through 14.09.

(a) At the direction of the Administrator, the Trustee shall purchase the annuity contract on behalf of a Participant or Beneficiary from an insurance company. Such annuity contract shall be nontransferable.

(b) The terms of the annuity contract shall comply with the requirements of the Plan and distributions under such contract shall be made in accordance with Code Section 401(a)(9) and the Treasury Regulations issued thereunder.

(c) The annuity contract may provide for payment over the life of the Participant and, upon the death of the Participant, may provide a survivor annuity continuing for the life of the Participant's designated Beneficiary. Such an annuity may provide for an annuity certain feature for a period not exceeding the life expectancy of the Participant or, if the annuity is payable to the Participant and a designated Beneficiary, the joint life and last survivor expectancy of the Participant and such Beneficiary. If the Participant dies prior to his Annuity Starting Date, the annuity contract distributed to the Participant's Beneficiary may provide for payment over the life of the Beneficiary, and may provide for an annuity certain

feature for a period not exceeding the life expectancy of the Beneficiary. The types of annuity contracts provided under the Plan shall be limited to the types of annuities described in Section 1.20 of the Adoption Agreement and the Forms of Payment Addendum to the Adoption Agreement.

(d) The annuity contract must provide for non-increasing payments.

14.04. "Qualified Joint and Survivor Annuity" and "Qualified Preretirement Survivor Annuity" Requirements. The requirements of this Section 14.04 apply to a Participant's Account if:

(a) the Plan includes assets transferred from a money purchase pension plan;

(b) the Employer has selected in Subsection 1.20(d)(2) of the Adoption Agreement that distribution in the form of a life annuity is the normal form of distribution with respect to such Participant's Account; or

(c) the Employer has indicated on the Forms of Payment Addendum to the Adoption Agreement that distribution in the form of a life annuity is an optional form of distribution with respect to such Participant's Account and the Participant is permitted to elect and has elected distribution in the form of an annuity contract payable over the life of the Participant.

If a Participant's Account is subject to the requirements of this Section 14.04, distribution shall be made to the Participant with respect to such Account in the form of a "qualified joint and survivor annuity" (with a survivor annuity in the percentage amount specified by the Employer in the Forms of Payment Addendum to the Adoption Agreement) in the amount that can be purchased with such Account, unless the Participant waives the "qualified joint and survivor annuity" as provided in Section 14.05. If the Participant dies prior to his Annuity Starting Date, distribution shall be made to the Participant's surviving Spouse, if any, in the form of a "qualified preretirement survivor annuity" in the amount that can be purchased with such Account, unless the Participant waives the "qualified preretirement survivor annuity" as provided in Section 14.05, or the Participant's surviving Spouse elects in writing to receive distribution in one of the other forms of payment provided under the Plan. A Participant's Account that is subject to the requirements of this Section 14.04 shall be used to purchase the "qualified preretirement survivor annuity" and the balance of the Participant's vested interest in his Account that is not used to purchase the "qualified preretirement survivor annuity" shall be distributed to the Participant's designated Beneficiary in accordance with the provisions of Sections 11.04 and 12.05.

14.05. Waiver of the "Qualified Joint and Survivor Annuity" and/or "Qualified Preretirement Survivor Annuity" Rights. A Participant may waive the "qualified joint and survivor annuity" described in Section 14.04 and elect another form of distribution permitted under the Plan at any time during the 180-day period ending on his Annuity Starting Date; provided, however, that if the Participant is married, his Spouse must consent in writing to such election as provided in Section 14.06. A Participant may waive or revoke a waiver of the "qualified joint and survivor annuity" described in Section 14.04 and elect another form of distribution permitted under the Plan at any time and any number of times during the 180-day period ending on his Annuity Starting Date; provided, however, that if the Participant is married and is electing a form of distribution other than the "qualified joint and survivor annuity" or the "qualified optional survivor annuity", his Spouse must consent in writing to such election as provided in Section 14.06.

A Participant may waive the "qualified preretirement survivor annuity" and designate a non-Spouse Beneficiary at any time during the "applicable election period"; provided, however, that the Participant's Spouse must consent in writing to such election as provided in Section 14.06. The "applicable election period" begins on the later of (1) the date the Participant's Account becomes subject to the requirements of Section 14.04 or (2) the first day of the Plan Year in which the Participant attains age 35 or, if he terminates employment prior to such date, the date he terminates employment with the Employer and all Related Employers. The "applicable election period" ends on the earlier of the Participant's Annuity

Starting Date or the date of the Participant's death. A Participant whose employment has not terminated may elect to waive the "qualified preretirement survivor annuity" prior to the Plan Year in which he attains age 35, provided that any such waiver shall cease to be effective as of the first day of the Plan Year in which the Participant attains age 35.

A Participant's waiver of the "qualified joint and survivor annuity" or "qualified preretirement survivor annuity" shall be valid only if the applicable notice described in Section 14.07 or 14.08 has been provided to the Participant.

14.06. Spouse's Consent to Waiver. A Spouse's written consent must acknowledge the effect of the Participant's election and must be witnessed by a Plan representative or a notary public. In addition, the Spouse's written consent must either (a) specify any non-Spouse Beneficiary designated by the Participant and that such designation may not be changed without written spousal consent or (b) acknowledge that the Spouse has the right to limit consent as provided in clause (a) above, but permit the Participant to change the designated Beneficiary without the Spouse's further consent.

A Participant's Spouse shall be deemed to have given written consent to a Participant's waiver if the Participant establishes to the satisfaction of a Plan representative that spousal consent cannot be obtained because the Spouse cannot be located or because of other circumstances set forth in Code Section 401(a)(11) and Treasury Regulations issued thereunder.

Any written consent given or deemed to have been given by a Participant's Spouse hereunder shall be irrevocable and shall be effective only with respect to such Spouse and not with respect to any subsequent Spouse.

In addition, with regard to a Participant's waiver of the "qualified joint and survivor annuity" form of distribution, the Spouse's written consent must either (a) specify the form of distribution elected instead of the "qualified joint and survivor annuity", and that such form may not be changed (except to a "qualified joint and survivor annuity") without written spousal consent or (b) acknowledge that the Spouse has the right to limit consent as provided in clause (a) above, but permit the Participant to change the form of distribution elected without the Spouse's further consent. To the extent a Participant's Account is subject to the requirements of Section 14.04, a Spouse's consent to a Participant's waiver shall be valid only if the applicable notice described in Section 14.07 or 14.08 has been provided to the Participant.

14.07. Notice Regarding "Qualified Joint and Survivor Annuity". The notice provided to a Participant under Section 14.05 shall include a written explanation that satisfies the requirements of Code Section 417(a)(3) and regulations issued thereunder. The notice will include a description of the following: (i) the terms and conditions of a qualified joint and survivor annuity and the qualified optional survivor annuity; (ii) the participant's right to make and the effect of any election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a participant's spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity.

14.08. Notice Regarding "Qualified Preretirement Survivor Annuity". If a Participant's Account is subject to the requirements of Section 14.04, the Participant shall be provided with a written explanation of the "qualified preretirement survivor annuity" comparable to the written explanation provided with respect to the "qualified joint and survivor annuity", as described in Section 14.07. Such explanation shall be furnished within whichever of the following periods ends last:

(a) the period beginning with the first day of the Plan Year in which the Participant reaches age 32 and ending with the end of the Plan Year preceding the Plan Year in which he reaches age 35;

(b) a reasonable period ending after the Employee becomes an Active Participant;

(c) a reasonable period ending after Section 14.04 first becomes applicable to the Participant's Account; or

(d) in the case of a Participant who separates from service before age 35, a reasonable period ending after such separation from service.

For purposes of the preceding sentence, the two-year period beginning one year prior to the date of the event described in Subsection 14.08(b), (c) or (d) above, whichever is applicable, and ending one year after such date shall be considered reasonable, provided, that in the case of a Participant who separates from service under Subsection 14.08(d) above and subsequently recommences employment with the Employer, the applicable period for such Participant shall be re- determined in accordance with this Section 14.08.

14.09. Former Spouse. For purposes of this Article, a former Spouse of a Participant shall be treated as the Spouse or surviving Spouse of the Participant, and a current Spouse shall not be so treated, to the extent required under a qualified domestic relations order, as defined in Code Section 414(p).

Article 15. Top-Heavy Provisions.

15.01. Definitions. For purposes of this Article, the following special definitions shall apply:

(a) "**Determination date**" means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" means the last day of that Plan Year.

(b) "**Determination period**" means the Plan Year containing the "determination date".

(c) "**Distribution period**" means (i) for any distribution made to an employee on account of severance from employment, death, disability, or termination of a plan which would have been part of the “required aggregation group” had it not been terminated, the one-year period ending on the "determination date" and (ii) for any other distribution, the five-year period ending on the "determination date".

(d) "**Key employee**" means any Employee or former Employee (including any deceased Employee) who at any time during the "determination period" was (1) an officer of the Employer or a Related Employer having annual Compensation greater than the dollar amount specified in Code Section 416(i)(1)(A)(I) adjusted under Code Section
416(i)(1) for Plan Years beginning after December 31, 2002 (e.g., $165,000 for Plan Years beginning in 2013), (2) a five-percent owner of the Employer or a Related Employer, or (3) a one-percent owner of the Employer or a Related Employer having annual Compensation of more than $150,000. The determination of who is a "key employee" shall be made in accordance with Code Section 416(i)(1) and any applicable guidance or regulations issued thereunder.

(e) "**Permissive aggregation group**" means the "required aggregation group" plus any other qualified plans of the Employer or a Related Employer which, when considered as a group with the "required aggregation group", would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(f) "**Required aggregation group**" means:

(1) Each qualified plan of the Employer or Related Employer in which at least one "key employee" participates, or has participated at any time during the "determination period" or, unless and until modified by future Treasury guidance, any of the four preceding Plan Years (regardless of whether the plan has terminated), and

(2) any other qualified plan of the Employer or Related Employer which enables a plan described in

Subsection 15.01(f)(1) above to meet the requirements of Code Section 401(a)(4) or 410. (g) "**Top-heavy plan**" means a plan in which any of the following conditions exists:

(1) the "top-heavy ratio" for the plan exceeds 60 percent and the plan is not part of any "required aggregation group" or "permissive aggregation group";

(2) the plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the "required aggregation group" exceeds 60 percent; or

(3) the plan is a part of a "required aggregation group" and a "permissive aggregation group" and the "top-heavy ratio" for both groups exceeds 60 percent.

Notwithstanding the foregoing, a plan is not a "top-heavy plan" for a Plan Year if it consists solely of a cash or deferred arrangement that satisfies the nondiscrimination requirements under Code Section 401(k) by application of Code Section 401(k)(12) or 401(k)(13) and, if matching contributions are provided under such plan, satisfies the nondiscrimination requirements under Code Section 401(m) by application of Code Section 401(m)(11) or 401(m)(12).

(h) **"Top-heavy ratio"** means:

(1) With respect to the Plan, or with respect to any "required aggregation group" or "permissive aggregation group" that consists solely of defined contribution plans (including any simplified employee pension, as defined in Code Section 408(k)), a fraction, the numerator of which is the sum of the account balances of all "key employees" under the plans as of the "determination date" (including any part of any account balance distributed during the "distribution period"), and the denominator of which is the sum of all account balances (including any part of any account balance distributed during the "distribution period") of all participants under the plans as of the "determination date". Both the numerator and denominator of the "top-heavy ratio" shall be increased, to the extent required by Code Section 416, to reflect any contribution which is due but unpaid as of the "determination date".

(2) With respect to any "required aggregation group" or "permissive aggregation group" that includes one or more defined benefit plans which, during the "determination period", has covered or could cover an Active Participant in the Plan, a fraction, the numerator of which is the sum of the account balances under the defined contribution plans for all "key employees" and the present value of accrued benefits under the defined benefit plans for all "key employees", and the denominator of which is the sum of the account balances under the defined contribution plans for all participants and the present value of accrued benefits under the defined benefit plans for all participants. Both the numerator and denominator of the "top-heavy ratio" shall be increased for any distribution of an account balance or an accrued benefit made during the "distribution period" and any contribution due but unpaid as of the "determination date".

For purposes of Subsections 15.01(h)(1) and (2) above, the value of accounts shall be determined as of the most recent "determination date" and the present value of accrued benefits shall be determined as of the date used for computing plan costs for minimum funding that falls within 12 months of the most recent "determination date", except as provided in Code Section 416 and the regulations issued thereunder for the first and second plan years of a defined benefit plan. When aggregating plans, the value of accounts and accrued benefits shall be calculated with reference to the "determination dates" that fall within the same calendar year.

The accounts and accrued benefits of a Participant who is not a "key employee" but who was a "key employee" in a prior year, or who has not performed services for the Employer or any Related Employer at any time during the one-year period ending on the "determination date", shall be disregarded. The calculation of the "top- heavy ratio", and the extent to which distributions, rollovers, and transfers are taken into account, shall be made in accordance with Code Section 416 and the regulations issued thereunder. Deductible employee contributions shall not be taken into account for purposes of computing the "top-heavy ratio".

For purposes of determining if the Plan, or any other plan included in a "required aggregation group" of which the Plan is a part, is a "top-heavy plan", the accrued benefit in a defined benefit plan of an Employee other than a "key employee" shall be determined under the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Employer or a Related Employer, or, if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual rate of Code Section 411(b)(1)(C).

Notwithstanding any other provision herein to the contrary, Compensation for purposes of this Article 15 shall be based on the amount actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) during the Plan Year, does ***not*** exclude any amounts elected by the Employer in Subsection 1.05(a) of the Adoption Agreement except moving expenses paid or reimbursed by the Employer if it is reasonable to believe they are deductible by the Employee, and shall include amounts that otherwise would be excluded as "severance amounts" (as defined in Section 2.01(k)) if such amounts are paid to an individual who does not currently perform services for the Employer because of qualified military service (as used in Code Section 414(u)(1)) to the extent those amounts do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

15.02. Application. If the Plan is or becomes a "top-heavy plan" in any Plan Year or is automatically deemed to be a "top- heavy plan" in accordance with the Employer's selection in Subsection 1.22(a)(1) of the Adoption Agreement, the provisions of this Article shall apply and shall supersede any conflicting provision in the Plan. Notwithstanding the foregoing, the provisions of this Article shall not apply if Subsection 1.22(a)(3) of the Adoption Agreement is selected.

15.03. Minimum Contribution. Except as otherwise specifically provided in this Section 15.03, the Nonelective Employer Contributions made for the Plan Year on behalf of any Active Participant who is not a "key employee", when combined with the Matching Employer Contributions made on behalf of such Active Participant for the Plan Year, shall not be less than the lesser of three percent (or five percent, if selected by the Employer in Subsection 1.22(b) of the Adoption Agreement) of such Participant's Compensation for the Plan Year or, in the case where neither the Employer nor any Related Employer maintains a defined benefit plan which uses the Plan to satisfy Code Section 401(a)(4) or 410, the largest percentage of Employer contributions made on behalf of any "key employee" for the Plan Year, expressed as a percentage of the "key employee's" Compensation for the Plan Year. Catch-Up Contributions made on behalf of a "key employee" for the

Plan Year shall not be taken into account for purposes of determining the amount of the minimum contribution required hereunder.

If an Active Participant is entitled to receive a minimum contribution under another qualified plan maintained by the Employer or a Related Employer that is a "top-heavy plan", no minimum contribution shall be made hereunder unless the Employer has provided in Subsection 1.22(b)(1) of the Adoption Agreement that the minimum contribution shall be made under this Plan in any event. If the Employer has provided in Subsection 1.22(b)(2) that an alternative means shall be used to satisfy the minimum contribution requirements where an Active Participant is covered under multiple plans that are "top- heavy plans", no minimum contribution shall be required under this Section, except as provided under the 416 Contributions Addendum to the Adoption Agreement. If a minimum contribution is required to be made under the Plan for the Plan Year on behalf of an Active Participant who is not a "key employee" and who is a participant in a defined benefit plan maintained by the Employer or a Related Employer that is aggregated with the Plan, the minimum contribution shall not be less than five percent of such Participant's Compensation for the Plan Year.

The minimum contribution required under this Section 15.03 shall be made to the Account of an Active Participant even though, under other Plan provisions, the Active Participant would not otherwise be entitled to receive a contribution, or would have received a lesser contribution for the Plan Year, because (a) the Active Participant failed to complete the Hours of Service requirement selected by the Employer in Subsection 1.11(e) or 1.12(d) of the Adoption Agreement, or (b) the Participant's Compensation was less than a stated amount; provided, however, that no minimum contribution shall be made for a Plan Year to the Account of an Active Participant who is not employed by the Employer or a Related Employer on the last day of the Plan Year.

That portion of a Participant's Account that is attributable to minimum contributions required under this Section 15.03, to the extent required to be nonforfeitable under Code Section 416(b), may not be forfeited under Code Section 411(a)(3)(B).

15.04. Determination of Minimum Required Contribution. For purposes of determining the amount of any minimum contribution required to be made on behalf of a Participant who is not a "key employee" for a Plan Year, the Matching Employer Contributions made on behalf of such Participant and the Nonelective Employer Contributions allocated to such Participant for the Plan Year shall be aggregated. If the aggregate amount of such contributions, when expressed as a percentage of such Participant's Compensation for the Plan Year, is less than the minimum contribution required to be made to such Participant under Section 15.03, the Employer shall make an additional contribution on behalf of such Participant in an amount that, when aggregated with the Qualified Nonelective Contributions, Matching Employer Contributions and Nonelective Employer Contributions previously allocated to such Participant, will equal the minimum contribution required to be made to such Participant under Section 15.03.

15.05. Accelerated Vesting. If applicable, for any Plan Year in which the Plan is or is deemed to be a "top-heavy plan" and all Plan Years thereafter, the top-heavy vesting schedule described within Subsection 1.22(c) of the Adoption Agreement shall automatically apply in lieu of any less favorable schedule specified in the Vesting Schedule Addendum to the Adoption Agreement. The top-heavy vesting schedule applies to all benefits within the meaning of Code Section 411(a)(7) except those already subject to a vesting schedule which vests at least as rapidly in all cases as the schedule described within Subsection 1.22(c) of the Adoption Agreement, including benefits accrued before the Plan becomes a "top-heavy plan". Notwithstanding the foregoing provisions of this Section 15.05, the top-heavy vesting schedule does not apply to the Account of any Participant who does not have an Hour of Service after the Plan initially becomes or is deemed to have become a "top- heavy plan" and such Employee's Account attributable to Employer Contributions shall be determined without regard to this Section 15.05.

15.06. Exclusion of Collectively-Bargained Employees. Notwithstanding any other provision of this Article 15, Employees who are included in a unit covered by a collective bargaining agreement between employee representatives and one or more employers may be included in determining whether or not the Plan is a "top-heavy plan"; provided, however, that if a "key employee" is covered by a collective bargaining agreement for the "determination period," all Employees covered by such agreement shall be included. No Employees in a unit covered by a collective bargaining agreement shall be entitled to a minimum contribution under Section 15.03 or accelerated vesting under Section 15.05, unless otherwise provided in the collective bargaining agreement.

Article 16. Amendment and Termination.

16.01. Amendments by the Employer that do not Affect Volume Submitter Status. The Employer reserves the authority through a board of directors' resolution or similar action, subject to the provisions of Article 1 and Section 16.04, to amend the Plan as provided herein, and such amendment shall not affect the status of the Plan as a volume submitter plan.

(a) The Employer may amend the Adoption Agreement to make a change or changes in the provisions previously elected by it. Such amendment may be made either by (1) completing an amended Adoption Agreement, or (2) adopting an amendment in the form provided by the Volume Submitter Sponsor. Any such amendment must be filed with the Trustee.

(b) The Employer may adopt certain model amendments published by the Internal Revenue Service which specifically provide that their adoption shall not cause the Plan to be treated as an individually designed plan.

16.02. Amendments by the Employer Adopting Provisions not Included in Volume Submitter Specimen Plan. The Employer reserves the authority, subject to the provisions of Section 16.04, to amend the Plan by adopting provisions that are not included in the Volume Submitter Sponsor's specimen plan. Any such amendment(s) shall be made through use of the Plan Superseding Provisions Addendum and/or the Trust Superseding Provisions Addendum to the Adoption Agreement, as appropriate.

16.03. Amendment by the Volume Submitter Sponsor.

Effective as of the date the Volume Submitter Sponsor receives approval from the Internal Revenue Service of its Volume Submitter specimen plan, the Volume Submitter Sponsor may in its discretion amend the volume submitter plan at any time, which amendment may also apply to the Plan maintained by the Employer. The Volume Submitter Sponsor shall satisfy any recordkeeping and notice requirements imposed by the Internal Revenue Service in order to maintain its amendment authority. The Volume Submitter Sponsor shall provide a copy of any such amendment to each Employer adopting its volume submitter plan at the Employer's last known address as shown on the books maintained by the Volume Submitter Sponsor or its affiliates.

The Volume Submitter Sponsor will no longer have the authority to amend the Plan on behalf of an adopting Employer as of the earlier of (a) the date of the adoption of an Employer amendment to the Plan to incorporate a provision that is not allowable in the Volume Submitter program, as described in Section 16.03 of Rev. Proc. 2011-49 (or the successor thereto), or (b) the date the Internal Revenue Service gives notice that the Plan is being treated as an individually-designed plan due to the nature and extent of amendments, pursuant to Section 24.03 of Rev. Proc. 2011-49 (or the successor thereto).

16.04. Amendments Affecting Vested Interest and/or Accrued Benefits. Except as permitted by Section 16.05, Section 1.20(d) of the Adoption Agreement, and/or Code Section 411(d)(6) and regulations issued thereunder, no amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's Account or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment. Furthermore, if the vesting schedule of the Plan is amended, the nonforfeitable interest of a Participant in his Account, determined as of the later of the date the amendment is adopted or the date it becomes effective, shall not be less than the Participant's nonforfeitable interest in his Account determined without regard to such amendment.

If the Plan's vesting schedule is amended because of a change to "top-heavy plan" status, as described in Subsection 15.01(g), the accelerated vesting provisions of Section 15.05 shall continue to apply for all Plan Years thereafter, regardless of whether the Plan is a "top-heavy plan" for such Plan Year.

If the Plan's vesting schedule is amended and an Active Participant's vested interest, as calculated by using the amended vesting schedule, is less in any year than the Active Participant's vested interest calculated under the Plan's vesting schedule immediately prior to the amendment, the amended vesting schedule shall apply only to Employees first hired on or after the effective date of the change in vesting schedule.

16.05. Retroactive Amendments made by Volume Submitter Sponsor. An amendment made by the Volume Submitter Sponsor in accordance with Section 16.03 may be made effective on a date prior to the first day of the Plan Year in which it is adopted if, in published guidance, the Internal Revenue Service either permits or requires such an amendment to be made to enable the Plan and Trust to satisfy the applicable requirements of the Code and all requirements for the retroactive amendment are satisfied.

16.06. Termination and Discontinuation of Contributions. The Employer has adopted the Plan with the intention and expectation that assets shall continue to be held under the Plan on behalf of Participants and their Beneficiaries indefinitely and, unless the Plan is a frozen plan as provided in Subsection 1.01(g)(5) of the Adoption Agreement, that contributions under the Plan shall be continued indefinitely. However, said Employer has no obligation or liability whatsoever to maintain the Plan for any

length of time and may amend the Plan to discontinue contributions under the Plan or terminate the Plan at any time without any liability hereunder for any such discontinuance or termination.

If the Plan is not already a frozen plan, the Employer may amend the Plan to discontinue further contributions to the Plan by selecting Subsection 1.01(g)(5) of the Adoption Agreement. An Employer that has selected in Subsection 1.01(g)(5) of the Adoption Agreement may change its selection and provide for contributions under the Plan to recommence with the intention that such contributions continue indefinitely, as provided in the preceding paragraph.

The Employer may terminate the Plan by written notice delivered to the Trustee. Notwithstanding the effective date of the termination of the Plan, loan payments being made pursuant to Section 9.07 shall continue to be remitted to the Trust until the loan has been defaulted or distributed pursuant to Sections 9.10 and 9.11 or Section 9.13, respectively.

16.07. Distribution upon Termination of the Plan. Upon termination or partial termination of the Plan or complete discontinuance of contributions thereunder, each Participant (including a terminated Participant with respect to amounts not previously forfeited by him) who is affected by such termination or partial termination or discontinuance shall have a vested interest in his Account of 100 percent. Subject to Section 12.01 and Article 14, upon receipt of instructions from the Administrator, the Trustee shall distribute to each Participant or other person entitled to distribution the balance of the Participant's Account in a single lump sum payment. In the absence of such instructions, the Trustee shall notify the Administrator of such situation and the Trustee shall be under no duty to make any distributions under the Plan until it receives instructions from the Administrator. Upon the completion of such distributions, the Trust shall terminate, the Trustee shall be relieved from all liability under the Trust, and no Participant or other person shall have any claims thereunder, except as required by applicable law.

If distribution is to be made to a Participant or Beneficiary who cannot be located, following the Administrator’s completion of such search methods as described in applicable Department of Labor guidance, the Administrator shall give instructions to the Trustee to roll over the distribution to an individual retirement account established by the Administrator in the name of the missing Participant or Beneficiary, which account shall satisfy the requirements of the Department of Labor automatic rollover safe harbor generally applicable to amounts less than or equal to the maximum cashout amount specified in Code Section 401(a)(31)(B)(ii) ($5,000 as of January 1, 2013) that are mandatorily distributed from the Plan. In the alternative, the Employer may direct the Trustee, subject to applicable guidance, to transfer the Account of any such missing Participant or Beneficiary, regardless of the amount of any such Account to the Pension Benefit Guarantee Corporation. In the absence of such instructions, the Trustee shall make no distribution to the distributee.

16.08. Merger or Consolidation of Plan; Transfer of Plan Assets. In case of any merger or consolidation of the Plan with, or transfer of assets and liabilities of the Plan to, any other plan, provision must be made so that each Participant would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated.

Article 17. Amendment and Continuation of Prior Plan; Transfer of Funds to or from Other Qualified Plans.

17.01. Amendment and Continuation of Prior Plan. In the event the Employer has previously established a plan (the "prior plan") which is a defined contribution plan under the Code and which on the date of adoption of the Plan meets the applicable requirements of Code Section 401(a), the Employer may, in accordance with the provisions of the prior plan, amend and restate the prior plan in the form of the Plan and become the Employer hereunder, subject to the following:

(a) Subject to the provisions of the Plan, each individual who was a Participant in the prior plan immediately prior to the effective date of such amendment and restatement shall become a Participant in the Plan on the effective date of the amendment and restatement, provided he is an Eligible Employee as of that date.

(b) Except as provided in Section 16.04, no election may be made under the vesting provisions of the Adoption Agreement if such election would reduce the benefits of a Participant under the Plan to less than the benefits to which he would have been entitled if he voluntarily separated from the service of the Employer immediately prior to such amendment and restatement.

(c) No amendment to the Plan shall decrease a Participant's accrued benefit or eliminate an optional form of benefit, except as permitted under Subsection 1.20(d) of the Adoption Agreement.

(d) The amounts standing to the credit of a Participant's account immediately prior to such amendment and restatement which represent the amounts properly attributable to (1) contributions by the Participant and (2) contributions by the Employer and forfeitures shall constitute the opening balance of his Account or Accounts under the Plan.

(e) Amounts being paid to an Inactive Participant or to a Beneficiary in accordance with the provisions of the prior plan shall continue to be paid in accordance with such provisions.

(f) Any election and waiver of the "qualified preretirement survivor annuity", as defined in Section 14.01, in effect after August 23, 1984, under the prior plan immediately before such amendment and restatement shall be deemed a valid election and waiver of Beneficiary under Section 14.04 if such designation satisfies the requirements of Sections 14.05 and 14.06, unless and until the Participant revokes such election and waiver under the Plan.

(g) All assets of the predecessor trust shall be invested by the Trustee as soon as reasonably practicable pursuant to Article 8. The Employer agrees to assist the Trustee in any way requested by the Trustee in order to facilitate the transfer of assets from the predecessor trust to the Trust Fund.

17.02. Transfer of Funds from an Existing Plan. The Employer may from time to time direct the Trustee, in accordance with such rules as the Trustee may establish, to accept cash, allowable Fund Shares or participant loan promissory notes transferred for the benefit of Participants from a trust forming part of another qualified plan under the Code, provided such plan is a defined contribution plan. Such transferred assets shall become assets of the Trust as of the date they are received by the Trustee. Such transferred assets shall be credited to Participants' Accounts in accordance with their respective interests immediately upon receipt by the Trustee. A Participant's vested interest under the Plan in transferred assets which were fully vested and nonforfeitable under the transferring plan or which were transferred to the Plan in a manner intended to satisfy the requirements of subsection (b) of this Section 17.02 shall be fully vested and nonforfeitable at all times. A Participant's interest under the Plan in transferred assets which were transferred to the Plan in a manner intended to satisfy the requirements of subsection (a) of this Section 17.02 shall be determined in accordance with the terms of the Plan, but applying the Plan's vesting schedule or the transferor plan's vesting schedule, whichever is more favorable, for each year of Vesting Service completed by the Participant. Such transferred assets shall be invested by the Trustee in accordance with the provisions of Subsection 17.01(g) as if such assets were transferred from a prior plan, as defined in Section 17.01. Except as otherwise provided below, no transfer of assets in accordance with this Section 17.02 may cause a loss of an accrued or optional form of benefit protected by Code Section 411(d)(6).

The terms of the Plan as in effect at the time of the transfer shall apply to the amounts transferred regardless of whether such application would have the effect of eliminating or reducing an optional form of benefit protected by Code Section 411(d)(6) which was previously available with respect to any amount transferred to the Plan pursuant to this Section 17.02, provided that such transfer satisfies the requirements set forth in either (a) or (b):

(a) (1) The transfer is conditioned upon a voluntary, fully informed election by the Participant to transfer his entire account balance to the Plan. As an alternative to the transfer, the Participant is offered the opportunity to retain the form of benefit previously available to him (or, if the transferor plan is terminated, to receive any

optional form of benefit for which the participant is eligible under the transferor plan as required by Code Section 411(d)(6));

(2) If the defined contribution plan from which the transfer is made includes a qualified cash or deferred arrangement, the Plan includes a cash or deferred arrangement;

(3) The defined contribution plan from which the transfer is made is not a money purchase pension plan and

(4) The transfer is made either in connection with an asset or stock acquisition, merger or other similar transaction involving a change in employer of the employees of a trade or business (i.e., an acquisition or disposition within the meaning of Section 1.410(b)-2(f) of the Treasury Regulations) or in connection with the participant's change in employment status such that the participant is not entitled to additional allocations under the transferor plan.

(b) (1) The transfer satisfies the requirements of subsection (a)(1) of this Section 17.02;

(2) The transfer occurs at a time when the Participant is eligible, under the terms of the transferor plan, to receive an immediate distribution of his account;

(3) The transfer occurs at a time when the participant is not eligible to receive an immediate distribution of his entire nonforfeitable account balance in a single sum distribution that would consist entirely of an eligible rollover distribution within the meaning of Code Section 401(a)(31)(C); and

(4) The amount transferred, together with the amount of any contemporaneous Code Section 401(a)(31) direct rollover to the Plan, equals the entire nonforfeitable account of the participant whose account is being transferred.

It is the Employer's obligation to ensure that all assets of the Plan, other than those maintained in a separate trust or fund pursuant to the provisions of Section 20.10, are transferred to the Trustee. The Trustee shall have no liability for and no duty to inquire into the administration of such transferred assets for periods prior to the transfer.

17.03. Acceptance of Assets by Trustee. The Trustee shall not accept assets which are not either in a medium proper for investment under the Plan, as set forth in the Plan and the Service Agreement, or in cash. Such assets shall be accompanied by instructions in writing (or such other medium as may be acceptable to the Trustee) showing separately the respective contributions by the prior employer and by the Participant, and identifying the assets attributable to such contributions. The Trustee shall establish such accounts as may be necessary or appropriate to reflect such contributions under the Plan. The Trustee shall hold such assets for investment in accordance with the provisions of Article 8, and shall in accordance with the instructions of the Employer make appropriate credits to the Accounts of the Participants for whose benefit assets have been transferred.

17.04. Transfer of Assets from Trust. The Employer may direct the Trustee to transfer all or a specified portion of the Trust assets to any other plan or plans maintained by the Employer or the employer or employers of an Inactive Participant or Participants, provided that the Trustee has received evidence satisfactory to it that such other plan meets all applicable requirements of the Code, subject to the following:

(a) The assets so transferred shall be accompanied by instructions from the Employer naming the persons for whose benefit such assets have been transferred, showing separately the respective contributions by the Employer and by each Inactive Participant, if any, and identifying the assets attributable to the various contributions. The Trustee

shall not transfer assets hereunder until all applicable filing requirements are met. The Trustee shall have no further liabilities with respect to assets so transferred.

(b) A transfer of assets made pursuant to this Section 17.04 may result in the elimination or reduction of an optional form of benefit protected by Code Section 411(d)(6), provided that the transfer satisfies the requirements set forth in either (1) or (2):

(1) (i) The transfer is conditioned upon a voluntary, fully informed election by the Participant to transfer his entire Account to the other defined contribution plan. As an alternative to the transfer, the Participant is offered the opportunity to retain the form of benefit previously available to him (or, if the Plan is terminated, to receive any optional form of benefit for which the Participant is eligible under the Plan as required by Code Section 411(d)(6));

(ii) If the Plan includes a qualified cash or deferred arrangement under Code Section 401(k), the defined contribution plan to which the transfer is made must include a qualified cash or deferred arrangement; and

(iii) The transfer is made either in connection with an asset or stock acquisition, merger or other similar transaction involving a change in employer of the employees of a trade or business (i.e., an acquisition or disposition within the meaning of Section 1.410(b)-2(f) of the Treasury Regulations) or in connection with the Participant's change in employment status such that the Participant becomes an Inactive Participant.

(2) (i) The transfer satisfies the requirements of subsection (1)(i) of this Section 17.04;

(ii) The transfer occurs at a time when the Participant is eligible, under the terms of the Plan, to receive an immediate distribution of his benefit;

(iii) The transfer occurs at a time when the Participant is not eligible to receive an immediate distribution of his entire nonforfeitable Account in a single sum distribution that would consist entirely of an eligible rollover distribution within the meaning of Code Section 401(a)(31)(C);

(iv) The Participant is fully vested in the transferred amount in the transferee plan; and

(v) The amount transferred, together with the amount of any contemporaneous Code Section 401(a)(31) direct rollover to the transferee plan, equals the entire nonforfeitable Account of the Participant whose Account is being transferred.

Article 18. Miscellaneous.

18.01. Communication to Participants. The Plan shall be communicated to all Eligible Employees by the Employer promptly after the Plan is adopted.

18.02. Limitation of Rights. Neither the establishment of the Plan and the Trust, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer, Administrator or Trustee, except as provided herein; and in no event shall the terms of employment or service of any Participant be modified or in any way affected hereby. It is a condition of the Plan, and each

Participant expressly agrees by his participation herein, that each Participant shall look solely to the assets held in the Trust for the payment of any benefit to which he is entitled under the Plan.

No Participant or Beneficiary shall have or acquire any right, title or interest in or to the Plan assets or any portion of the Plan assets, except by the actual payment or distribution from the Plan to such Participant or Beneficiary of such Participant's or Beneficiary's benefit to which he or she is entitled under the provisions of the Plan. Whenever the Plan pays a benefit in excess of the maximum amount of payment required under the provisions of the Plan, the Administrator will have the right to recover any such excess payment, plus earnings at the Administrator's discretion, on behalf of the Plan from the Participant and/or Beneficiary, as the case may be. Notwithstanding anything to the contrary herein stated, this right of recovery includes, but is not limited to, a right of offset against future benefit payments to be paid under the Plan to the Participant and/or Beneficiary, as the case may be, which the Administrator may exercise in its sole discretion.

18.03. Nonalienability of Benefits. Except as provided in Code Sections 401(a)(13)(C) and (D)(relating to offsets ordered or required under a criminal conviction involving the Plan, a civil judgment in connection with a violation or alleged violation of fiduciary responsibilities under ERISA, or a settlement agreement between the Participant and the Department of Labor in connection with a violation or alleged violation of fiduciary responsibilities under ERISA), Section 1.401(a)-
13(b)(2) of the Treasury Regulations (relating to Federal tax levies), or as otherwise required by law, the benefits provided hereunder shall not be subject to alienation, assignment, garnishment, attachment, execution or levy of any kind, either voluntarily or involuntarily, and any attempt to cause such benefits to be so subjected shall not be recognized. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined in accordance with procedures established by the Administrator to be a qualified domestic relations order, as defined in Code Section 414(p), or any domestic relations order entered before January 1, 1985.

18.04. Qualified Domestic Relations Orders Procedures. The Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Participant and any alternate payee named in the order shall be notified, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Administrator must determine the qualified status of the order. The Participant and each alternate payee shall be provided notice of such determination by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with the Department of Labor regulations.

If any portion of the Participant's Account is payable during the period the Administrator is making its determination of the qualified status of the domestic relations order, the Administrator must make a separate accounting of the amounts

payable. If the Administrator determines the order is a qualified domestic relations order within 18 months of the date amounts first are payable following receipt of the order, the Administrator shall direct the Trustee to distribute the payable amounts in accordance with the order. If the determination of the qualified status of the order is not made within the 18- month determination period, the Administrator shall direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and shall apply the order prospectively if the Administrator later determines that the order is a qualified domestic relations order.

The Trustee shall set up segregated accounts for each alternate payee as directed by the Administrator.

A domestic relations order shall not fail to be deemed a qualified domestic relations order merely because it permits distribution or requires segregation of all or part of a Participant's Account with respect to an alternate payee prior to the Participant's earliest retirement age (as defined in Code Section 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of the earliest retirement age is available only if the order provides for distribution at that time and the alternate payee consents to a distribution occurring prior to the Participant's attainment of earliest retirement age.

Notwithstanding any other provisions of this Section or of a domestic relations order, if the Employer has elected to cash out small Accounts as provided in Subsection 1.20(e)(1) of the Adoption Agreement and the alternate payee's benefits under the Plan do not exceed the maximum cash out limit permitted under Code Section 411(a)(11)(A), distribution shall be made to the alternate payee in a lump sum as soon as practicable following the Administrator's determination that the order is a qualified domestic relations order.

18.05. Application of Plan Provisions for Multiple Employer Plans. Notwithstanding any other provision of the Plan to the contrary, if one of the Employers designated in Subsection 1.02(b) of the Adoption Agreement is or ceases to be a Related Employer (hereinafter "un-Related Employer"), the Plan shall be treated as a multiple employer plan (as defined in Code Section 413(c)) in accordance with applicable guidance. Any subsequent removal of an un-Related Employer will not be treated as a termination of the Plan with regard to that un-Related Employer and not be considered a distributable event for Participants still employed with that un-Related Employer.

For the period, if any, that the Plan is a multiple employer plan, each un-Related Employer shall be treated as a separate Employer for purposes of contributions, application of the "ADP" and "ACP" tests described in Sections 6.03 and
6.06, application of the Code Section 415 limitations described in Section 6.12, top-heavy determinations and application of the top-heavy requirements under Article 15, and application of such other Plan provisions as the Employers determine to be appropriate. For any such period, the Volume Submitter Sponsor shall continue to treat the Employer as participating in this volume submitter plan arrangement for purposes of notice or other communications in connection with the Plan, and other Plan-related services. The Administrator shall be responsible for administering the Plan as a multiple employer plan.

18.06. Veterans Reemployment Rights. Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u) and the regulations thereunder. The Administrator shall notify the Trustee of any Participant with respect to whom additional contributions are made because of qualified military service. Additional contributions made to the Plan pursuant to Code Section 414(u) shall be treated as Deferral Contributions (if Option 1.07(a)(5) is selected in the Adoption Agreement, including, to the extent designated by the Participant, Roth 401(k) Contributions), Employee Contributions, Matching Employer Contributions, Qualified Matching Employer Contributions, Qualified Nonelective Employer Contributions, or Nonelective Employer Contributions based on the character of the contribution they are intended to replace; provided, however, that the Plan shall not be treated as failing to meet the requirements of Code Section 401(a)(4), 401(k)(3),
401(k)(12), 401(m), 410(b), or 416 by reason of the making of or the right to make such contribution. Notwithstanding the foregoing, Participants dying and/or becoming disabled while performing qualified military service as defined in Code Section 414(u)(5) shall not be treated as having resumed employment pursuant to this Section on the day prior to dying or becoming disabled for purposes of calculating contributions pursuant to Code Section 414(u)(9).

18.07. Facility of Payment. In the event the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Trustee to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under state law for the care and control of such recipient. The receipt by such person or institution of any such payments shall be complete acquittance therefore, and any such payment to the extent thereof, shall discharge the liability of the Trust for the payment of benefits hereunder to such recipient.

18.08. Information between Employer and/or Administrator and Trustee. The Employer and/or Administrator will furnish the Trustee, and the Trustee will furnish the Employer and/or Administrator, with such information relating to the Plan and Trust as may be required by the other in order to carry out their respective duties hereunder, including without limitation information required under the Code and any regulations issued or forms adopted by the Treasury Department thereunder or under the provisions of ERISA and any regulations issued or forms adopted by the Department of Labor thereunder.

18.09. Effect of Failure to Qualify Under Code. Notwithstanding any other provision contained herein, if the Employer's plan fails to be a qualified plan under the Code, such plan can no longer participate in this volume submitter plan arrangement and shall be considered an individually designed plan.

18.10. Directions, Notices and Disclosure. Any notice or other communication in connection with this Plan shall be deemed delivered in writing if addressed as follows and if either actually delivered at said address or, in the case of a letter, three business days shall have elapsed after the same shall have been deposited in the United States mail, first-class postage prepaid and registered or certified:

(a) If to the Employer or Administrator, to it at such address as the Administrator shall direct pursuant to the Service Agreement;

(b) If to the Trustee, to it at the address set forth in Subsection 1.03(a) of the Adoption Agreement;

or, in each case at such other address as the addressee shall have specified by written notice delivered in accordance with the foregoing to the addressor's then effective notice address.

Any direction, notice or other communication provided to the Employer, the Administrator or the Trustee by another party which is stipulated to be in written form under the provisions of this Plan may also be provided in any medium which is permitted under applicable law or regulation. Any written communication or disclosure to Participants required under the provisions of this Plan may be provided in any other medium (electronic, telephone or otherwise) that is permitted under applicable law or regulation.

18.11. Governing Law. The Plan and the accompanying Adoption Agreement shall be construed, administered and enforced according to ERISA, and to the extent not preempted thereby, the laws of the Commonwealth of Massachusetts.

18.12. Discharge of Duties by Fiduciaries. The Trustee, the Employer and any other fiduciary shall discharge their duties under the Plan in accordance with the requirements of ERISA solely in the interests of Participants and their Beneficiaries and with the care, skill, prudence, and diligence under the applicable circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character with like aims.

Article 19. Plan Administration.

19.01. Powers and Responsibilities of the Administrator. The Administrator has the full power and the full responsibility to administer the Plan in all of its details, subject, however, to the requirements of ERISA. The Administrator is the agent for service of legal process for the Plan. In addition to the powers and authorities expressly conferred upon it in the Plan, the Administrator shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the discretionary power and authority to interpret and construe the provisions of the Plan, such interpretation to be final and conclusive on all persons claiming benefits under the Plan; to make benefit determinations; to utilize the correction programs or systems established by the Internal Revenue Service (such as the Employee Plans Compliance and Resolution System) or the Department of Labor; and to resolve any disputes arising under the Plan. The Administrator may, by written instrument, allocate and delegate its fiduciary responsibilities in accordance with ERISA Section 405, including allocation of such responsibilities to an administrative committee formed to administer the Plan.

19.02. Nondiscriminatory Exercise of Authority. Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated shall receive substantially the same treatment.

19.03. Claims and Review Procedures. As required under Section 2560.503-1(b)(2) of Regulations issued by the

Department of Labor, the claims and review procedures are described in detail in the Summary Plan Description for the Plan.

A Participant, Beneficiary or alternate payee (collectively referred to as “Claimant” in this section) seeking judicial review of an adverse benefit determination under the Plan, whether in whole or in part, must file any suit or legal action (including,

without limitation, a civil action under Section 502(a) of ERISA) within 12 months of the date the final adverse benefit determination is issued. Notwithstanding the foregoing, any Claimant that fails to engage in or exhaust the claims and review procedures must file any suit or legal action within 12 months of the date of the alleged facts or conduct giving rise to the claim (including, without limitation, the date the Claimant alleges he or she became entitled to the Plan benefits requested in the suit or legal action). Nothing in this Plan should be construed to relieve a Claimant of the obligation to exhaust all claims and review procedures under the Plan before filing suit in state or federal court. A claimant who fails to file such suit or legal action within the 12 months limitations period will lose any rights to bring any such suit or legal action thereafter.

19.04. Named Fiduciary. The Administrator is a "named fiduciary" for purposes of ERISA Section 402(a)(1) and has the powers and responsibilities with respect to the management and operation of the Plan described herein.

19.05. Costs of Administration. All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator and the Trustee in administering the Plan and Trust may be paid from the forfeitures (if any) resulting under Section 11.08, or from the remaining Trust Fund. All such costs and expenses paid from the remaining Trust Fund shall, unless allocable to the Accounts of particular Participants, be charged against the Accounts of all Participants as provided in the Service Agreement.

Article 20. Trust Agreement.

20.01. Acceptance of Trust Responsibilities. By executing the Adoption Agreement, the Employer establishes a trust to hold the assets of the Plan that are invested in Permissible Investments. By executing the Adoption Agreement, the Trustee agrees to accept the rights, duties and responsibilities set forth in this Article. If the Plan is an amendment and restatement of a prior plan, the Trustee shall have no liability for, and no duty to inquire into, the administration of the assets of the Plan for periods prior to the date such assets are transferred to the Trust.

20.02. Establishment of Trust Fund. A trust is hereby established under the Plan. The Trustee shall open and maintain a trust account for the Plan and, as part thereof, Accounts for such individuals as the Employer shall from time to time notify the Trustee are Participants in the Plan. The Trustee shall accept and hold in the Trust Fund such contributions on behalf of Participants as it may receive from time to time from the Employer. The Trust Fund shall be fully invested and reinvested in accordance with the applicable provisions of the Plan in Fund Shares or as otherwise provided in Section 20.10.

20.03. Exclusive Benefit. The Trustee shall hold the assets of the Trust Fund for the exclusive purpose of providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan. No assets of the Plan shall revert to the Employer except as specifically permitted by the terms of the Plan.

20.04. Powers of Trustee. The Trustee shall have no discretion or authority with respect to the investment of the Trust Fund but shall act solely as a directed trustee of the funds contributed to it. In addition to and not in limitation of such powers as the Trustee has by law or under any other provisions of the Plan, the Trustee shall have the following powers, each of which the Trustee exercises solely as a directed trustee in accordance with the written direction of the Employer except to the extent a Plan asset is subject to Participant direction of investment and provided that no such power shall be exercised in any manner inconsistent with the provisions of ERISA:

(a) to deal with all or any part of the Trust Fund and to invest all or a part of the Trust Fund in Permissible Investments, without regard to the law of any state regarding proper investment;

(b) to transfer to and invest all or any part of the Trust in any collective investment trust which is then maintained by a bank or trust company (or any affiliate) and which is tax-exempt pursuant to Code Section 501(a) and Rev. Rul. 81-100; provided that such collective investment trust is a Permissible Investment; and provided, further, that the instrument establishing such collective investment trust, as amended from time to time, shall govern any investment therein, and is hereby made a part of the Plan and this Trust Agreement to the extent of such investment therein;

(c) to retain uninvested such cash as the Administrator or a named fiduciary under the Plan may, from time to time, direct;

(d) to sell, lease, convert, redeem, exchange, or otherwise dispose of all or any part of the assets constituting the Trust Fund;

(e) to borrow funds from a bank or other financial institution not affiliated with the Trustee in order to provide sufficient liquidity to process Plan transactions in a timely fashion, provided that the cost of borrowing shall be allocated in a reasonable fashion to the Permissible Investment(s) in need of liquidity and the Employer acknowledges that it has received the disclosure on the Trustee's line of credit program and credit allocation policy and a copy of the text of Prohibited Transaction Exemption 2002-55 prior to executing the Adoption Agreement, if applicable;

(f) to enforce by suit or otherwise, or to waive, its rights on behalf of the Trust, and to defend claims asserted against it or the Trust, provided that the Trustee is indemnified to its satisfaction against liability and expenses (including claims for delinquent contributions or repayments in accordance with Section 5.12);

(g) to employ legal, accounting, clerical, and other assistance to carry out the provisions of this Trust and to pay the reasonable expenses of such employment, including compensation, from the Trust if not paid by the Employer;

(h) to compromise, adjust and settle any and all claims against or in favor of it or the Trust;

(i) to oppose, or participate in and consent to the reorganization, merger, consolidation, or readjustment of the finances of any enterprise, to pay assessments and expenses in connection therewith, and to deposit securities under deposit agreements;

(j) to apply for or purchase annuity contracts in accordance with Article 14;

(k) to hold securities unregistered, or to register them in its own name or in the name of nominees in accordance with the provisions of Section 2550.403a-1(b) of Department of Labor Regulations;

(l) to appoint custodians to hold investments within the jurisdiction of the district courts of the United States and to deposit securities with stock clearing corporations or depositories or similar organizations;

(m) to make, execute, acknowledge and deliver any and all instruments that it deems necessary or appropriate to carry out the powers herein granted;

(n) generally to exercise any of the powers of an owner with respect to all or any part of the Trust Fund; and

(o) to take all such actions as may be necessary under the Trust Agreement, to the extent consistent with applicable law.

The Employer specifically acknowledges and authorizes that affiliates of the Trustee may act as its agent in the performance of ministerial, nonfiduciary duties under the Trust.

The Trustee shall provide the Employer with reasonable notice of any claim filed against the Plan or Trust or with regard to any related matter, or of any claim filed by the Trustee on behalf of the Plan or Trust or with regard to any related matter.

20.05. Accounts. The Trustee shall keep full accounts of all receipts and disbursements and other transactions hereunder. Within 120 days after the close of each Plan Year and at such other times as may be appropriate, the Trustee shall determine the then net fair market value of the Trust Fund as of the close of the Plan Year, as of the termination of the Trust, or as of such other time, whichever is applicable, and shall render to the Employer and Administrator an account of its administration of the Trust during the period since the last such accounting, including all allocations made by it during such period.

20.06. Approval of Accounts. To the extent permitted by law, the written approval of any account by the Employer or Administrator shall be final and binding, as to all matters and transactions stated or shown therein, upon the Employer, Administrator, Participants and all persons who then are or thereafter become interested in the Trust. The failure of the Employer or Administrator to notify the Trustee within six months after the receipt of any account of its objection to the account shall, to the extent permitted by law, be the equivalent of written approval. If the Employer or Administrator files any objections within such six month period with respect to any matters or transactions stated or shown in the account, and the Employer or Administrator and the Trustee cannot amicably settle the question raised by such objections, the Trustee shall have the right to have such questions settled by judicial proceedings. Nothing herein contained shall be construed so as to deprive the Trustee of the right to have judicial settlement of its accounts. In any proceeding for a judicial settlement of any account or for instructions, the only necessary parties shall be the Trustee, the Employer and the Administrator.

20.07. Distribution from Trust Fund. The Trustee shall make such distributions from the Trust Fund as the Employer or Administrator may direct (in writing or such other medium as may be acceptable to the Trustee), consistent with the terms of the Plan and either for the exclusive benefit of Participants or their Beneficiaries, or for the payment of expenses of administering the Plan.

20.08. Transfer of Amounts from Qualified Plan. If amounts are to be transferred to the Plan from another qualified plan or trust under Code Section 401(a), such transfer shall be made in accordance with the provisions of the Plan and with such rules as may be established by the Trustee. The Trustee shall only accept assets which are in a medium proper for investment under this Trust Agreement or in cash, and that are accompanied in a timely manner, as agreed to by the Administrator and the Trustee, by instructions in writing (or such other medium as may be acceptable to the Trustee) showing separately the respective contributions by the prior employer and the transferring Employee, the records relating to such contributions, and identifying the assets attributable to such contributions. The Trustee shall hold such assets for investment in accordance with the provisions of this Trust Agreement.

20.09. Transfer of Assets from Trust. Subject to the provisions of the Plan, the Employer may direct the Trustee to transfer all or a specified portion of the Trust assets to any other plan or plans maintained by the Employer or the employer or employers of an Inactive Participant or Participants, provided that the Trustee has received evidence satisfactory to it that such other plan meets all applicable requirements of the Code. The assets so transferred shall be accompanied by written instructions from the Employer naming the persons for whose benefit such assets have been transferred, showing separately the respective contributions by the Employer and by each Participant, if any, and identifying the assets attributable to the various contributions. The Trustee shall have no further liabilities with respect to assets so transferred.

20.10. Separate Trust or Fund. Subject to agreement with the Trustee, the Employer may maintain a trust or fund (including a group annuity contract) under this volume submitter plan document for Permissible Investments for which the Trustee will not take responsibility under this Trust Agreement as indicated in the Service Agreement. Any Permissible Investments for which the Trustee has not agreed to take responsibility shall not be governed by the terms of this Trust (including Sections 20.11 and 20.12) but rather shall be subject to procedures established in the Service Agreement to govern contributions, distributions and exchanges

between such Permissible Investments and any other Permissible Investments for the Plan. In addition, the Employer may also appoint a trustee to establish a separate trust for claims on behalf of the Trust for delinquent contributions or loan repayments under the Plan. The Trustee shall have no authority and no responsibility for the Plan assets held in such separate trust or fund. The Employer shall be responsible for assuring that such separate trust or fund is maintained pursuant to a separate trust or custodial agreement signed by the Employer and any such trustee or custodian, to the extent such an agreement is required. The duties and responsibilities of the trustee of a separate trust shall be provided by the separate trust agreement, between the Employer and the trustee of the separate trust.

Notwithstanding the preceding paragraph, the Trustee or an affiliate of the Trustee may agree in writing to provide ministerial recordkeeping services for assets held outside of this Trust Agreement.

The Trustee shall not be the owner of any insurance contract purchased for the Plan. All insurance contract(s) must provide that proceeds shall be payable to the Plan; provided, however, that the policy holder shall be required to pay over all proceeds of the contract(s) to the Participant's designated Beneficiary in accordance with the distribution provisions of this Plan. A Participant's Spouse shall be the designated Beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with Article 14. Under no circumstances shall the policy holder retain any part of the proceeds. In the event of any conflict between the terms of the Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

Any life insurance contracts held in the Trust Fund or in the separate trust are subject to the following limits:

(a) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are held, less than
1/2 of the aggregate employer contributions allocated to any Participant shall be used to pay the premiums attributable to them.

(b) Term and universal life - No more than 1/4 of the aggregate employer contributions allocated to any participant shall be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(c) Combination - The sum of 1/2 of the ordinary life insurance premiums and all other life insurance premiums shall not exceed 1/4 of the aggregate employer contributions allocated to any Participant.

20.11. Self-Directed Brokerage Option. If one of the Permissible Investments under the Plan is Fidelity BrokerageLink®, the self-directed brokerage option ("BrokerageLink"), the Employer hereby directs the Trustee to use Fidelity Brokerage Services LLC ("FBSLLC") to purchase or sell individual securities for each Participant BrokerageLink account ("PBLA") in accordance with investment directions provided by such Participant. The Employer directs the Trustee to establish a PBLA with FBSLLC in the name of the Trustee for each Participant electing to utilize the BrokerageLink option. Each electing Participant shall be granted limited trading authority over the PBLA established for such Participant, and FBSLLC shall accept and act upon instructions from such Participants to buy, sell, exchange, convert, tender, trade and otherwise acquire and dispose of securities in the PBLA. The provision of BrokerageLink shall be subject to the following:

(a) Each Participant who elects to utilize the BrokerageLink option must complete a BrokerageLink Participant Acknowledgement Form which incorporates the provisions of the BrokerageLink Account Terms and Conditions. Upon acceptance by FBSLLC of the BrokerageLink Participant Acknowledgement Form, FBSLLC will establish a PBLA for the Participant. Participant activity in the PBLA will be governed by the BrokerageLink Participant Acknowledgement Form and the BrokerageLink Account Terms and Conditions. If the BrokerageLink Participant Acknowledgement Form or the BrokerageLink Account Terms and Conditions conflicts with the terms of this Trust, the Plan or an applicable statute or regulation, the Trust, the Plan or the applicable statute or regulation shall control.

(b) Any successor organization of FBSLLC, through reorganization, consolidation, merger or similar transactions, shall, upon consummation of such transaction, become the successor broker in accordance with the terms of this authorization provision.

(c) The Trustee and FBSLLC shall continue to rely on this direction provision until notified to the contrary. The Employer reserves the right to terminate this direction upon written notice to FBSLLC (or its successor) and the Trustee, such termination to be implemented as soon as administratively feasible. Such notice shall be deemed a direction to terminate BrokerageLink as an investment option.

(d) The Trustee shall provide the Employer with a list of the types of securities which may not be purchased under BrokerageLink. Administrative procedures governing investment in and withdrawals from a PBLA will also be provided to the Employer by the Trustee.

(e) With respect to exchanges from the Participant's Account holding investments outside of the BrokerageLink option (hereinafter, the "SPO") into the PBLA, the named fiduciary hereby directs the Trustee to submit for processing all instructions for purchases into the core account indicated in the BrokerageLink Account Terms and Conditions (the "BrokerageLink Core Account") received before the close of the New York Stock Exchange ("NYSE") on a particular date resulting from such exchange requests the next day that the NYSE is operating.

(f) A Participant has the authority to designate an agent to have limited trading authority over assets in the PBLA established for such Participant. Such agent as the Participant may designate shall have the same authority to trade in and otherwise transact business in the PBLA, in the same manner and to the same extent as the Participant is otherwise empowered to do hereunder, and FBSLLC shall act upon instructions from the agent as if the instructions had come from the Participant. Designation of an agent by the Participant is subject to acceptance by FBSLLC of a completed BrokerageLink Third Party Limited Trading Authorization Form, the terms of which shall govern the activity of the Participant and the authorized agent. In the event that a provision of the BrokerageLink Third Party Limited Trading Authorization Form conflicts with the terms of the BrokerageLink Participant Acknowledgement Form, the BrokerageLink Account Terms and Conditions, this Trust, the Plan or an applicable statute or regulation, the terms of the BrokerageLink Participant Acknowledgement Form, the Brokerage Link Account Terms and Conditions, this Trust, the Plan or the applicable statute or regulation shall control.

(g) The Participant shall be solely responsible for receiving and responding to all trade confirmations, account statements, prospectuses, annual reports, proxies and other materials that would otherwise be distributed to the owner of the PBLA. With respect to proxies for securities held in the PBLA, FBSLLC shall send a copy of the meeting notice and all proxies and proxy solicitation materials, together with a voting direction form, to the Participant and the Participant shall have the authority to direct the exercise of all shareholder rights attributable to those securities. The Trustee shall not exercise such rights in the absence of direction from the Participant.

(h) FBSLLC shall buy, sell, exchange, convert, tender, trade and otherwise acquire and dispose of securities in each PBLA, transfer funds to and from the BrokerageLink Core Account and the SPO default fund, collect any fees or other remuneration due FBSLLC or any of its affiliates (other than the Fidelity BrokerageLink Plan related Account Fee, which shall be assessed and collected as described in the Service Agreement), and make distributions to the Participant, in accordance with the Service Agreement. No prior notice to or consent from the Participant is required. In the event of a transfer of the Plan to another service provider, the directions of the Employer in transferring Plan assets shall control. Such transfers may be effected without notice to or consent from the Participant.

(i) FBSLLC may accept from the Participant changes to indicative data including, but not limited to, postal address, email address, and phone number associated with the PBLA established for the Participant.

20.12. Employer Stock Investment Option. If one of the Permissible Investments is equity securities issued by the Employer or a Related Employer ("Employer Stock"), such Employer Stock must be publicly traded and "qualifying employer securities" within the meaning of ERISA Section 407(d)(5). Plan investments in Employer Stock shall be made via the Employer Stock Investment Fund (the "Stock Fund") which shall consist of either (i) the shares of Employer Stock held for each Participant who participates in the Stock Fund (a "Share Accounting Stock Fund"), or (ii) a combination of shares of Employer Stock and short-term liquid investments, consisting of mutual fund shares or commingled money market pool units as agreed to by the Employer and the Trustee, which are necessary to satisfy the Stock Fund's cash needs for transfers and payments (a "Unitized Stock Fund"). Dividends received by the Stock Fund are reinvested in additional shares of Employer Stock or, in the case of a Unitized Stock Fund, in short-term liquid investments. The determination of whether each Participant's interest in the Stock Fund is administered on a share-accounting or a unitized basis shall be determined by the Employer's election in the Service Agreement.

In the case of a Unitized Stock Fund, such units shall represent a proportionate interest in all assets of the Unitized Stock Fund, which includes shares of Employer Stock, short-term investments, and at times, receivables for dividends and/or Employer Stock sold and payables for Employer Stock purchased. A net asset value per unit shall be determined daily for each cash unit outstanding of the Unitized Stock Fund. The return earned by the Unitized Stock Fund shall represent a combination of the dividends paid on the shares of Employer Stock held by the Unitized Stock Fund, gains or losses realized on sales of Employer Stock, appreciation or depreciation in the market price of those shares owned, and interest on the short- term investments held by the Unitized Stock Fund. A target range for the short-term liquid investments shall be maintained for the Unitized Stock Fund. The named fiduciary shall, after consultation with the Trustee, establish and communicate to the Trustee in writing such target range and a drift allowance for such short-term liquid investments. Such target range and drift allowance may be changed by the named fiduciary, after consultation with the Trustee, provided any such change is communicated to the Trustee in writing. The Trustee is responsible for ensuring that the actual short-term liquid investments held in the Unitized Stock Fund fall within the agreed upon target range over time, subject to the Trustee's ability to execute open-market trades in Employer Stock or to otherwise trade with the Employer.

Investments in Employer Stock shall be subject to the following limitations:

(a) Acquisition Limit. Pursuant to the Plan, the Trust may be invested in Employer Stock to the extent necessary to comply with investment directions under Section 8.02 of the Plan. Notwithstanding the foregoing, effective for Deferral Contributions made for Plan Years beginning on or after January 1, 1999, the portion of a Participant's Deferral Contributions that the Employer may require to be invested in Employer Stock for a Plan Year cannot exceed one percent of such Participant's Compensation for the Plan Year.

(b) Fiduciary Duty of Named Fiduciary. The Administrator or any person designated by the Administrator as a named fiduciary under Section 19.01 (the "named fiduciary") shall continuously monitor the suitability under the fiduciary duty rules of ERISA Section 404(a)(1) (as modified by ERISA Section 404(a)(2)) of acquiring and holding Employer Stock. The Trustee shall not be liable for any loss, or by reason of any breach, which arises from the directions of the named fiduciary with respect to the acquisition and holding of Employer Stock, unless it is clear on their face that the actions to be taken under those directions would be prohibited by the foregoing fiduciary duty rules or would be contrary to the terms of the Plan or this Trust Agreement.

(c) Execution of Purchases and Sales. Purchases and sales of Employer Stock shall be made on the open market on the date on which the Trustee receives in good order all information and documentation necessary to accurately effect such purchases and sales or (i) if later, in the case of purchases, the date on which the Trustee has

received a transfer of the funds necessary to make such purchases, (ii) as otherwise provided in the Service Agreement, or (iii) as provided in Subsection (d) below. Such general rules shall not apply in the following circumstances:

(1) If the Trustee is unable to determine the number of shares required to be purchased or sold on such day;

(2) If the Trustee is unable to purchase or sell the total number of shares required to be purchased or sold on such day as a result of market conditions; or

(3) If the Trustee is prohibited by the Securities and Exchange Commission, the New York Stock Exchange, or any other regulatory body from purchasing or selling any or all of the shares required to be purchased or sold on such day.

In the event of the occurrence of the circumstances described in (1), (2), or (3) above, the Trustee shall purchase or sell such shares as soon as possible thereafter and, in the case of a Share Accounting Stock Fund, shall determine the price of such purchases or sales to be the average purchase or sales price of all such shares purchased or sold, respectively.

(d) Purchases and Sales from or to Employer. If directed by the Employer in writing prior to the trading date, the Trustee may purchase or sell Employer Stock from or to the Employer if the purchase or sale is for adequate consideration (within the meaning of ERISA Section 3(18)) and no commission is charged. If Employer contributions or contributions made by the Employer on behalf of the Participants under the Plan are to be invested in Employer Stock, the Employer may transfer Employer Stock in lieu of cash to the Trust. In such case, the shares of Employer Stock to be transferred to the Trust will be valued at a price that constitutes adequate consideration (within the meaning of ERISA Section 3(18)).

(e) Use of Broker to Purchase Employer Stock. The Employer hereby directs the Trustee to use Fidelity Capital Markets, Inc., an affiliate of the Trustee, or any other affiliate or subsidiary of the Trustee (collectively, "Capital Markets"), to provide brokerage services in connection with all market purchases and sales of Employer Stock for the Stock Fund, except in circumstances where the Trustee has determined, in accordance with its standard trading guidelines or pursuant to Employer direction, to seek expedited settlement of trades. The Trustee shall provide the Employer with the commission schedule for such transactions and a copy of Capital Markets' brokerage placement practices. The following shall apply as well:

(1) Any successor organization of Capital Markets through reorganization, consolidation, merger, or similar transactions, shall, upon consummation of such transaction, become the successor broker in accordance with the terms of this provision.

(2) The Trustee shall continue to rely on this Employer direction until notified to the contrary. The Employer reserves the right to terminate this authorization upon sixty (60) days written notice to Capital Markets (or its successor) and the Trustee and the Employer and the Trustee shall decide on a mutually- agreeable alternative procedure for handling brokerage transactions on behalf of the Stock Fund.

(f) Securities Law Reports. The named fiduciary shall be responsible for filing all reports required under Federal or state securities laws with respect to the Trust's ownership of Employer Stock; including, without limitation, any reports required under Section 13 or 16 of the Securities Exchange Act of 1934 and shall immediately notify the Trustee in writing of any requirement to stop purchases or sales of Employer Stock pending the filing of any report. The Trustee shall provide to the named fiduciary such information on the Trust's ownership of Employer Stock as the named fiduciary may reasonably request in order to comply with Federal or state securities laws.

(g) Voting and Tender Offers. Notwithstanding any other provision of the Trust Agreement the provisions of this Subsection shall govern the voting and tendering of Employer Stock. For purposes of this Subsection, each Participant shall be designated as a named fiduciary under ERISA with respect to shares of Employer Stock that reflect that portion,

if any, of the Participant's interest in the Stock Fund not acquired at the direction of the Participant in accordance with ERISA Section 404(c).

The Employer shall pay for all printing, mailing, tabulation and other costs associated with the voting and tendering of Employer Stock. The Trustee, after consultation with the Employer, shall prepare any necessary documents associated with the voting and tendering of Employer Stock for the Trust.

(1) Voting.

(A) When the issuer of the Employer Stock prepares for any annual or special meeting, the Employer shall notify the Trustee at least thirty (30) days in advance of the intended record date and shall cause a copy of all proxy solicitation materials to be sent to the Trustee. If requested by the Trustee, the Employer shall certify to the Trustee that the aforementioned materials represent the same information distributed to shareholders of Employer Stock. The Employer shall cause proxy solicitation materials to be provided to each Participant with an interest in Employer Stock held in the Trust, together with an instruction form to be returned to the Trustee or a designee. The form shall show the proportional interest in the number of full and fractional shares of Employer Stock credited to the Participant's sub-accounts held in the Stock Fund.

(B) Each Participant with an interest in the Stock Fund shall have the right to direct the Trustee as to the manner in which the Trustee is to vote (including not to vote) that number of shares of Employer Stock that is credited to his Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflects such Participant's proportional interest in the Stock Fund (both vested and unvested). Directions from a Participant to the Trustee concerning the voting of Employer Stock shall be communicated in writing, or by such other means agreed upon by the Trustee and the Employer. These directions shall be held in confidence by the Trustee and shall not be divulged to the Employer, or any officer or employee thereof, or any other person, except to the extent that the consequences of such directions are reflected in reports regularly communicated to any such persons in the ordinary course of the performance of the Trustee's services hereunder. Upon its receipt of the directions, the Trustee shall vote the shares of Employer Stock that reflect the Participant's interest in the Stock Fund as directed by the Participant. The Trustee shall not vote shares of Employer Stock that reflect a Participant's interest in the Stock Fund for which the Trustee has received no direction from the Participant, except as required by law, or to the extent that the Employer or Administrator directs the Trustee through the Service Agreement to vote shares of Employer Stock that reflect a Participant's interest in the Stock Fund for which the Trustee has received no directions from the Participant in the same proportion on each issue as it votes those shares that reflect all Participants' interests in the Stock Fund (in the aggregate) for which it received voting instructions from Participants.

(C) Except as otherwise required by law, the Trustee shall vote that number of shares of Employer Stock not credited to Participants' Accounts in the same proportion on each issue as it votes those shares credited to Participants' Accounts for which it received voting directions from Participants.

(2) Tender Offers.

(A) Upon commencement of a tender offer for any securities held in the Trust that are Employer Stock, the Employer shall timely notify the Trustee in advance of the intended tender date and shall cause a copy of all materials to be sent to the Trustee. The Employer shall certify to the Trustee that the aforementioned materials represent the same information distributed to shareholders of Employer Stock. Based on these materials, the Trustee shall prepare a tender instruction form. The tender

instruction form shall show the number of full and fractional shares of Employer Stock credited to the Participant's Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect the Participant's proportional interest in the Stock Fund (both vested and unvested). The Employer shall cause tender materials to be sent to each Participant with an interest in the Stock Fund, together with the foregoing tender instruction form, such materials and form to be returned to the Trustee or a designee.

(B) Each Participant with an interest in the Stock Fund shall have the right to direct the Trustee to tender or not to tender some or all of the shares of Employer Stock that are credited to his Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect such Participant's proportional interest in the Stock Fund (both vested and unvested). Directions from a Participant to the Trustee concerning the tender of Employer Stock shall be communicated in writing, or by such other means agreed upon by the Trustee and the Employer. These directions shall be held in confidence by the Trustee and shall not be divulged to the Employer, or any officer or employee thereof, or any other person, except to the extent that the consequences of such directions are reflected in reports regularly communicated to any such persons in the ordinary course of the performance of the Trustee's services hereunder. The Trustee shall tender or not tender shares of Employer Stock as directed by the Participant. Except as otherwise required by law, the Trustee shall not tender shares of Employer Stock that are credited to a Participant's Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect a Participant's proportional interest in the Stock Fund for which the Trustee has received no direction from the Participant.

(C) Except as otherwise required by law, the Trustee shall tender shares of Employer Stock not credited to Participants' accounts in the same proportion as it tenders shares of Employer Stock credited to Participants' accounts.

(D) A Participant who has directed the Trustee to tender some or all of the shares of Employer Stock that reflect the Participant's proportional interest in the Stock Fund may, at any time prior to the tender offer withdrawal date, direct the Trustee to withdraw some or all of such tendered shares, and the Trustee shall withdraw the directed number of shares from the tender offer prior to the tender offer withdrawal deadline. Prior to the withdrawal deadline, if any shares of Employer Stock not credited to Participants' accounts have been tendered, the Trustee shall redetermine the number of shares of Employer Stock that would be tendered under the previous paragraph if the date of the foregoing withdrawal were the date of determination, and withdraw from the tender offer the number of shares of Employer Stock not credited to Participants' accounts necessary to reduce the amount of tendered Employer Stock not credited to Participants' accounts to the amount so redetermined. A Participant shall not be limited as to the number of directions to tender or withdraw that the Participant may give to the Trustee.

(E) A direction by a Participant to the Trustee to tender shares of Employer Stock that reflect the Participant's proportional interest in the Stock Fund shall not be considered a written election under the Plan by the Participant to withdraw, or have distributed, any or all of his withdrawable shares. If the Plan uses share accounting, the Trustee shall credit to the Participant's Account the proceeds received by the Trustee in exchange for the shares of Employer Stock tendered from the Participant's Account. If accounting is by units of participation, the Trustee shall credit to each proportional interest of the Participant from which the tendered shares were taken the proceeds received by the Trustee in exchange for the shares of Employer Stock tendered from that interest. Pending receipt of direction (through the Administrator) from the Participant or the named fiduciary, as provided in the Plan, as to which of the

remaining Permissible Investments the proceeds should be invested in, the Trustee shall invest the proceeds in the Permissible Investment specified for such purposes in the Service Agreement.

(h) Shares Credited. If accounting with respect to the Stock Fund is by units of participation, then for all purposes of this Section 20.12, the number of shares of Employer Stock deemed "reflected" in a Participant's proportional interest shall be determined as of the last preceding valuation date. The trade date is the date the transaction is valued.

(i) General. With respect to all rights other than the right to vote, the right to tender, and the right to withdraw shares previously tendered, in the case of Employer Stock credited to a Participant's Account or proportional interest in the Stock Fund, the Trustee shall follow the directions of the Participant and if no such directions are received, the directions of the named fiduciary. The Trustee shall have no duty to solicit directions from Participants. The Administrator is responsible for ensuring that (i) the procedures established in accordance with the provisions of Subsection 20.12(g) are sufficient to safeguard the confidentiality of the information described therein, (ii) such

procedures are being followed, and (iii) an independent fiduciary, as described in regulations issued under ERISA Section 404(c), is appointed when needed in accordance with those regulations.

(j) Conversion. All provisions in this Section 20.12 shall also apply to any securities received as a result of a conversion to Employer Stock.

20.13. Voting; Delivery of Information. The Trustee shall deliver, or cause to be executed and delivered, to the Employer or Administrator all notices, prospectuses, financial statements, proxies and proxy soliciting materials received by the Trustee relating to securities held by the Trust or, if applicable, deliver these materials to the appropriate Participant or the Beneficiary of a deceased Participant. Unless provided otherwise in the Service Agreement, the Trustee shall vote any securities held by the Trust in accordance with the instructions of the Participant or the Beneficiary of a deceased Participant and shall not vote securities for which it has not received instructions.

20.14. Compensation and Expenses of Trustee. The Trustee's fee for performing its duties hereunder shall be such reasonable amounts as specified in the Service Agreement or any other written agreement with the Employer. Such fee, any taxes of any kind which may be levied or assessed upon or with respect to the Trust Fund, and any and all expenses, including without limitation legal fees and expenses of administrative and judicial proceedings, reasonably incurred by the Trustee in connection with its duties and responsibilities hereunder shall, unless some or all have been paid by the Employer, be paid from the Trust in the method specified in the Service Agreement.

20.15. Reliance by Trustee on Other Persons. The Trustee may rely upon and act upon any writing from any person authorized by the Employer or the Administrator pursuant to the Service Agreement or any other written direction to give instructions concerning the Plan and may conclusively rely upon and be protected in acting upon any written order from the Employer or the Administrator or upon any other notice, request, consent, certificate, or other instructions or paper reasonably believed by it to have been executed by a duly authorized person, so long as it acts in good faith in taking or omitting to take any such action. The Trustee need not inquire as to the basis in fact of any statement in writing received from the Employer or the Administrator.

The Trustee shall be entitled to rely on the latest certificate it has received from the Employer or the Administrator as to any person or persons authorized to act for the Employer or the Administrator hereunder and to sign on behalf of the Employer or the Administrator any directions or instructions, until it receives from the Employer or the Administrator written notice that such authority has been revoked.

Except with respect to instructions from a Participant as to the Participant's Account that are otherwise authorized under the Plan, the Trustee shall be under no duty to take any action with respect to any Participant's Account (other than as specified herein) unless and until the Employer or the Administrator furnishes the Trustee with written instructions on a form acceptable to

the Trustee, and the Trustee agrees thereto in writing. The Trustee shall not be liable for any action taken pursuant to the Employer's or the Administrator's written instructions (nor the purpose or propriety of any distribution made thereunder).

20.16. Indemnification by Employer. The Employer shall indemnify and save harmless the Trustee, and all affiliates, employees, agents and sub-contractors of the Trustee, from and against any and all liability or expense (including reasonable attorneys' fees) to which the Trustee, or such other individuals or entities, may be subjected by reason of any act or conduct being taken in the performance of any Plan-related duties, including those described in this Trust Agreement and the Service Agreement, unless such liability or expense results from the Trustee's, or such other individuals' or entities', negligence or willful misconduct.

20.17. Consultation by Trustee with Counsel. The Trustee may consult with legal counsel (who may be but need not be counsel for the Employer or the Administrator) concerning any question which may arise with respect to its rights and duties under the Plan and Trust, and the opinion of such counsel shall, to the extent permitted by law, be full and complete protection in respect of any action taken or omitted by the Trustee hereunder in good faith and in accordance with the opinion of such counsel.

20.18. Persons Dealing with the Trustee. No person dealing with the Trustee shall be bound to see to the application of any money or property paid or delivered to the Trustee or to inquire into the validity or propriety of any transactions.

20.19. Resignation or Removal of Trustee. The Trustee may resign at any time by written notice to the Employer, which resignation shall be effective 60 days after delivery to the Employer. The Trustee may be removed by the Employer by

written notice to the Trustee, which removal shall be effective 60 days after delivery to the Trustee or such shorter period as may be mutually agreed upon by the Employer and the Trustee.

Except in the case of Plan termination, upon resignation or removal of the Trustee, the Employer shall appoint a successor trustee. Any such successor trustee shall, upon written acceptance of his appointment, become vested with the estate, rights, powers, discretion, duties and obligations of the Trustee hereunder as if he had been originally named as Trustee in this Agreement.

Upon resignation or removal of the Trustee, the Employer shall no longer participate in this volume submitter plan and shall be deemed to have adopted an individually designed plan. In such event, the Employer shall appoint a successor trustee within said 60-day period and the Trustee shall transfer the assets of the Trust to the successor trustee upon receipt of sufficient evidence (such as a determination letter or opinion letter from the Internal Revenue Service or an opinion of counsel satisfactory to the Trustee) that such trust shall be a qualified trust under the Code.

The appointment of a successor trustee shall be accomplished by delivery to the Trustee of written notice that the Employer has appointed such successor trustee, and written acceptance of such appointment by the successor trustee. The Trustee may, upon transfer and delivery of the Trust Fund to a successor trustee, reserve such reasonable amount as it shall deem necessary to provide for its fees, compensation, costs and expenses, or for the payment of any other liabilities chargeable against the Trust Fund for which it may be liable. The Trustee shall not be liable for the acts or omissions of any successor trustee.

20.20. Fiscal Year of the Trust. The fiscal year of the Trust shall coincide with the Plan Year.

20.21. Amendment. In accordance with provisions of the Plan, and subject to the limitations set forth therein, this Trust Agreement may only be amended by the Employer and the Trustee executing an amendment to the Trust Superseding Provisions Addendum to the Adoption Agreement. No amendment to this Trust Agreement shall divert any part of the Trust Fund to any purpose other than as provided in Section 20.03.

20.22. Plan Termination. Upon termination or partial termination of the Plan or complete discontinuance of contributions thereunder, the Trustee shall make distributions to the Participants or other persons entitled to distributions as the Employer or Administrator directs in accordance with the provisions of the Plan. In the absence of such instructions and unless the Plan otherwise

provides, the Trustee shall notify the Employer or Administrator of such situation and the Trustee shall be under no duty to make any distributions under the Plan until it receives written instructions from the Employer or Administrator. Upon the completion of such distributions, the Trust shall terminate, the Trustee shall be relieved from all liability under the Trust, and no Participant or other person shall have any claims thereunder, except as required by applicable law.

20.23. Permitted Reversion of Funds to Employer. If it is determined by the Internal Revenue Service that the Plan does not initially qualify under Code Section 401, all assets then held under the Plan shall be returned by the Trustee, as directed by the Administrator, to the Employer, but only if the application for determination is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted or such later date as may be prescribed by regulations. Such distribution shall be made within one year after the date the initial qualification is denied. Upon such distribution the Plan shall be considered to be rescinded and to be of no force or effect.

Contributions under the Plan are conditioned upon their deductibility under Code Section 404. In the event the deduction of a contribution made by the Employer is disallowed under Code Section 404, such contribution (to the extent disallowed) must be returned to the Employer within one year of the disallowance of the deduction.

Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

20.24. Governing Law. This Trust Agreement shall be construed, administered and enforced according to ERISA and, to the extent not preempted thereby, the laws of the State or Commonwealth in which the Trustee has its principal place of business.

20.25. Assignment and Successors. This Trust Agreement, and any of its rights and obligations hereunder, may not be assigned by any party without the prior written consent of the other party(ies), and such consent may be withheld in any party's sole discretion. Notwithstanding the foregoing, the Trustee may assign this Agreement in whole or in part, and any of its rights and obligations hereunder, to a subsidiary or affiliate of the Trustee without consent of the Employer. Any successor to the Trustee or successor trustee, either through sale or transfer of the business or trust department of the Trustee or successor trustee, or through reorganization, consolidation, or merger, or any similar transaction of either the Trustee or successor trustee, shall, upon consummation of the transaction, become the successor trustee under this Agreement. All provisions in this Trust Agreement shall extend to and be binding upon the parties hereto and their respective successors and permitted assigns.

VOLUME SUBMITTER DEFINED CONTRIBUTION PLAN

ADDENDUM

RE: American Taxpayer Relief Act of 2012 and Code Sections 401(k) & 401(m) Final Regulations

Amendments for Fidelity Basic Plan Document No. 17

PREAMBLE

Adoption and Effective Date of Amendment. This amendment of the Plan is adopted to reflect statutory changes pursuant to the American Taxpayer Relief Act of 2012 (“ATRA”), the final regulations adopted pursuant to Code Sections 401(k) & 401(m), and any related guidance. This amendment is intended as good faith compliance with the requirements of the ATRA and those final regulations and is to be construed in accordance with guidance issued thereunder.

Except as provided otherwise below, the amendments contained herein shall effective for Plan Years beginning after December 31, 2014.

Supersession of Inconsistent Provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

Article 1. In-Plan Roth Conversions. The following shall be added to Article 5 effective for Roth conversions within the Plan after December 31, 2012:

In-Plan Roth Conversions. If elected by the Employer in Section (a) of the corresponding Adoption Agreement Addendum, and effective for in-plan Roth conversions on and after the date elected by the Employer in such Section (a), any Participant meeting the requirements set forth in Section (a) of the corresponding Adoption Agreement Addendum may elect to have any part of the portions of his Account as may be described and limited therein, which are not "designated Roth contributions" under the Plan, be considered "designated Roth contributions" for purposes of the Plan. Any assets converted in such a way shall be separately accounted for, be maintained in such records as are necessary for the proper reporting thereof, and have any distribution constraints, such as those found in Article 14, applicable to them prior to the conversion continue to apply to them.

Article 2. Changing Testing Methods. Section 6.11 is amended by replacing subsection (d) it in its entirety with the following:

(d) A Plan may be amended to reduce or suspend 401(k) Safe Harbor Matching Contributions or 401(k) Safe Harbor Nonelective Employer Contributions for a Plan year, if the Employer provides in the notice described in Section 6.09(b) that the plan may be amended during the Plan Year to reduce or suspend such contributions or the Employer is operating at an economic loss (as described in Code Section 412(c)(2)(A)), and revert to the "ADP" testing method (and, if applicable, the "ACP" testing method) for such Plan Year if:

(1) All Eligible Employees are provided notice of the reduction or suspension describing (i) the consequences of the amendment, (ii) the procedures for changing their salary reduction agreements, and (iii) the effective date of the reduction or suspension.

(2) The reduction or suspension of such contributions is no earlier than the later of (i) 30 days after the date the notice described in paragraph (1) is provided to Eligible Employees or (ii) the date the amendment is adopted.

(3) Active Participants are given a reasonable opportunity before the reduction or suspension occurs, including a reasonable period after the notice described in paragraph (1) is provided to Eligible Employees, to change amounts elected or deemed elected under Section 5.03 and, if applicable, Section 5.04.

(4) With regard to 401(k) Safe Harbor Matching Employer Contributions, the Plan satisfies the 401(k) Safe Harbor Matching Employer Contributions provisions of the Adoption Agreement in effect prior to the amendment with respect to amounts elected or deemed elected under Section 5.03 and, if applicable, Section 5.04 made through the effective date of the amendment.

(5) With regard to 401(k) Safe Harbor Nonelective Employer Contributions, the Plan satisfies the 401(k) Safe Harbor Nonelective Employer Contributions provisions of the Adoption Agreement in effect prior to the amendment with respect to the safe harbor compensation (compensation meeting the requirements of Section 1.401(k)-3(b)(2) of the Treasury Regulations) paid through the effective date of the amendment.

If the Employer amends its Plan in accordance with the provisions of this paragraph (d), the "ADP" test described in Section 6.03 and the “ACP” test described in Section 6.06 shall be applied as if it had been in effect for the entire Plan Year using the current year testing method in Subsection 1.06(a)(1) of the Adoption Agreement. With regard to 401(k) Safe Harbor Nonelective Employer Contributions, the conditions for which an Employer may make an amendment to revert to “ADP” testing shall be considered effective for amendments adopted after May 18, 2009.

The Volume Submitter Sponsor (Fidelity Management & Research Company) executed this Amendment by separate resolution on August 27, 2014.

EXHIBIT 10.31

The Children's Place, Inc.
First Amended and Restated
2011 Equity Incentive Plan

TABLE OF CONTENTS

The Children's Place, Inc.
First Amended and Restated
2011 Equity Incentive Plan

1. **Purpose.** The purpose of The Children's Place, Inc. First Amended and Restated 2011 Equity Incentive Plan is to provide a means through which the Company and its Affiliates may attract and retain key personnel, including the services of experienced and knowledgeable non-executive directors, and to provide a means whereby directors, officers, employees, consultants and advisors (and prospective directors, officers, employees, consultants and advisors) of the Company and its Affiliates can acquire and maintain an equity interest in the Company, or be paid incentive compensation, including but not limited to incentive compensation measured by reference to the value of Common Stock or the results of operations of the Company, thereby strengthening their commitment to the welfare of the Company and its Affiliates and aligning their interests with those of the Company's shareholders. This Plan document is an omnibus document which includes, in addition to the Plan, separate sub-plans ("Sub Plans") that permit offerings of grants to employees of certain Designated Foreign Subsidiaries. Offerings under the Sub Plans may be made in particular locations outside the United States of America and shall comply with local laws applicable to offerings in such foreign jurisdictions. The Plan shall be a separate and independent plan from the Sub Plans, but the total number of shares of Common Stock authorized to be issued under the Plan applies in the aggregate to both the Plan and the Sub Plans.

2. **Definitions.** The following definitions shall be applicable throughout the Plan.

(a) "Affiliate" means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(b) "Award" means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Other Stock-Based Award and Performance Compensation Award granted under the Plan. For purposes of Section 5(c) of the Plan, "Award" and "Award under the Plan" shall also mean any stock-based Award granted under a Prior Plan and outstanding on the Effective Date.

(c) "Beneficial Owner" has the meaning set forth in Rule 13d-3 promulgated under Section 13 of the Exchange Act.

(d) "Board" means the Board of Directors of the Company.

(e) "Cause" means, in the case of a particular Award, unless the applicable Award agreement states otherwise, (i) the Company or an Affiliate having "cause" to terminate a Participant's employment or service, as defined in any employment, consulting, change in control, severance or any other agreement between the Participant and the Company or an Affiliate in effect at the time of such termination or (ii) in the absence of any such employment, consulting, change in control, severance or other agreement (or the absence of any definition of "cause" or term of similar import therein), (A) the Participant has failed to reasonably perform his or her duties to the Company, or has failed to follow the lawful instructions of the Board or his or her direct superiors, in each case, other than as a result of his or her incapacity due to physical or mental illness or injury, and such failure has resulted in, or could reasonably be expected to result in, harm (whether financially, reputationally or otherwise) to the Company or an Affiliate, (B) the Participant has engaged in conduct harmful (whether financially, reputationally or otherwise) to the Company or an Affiliate, (C) the Participant having been convicted of, or plead guilty or no contest to, a felony or any crime involving as a material element fraud or dishonesty or moral turpitude, (D) the willful misconduct or gross neglect of the Participant that has resulted in or could reasonably be expected to result in harm (whether financially, reputationally or otherwise) to the Company or an Affiliate, (E) the willful violation by the Participant of the written policies of the Company or any of its Affiliates, that that has resulted in or could reasonably be expected to result in harm (whether financially, reputationally or otherwise) to the Company or an Affiliate, (F) the Participant's fraud or misappropriation, embezzlement or misuse of funds or property belonging to the Company (other than good faith expense account disputes), (G) the Participant's act of personal dishonesty which involves personal profit in connection with the Participant's employment or service with the Company or an Affiliate, (H) the willful breach by the Participant of fiduciary duty owed to the Company or an Affiliate, or (I) in the case of a Participant who is a Non-Employee Director, the Participant engaging in any of the activities described in clauses (A) through (H) above; provided, however, that the Participant shall be provided a 10-day period to cure any of the events or occurrences described in the immediately preceding clause (A) hereof, to the extent capable of cure during such 10-day period. Any determination of whether Cause exists shall be made by the Committee in its sole discretion.

(f) "Change in Control" shall, in the case of a particular Award, be deemed to occur upon:

(i) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a "Person")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% (on a fully diluted basis) of either (A) the then outstanding shares of Common Stock taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Common Stock (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (I) any acquisition by the Company, or (II) any acquisition by any employee benefit plan sponsored or maintained by the Company;

(ii) individuals who, during any consecutive 12-month period, constitute the Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, that any person becoming a director subsequent to the date hereof, whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (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 written objection to such nomination) shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest, as such terms are used in Rule 14a-12 of Regulation 14A promulgated under the Exchange Act, with respect to directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall be deemed to be an Incumbent Director;

(iii) the approval by the shareholders of the Company of a plan of complete dissolution or liquidation of the Company; or

(iv) the consummation of a reorganization, recapitalization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company (a "Business Combination"), or sale, transfer or other disposition of all or substantially all of the business or assets of the Company to an entity that is not an Affiliate of the Company (a "Sale"), that in each case requires the approval of the Company's stockholders (whether for such Business Combination or Sale or the issuance of securities in such Business Combination or Sale), unless immediately following such Business Combination or Sale: (A) more than 50% of the total voting power of (x) the entity resulting from such Business Combination or the entity which has acquired all or substantially all of the business or assets of the Company in a Sale (in either case, the "Surviving Company"), or (y) if applicable, the ultimate parent entity that directly or indirectly has beneficial ownership of sufficient voting securities eligible to elect a majority of the board of directors (or the analogous governing body) of the Surviving Company (the "Parent Company"), is represented by the Outstanding Company Voting Securities that were outstanding immediately prior to such Business Combination or Sale (or, if applicable, is represented by shares into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination or Sale), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately prior to the Business Combination or Sale, (B) no Person (other than any employee benefit plan sponsored or maintained by the Surviving Company or the Parent Company), is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power of the outstanding voting securities eligible to elect members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) and (C) at least a majority of the members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the

Business Combination or Sale were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination or Sale.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and any successor thereto. Reference in the Plan to any section of the Code shall be deemed to include any regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, regulations or guidance.

(h) "Committee" means the Compensation Committee of the Board or subcommittee thereof if required with respect to actions taken to obtain the exception for performance-based compensation under Section 162(m) of the Code or to comply with Rule 16b-3 of the Exchange Act in respect of Awards or, if no such Compensation Committee or subcommittee thereof exists, the Board.

(i) "Common Stock" means the common stock, par value $0.10 per share, of the Company (and any stock or other securities into which such common stock may be converted or into which it may be exchanged).

(j) "Company" means The Children's Place, Inc., a Delaware corporation, and any successor thereto.

(k) "Designated Foreign Subsidiaries" means all Affiliates organized under the laws of any jurisdiction or country other than the United States of America that may be designated by the Board or the Committee from time to time.

(l) "Disability" means, unless in the case of a particular Award the applicable Award agreement states otherwise, the Company or an Affiliate having cause to terminate a Participant's employment or service on account of "disability," as defined in any then-existing employment, consulting, change in control, severance or other agreement between the Participant and the Company or an Affiliate or, in the absence of such an employment, consulting, change in control, severance or other agreement (or in the absence of any definition of "disability" or term of similar import therein), a Participant's total disability as defined below and (to the extent required by Code Section 409A) determined in a manner consistent with Code Section 409A and the regulations thereunder:

(i) The Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

(ii) A Participant will be deemed to have suffered a Disability if determined to be totally disabled by the Social Security Administration. In addition, the Participant will be deemed to have suffered a Disability if determined to be disabled in accordance with a disability insurance program maintained by the Company.

(m) "Effective Date" means the date of the annual shareholder meeting at which the Plan is approved by the shareholders.

(n) "Eligible Director" means a person who is (i) a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act and (ii) an "outside director" within the meaning of Section 162(m) of the Code and (iii) an "independent director" under the rules of the NASDAQ or any other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, or a person meeting any similar requirement under any successor rule or regulation.

(o) "Eligible Person" means any (i) individual employed by the Company or an Affiliate who satisfies all of the requirements of Section 6 of the Plan; provided, however, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument relating thereto; (ii) director or officer of the Company or an Affiliate; (iii) consultant or advisor to the Company or an Affiliate who may be offered securities registrable on Form S-8 under the Securities Act; or (iv) any prospective employees, directors, officers, consultants or advisors who have accepted offers of employment or consultancy from the Company or its Affiliates (and would satisfy the provisions of clauses (i) through (iii) above once he or she begins employment with or providing services to the Company or its Affiliates).

(p) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto. Reference in the Plan to any section of (or rule promulgated under) the Exchange Act shall be deemed to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successor provisions to such section, rules, regulations or guidance.

(q) "Exercise Price" has the meaning given such term in Section 7(b) of the Plan.

(r) "Fair Market Value" means, on a given date, (i) if the Common Stock is listed on a national securities exchange, the closing sales price of the Common Stock reported on the primary exchange on which the Common Stock is listed and traded on such date, or, if there is no such sale on that date, then on the last preceding date on which such a sale was reported; (ii) if the Common Stock is not listed on any national securities exchange but is quoted in an inter-dealer quotation service on a last sale basis, the average between the closing bid price and ask price reported on such date, or, if there is no such sale on that date, then on the last preceding date on which a sale was reported; (iii) if Fair Market Value cannot be determined under clause (i) or (ii) above, or if the Committee determines in its sole discretion that the shares of Common Stock are too thinly traded for Fair Market Value to be determined pursuant to clause (i) or (ii), the fair market value as determined in good faith by the Committee in its sole discretion; or (iv) if the Common Stock is not listed on a national securities exchange or quoted in an inter-dealer quotation service on a last sale basis, the amount determined by the Committee in good faith to be the fair market value of the Common Stock.

(s) "Good Reason" shall mean the occurrence of any of the following without the Participant's prior written consent: (i) a material reduction in the Participant's then current base salary or target bonus percentage, (ii) a material diminution of the Participant's duties or responsibilities, (iii) the assignment to the Participant of duties or responsibilities which are materially inconsistent with the Participant's previous duties or responsibilities, or (iv) relocation of the Participant's principal work location to a location more than thirty (30) miles from the Participant's previous principal work location; provided, however, that no such occurrence shall constitute Good Reason unless the Participant provides the Company with written notice of the matter within thirty (30) days after the Participant first has knowledge of the matter and, in the case of clauses (i), (ii) or (iii) hereof, the Company fails to cure such matter within ten (10) days after its receipt of such notice.

(t) "Immediate Family Members" shall have the meaning set forth in Section 15(b).

(u) "Incentive Stock Option" means an Option which is designated by the Committee as an incentive stock option as described in Section 422 of the Code and otherwise meets the requirements set forth in the Plan.

(v) "Indemnifiable Person" shall have the meaning set forth in Section 4(f) of the Plan.

(w) "Involuntary Termination" shall mean (i) the involuntary termination of the Participant's employment with Company or any of its subsidiaries (other than for Cause, death or Disability) or (ii) the Participant's resignation of employment with Company or any of its subsidiaries for Good Reason.

(x) "NASDAQ" means the NASDAQ Stock Market.

(y) "Negative Discretion" shall mean the discretion authorized by the Plan to be applied by the Committee to eliminate or reduce the size of a Performance Compensation Award consistent with Section 162(m) of the Code.

(z) "Nonqualified Stock Option" means an Option which is not designated by the Committee as an Incentive Stock Option.

(aa) "Non-Employee Director" means a member of the Board who is not an employee of the Company or any Affiliate.

(ab) "Option" means an Award granted under Section 7 of the Plan.

(ac) "Option Period" has the meaning given such term in Section 7(c) of the Plan.

(ad) "Other Stock-Based Award" means an Award granted under Section 10 of the Plan.

(ae) "Participant" means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to Section 6 of the Plan.

(af) "Performance Compensation Award" shall mean any Award designated by the Committee as a Performance Compensation Award pursuant to Section 11 of the Plan.

(ag) "Performance Criteria" shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award under the Plan.

(ah) "Performance Formula" shall mean, for a Performance Period, the one or more objective formulae applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Compensation Award has been earned for the Performance Period.

(ai) "Performance Goals" shall mean, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria.

(aj) "Performance Period" shall mean the one or more periods of time of not less than 12 months, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance Compensation Award.

(ak) "Permitted Transferee" shall have the meaning set forth in Section 15(b) of the Plan.

(al) "Person" has the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company or any of its subsidiaries, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Affiliates, (iii) an underwriter temporarily holding securities pursuant to an

offering of such securities, or (iv) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of Common Stock of the Company.

(am) "Plan" means this The Children's Place, Inc. 2011 Equity Incentive Plan .

(an) "Prior Plan" shall mean, as amended from time to time, each of the Amended and Restated 2005 Equity Incentive Plan of The Children's Place Retail Stores, Inc. and the 1997 Stock Option Plan of The Children's Place Retail Stores, Inc.

(ao) "Released Unit" shall have the meaning assigned to it in Section 9(e).

(ap) "Restricted Period" means the period of time determined by the Committee during which an Award or a portion thereof is subject to restrictions or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.

(aq) "Restricted Stock" means Common Stock, subject to certain specified restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of the Plan.

(ar) "Restricted Stock Unit" means an unfunded and unsecured promise to deliver shares of Common Stock, cash, other securities or other property, subject to certain restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of the Plan.

(as) "Retirement" means a voluntary termination of employment or service with the Company and all Affiliates by a Participant on or after the Participant's Retirement Age (other than any such termination effective on or after any time that the Company has grounds to terminate the Participant's employment or service for Cause (assuming for such purpose that no cure period were available)).

(at) "Retirement Age" means, unless determined otherwise by the Committee, attainment of age 65.

(au) "SAR Period" has the meaning given such term in Section 8(c) of the Plan.

(av) "Securities Act" means the Securities Act of 1933, as amended, and any successor thereto. Reference in the Plan to any section of (or rule promulgated under) the Securities Act shall be deemed to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successor provisions to such section, rules, regulations or guidance.

(aw) "Stock Appreciation Right" or "SAR" means an Award granted under Section 8 of the Plan.

(ax) "Strike Price" has the meaning given such term in Section 8(b) of the Plan.

(ay) "Substitute Award" has the meaning given such term in Section 5(e).

(az) "Sub Plans" has the meaning given such term in Section 1.

3. **Effective Date; Duration.** The Plan shall be effective as of the Effective Date. The expiration date of the Plan, on and after which date no Awards may be granted hereunder, shall be the tenth anniversary of the Effective Date; provided, however, that such expiration shall not affect Awards then outstanding, and the terms and conditions of the Plan shall continue to apply to such Awards.

4. **Administration.** (a) The Committee shall administer the Plan. The majority of the members of the Committee shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present or acts approved in writing by a majority of the Committee shall be deemed the acts of the Committee. To the extent required to comply with the provisions of Rule 16b-3

promulgated under the Exchange Act (if the Board is not acting as the Committee under the Plan) or necessary to obtain the exception for performance-based compensation under Section 162(m) of the Code, or any exception or exemption under the rules of the NASDAQ or any other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, as applicable, it is intended that each member of the Committee shall, at the time he or she takes any action with respect to an Award under the Plan, be an Eligible Director. However, the fact that a Committee member shall fail to qualify as an Eligible Director shall not invalidate any Award granted or action taken by the Committee that is otherwise validly granted or taken under the Plan.

(b) Subject to the provisions of the Plan and applicable law, the Committee shall have the sole and plenary authority, in addition to other express powers and authorizations conferred on the Committee by the Plan, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of shares of Common Stock to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, shares of Common Stock, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Common Stock, other securities, other Awards or other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant or of the Committee; (vii) interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Committee shall deem appropriate for the proper administration of the Plan; (ix) accelerate the vesting, delivery or exercisability of, payment for or lapse of restrictions on, or waive any condition in respect of, Awards; and (x) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

(c) Except to the extent prohibited by applicable law or the applicable rules and regulations of any securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time. Without limiting the generality of the foregoing, the Committee may delegate to one or more officers of the Company or any Affiliate the authority to act on behalf of the Committee with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Committee herein, and which may be so delegated as a matter of law, except for grants of Awards to persons (i) who are non-employee members of the Board or otherwise are subject to Section 16 of the Exchange Act or (ii) who are, or who are reasonably expected to be, “covered employees” for purposes of Section 162(m) of the Code.

(d) The Committee shall have the authority to amend the Plan (including by the adoption of appendices or subplans) and/or the terms and conditions relating to an Award to the extent necessary to permit participation in the Plan by Eligible Persons who are located outside of the United States on terms and conditions comparable to those afforded to Eligible Persons located within the United States; provided, however, that no such action shall be taken without shareholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including as necessary to prevent the Company from being denied a tax deduction on account of Section 162(m) of the Code).

(e) Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award or any documents evidencing Awards granted pursuant to the Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all persons or entities, including, without limitation, the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any shareholder of the Company.

(f) No member of the Board, the Committee or any employee or agent of the Company (each such person, an "Indemnifiable Person") shall be liable for any action taken or omitted to be taken or any determination made with respect to the Plan or any Award hereunder (unless constituting fraud or a willful criminal act or omission). Each Indemnifiable Person shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense (including attorneys' fees) that may be imposed upon or incurred by such Indemnifiable Person in connection with or resulting from any action, suit or proceeding to which such Indemnifiable Person may be a party or in which such Indemnifiable Person may be involved by reason of any action taken or omitted to be taken or determination made under the Plan or any Award agreement and against and from any and all amounts paid by such Indemnifiable Person with the Company's approval (not to be unreasonably withheld), in settlement thereof, or paid by such Indemnifiable Person in satisfaction of any judgment in any such action, suit or proceeding against such Indemnifiable Person, and the Company shall advance to such Indemnifiable Person any such expenses promptly upon written request (which request shall include an undertaking by the Indemnifiable Person to repay the amount of such advance if it shall ultimately be determined as provided below that the Indemnifiable Person is not entitled to be indemnified); provided that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of recognized standing of the Company's choice. The foregoing right of indemnification shall not be available to an Indemnifiable Person to the extent that a final judgment or other final adjudication (in either case not subject to further appeal) binding upon such Indemnifiable Person determines that the acts or omissions or determinations of such Indemnifiable Person giving rise to the indemnification claim resulted from such Indemnifiable Person's fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the Company's Certificate of Incorporation or Bylaws. The foregoing right of indemnification shall not be exclusive of or otherwise supersede any other rights of indemnification to which such Indemnifiable Persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, individual indemnification agreement or

contract or otherwise, or any other power that the Company may have to indemnify such Indemnifiable Persons or hold them harmless.

(g) Notwithstanding anything to the contrary contained in the Plan, the Board may, in its sole discretion, at any time and from time to time, grant Awards and administer the Plan with respect to such Awards. Any such actions by the Board shall be subject to the applicable rules of the NASDAQ or any other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted. In any such case, the Board shall have all the authority granted to the Committee under the Plan.

5. **Grant of Awards; Shares Subject to the Plan; Limitations.** (a) The Committee may, from time to time, grant Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Other Stock-Based Awards and/or Performance Compensation Awards to one or more Eligible Persons.

(b) Awards granted under the Plan shall be subject to the following limitations: (i) subject to Section 12 of the Plan and subsection (e) below, no more than 2,000,000 shares of Common Stock may be delivered in the aggregate pursuant to Awards granted under the Plan; (ii) subject to Section 12 of the Plan, no more than 750,000 shares of Common Stock may be subject to grants of Options or SARs under the Plan to any single Participant during any calendar year; (iii) subject to Section 12 of the Plan, no more than 2,000,000 shares of Common Stock may be delivered pursuant to the exercise of Incentive Stock Options granted under the Plan; (iv) subject to Section 12 of the Plan, no more than 750,000 shares of Common Stock may be delivered in respect of Performance Compensation Awards denominated in shares of Common Stock granted pursuant to Section 11 of the Plan to any Participant for a single Performance Period (or with respect to each single fiscal year in the event a Performance Period extends beyond a single fiscal year), or in the event such Performance Compensation Award is paid in cash, other securities, other Awards or other property, no more than the Fair Market Value of 750,000 shares of Common Stock on the last day of the Performance Period to which such Award relates; and (v) the maximum amount that can be paid to any individual Participant for a single fiscal year during a Performance Period (or with respect to each single year in the event a Performance Period extends beyond a single year) pursuant to a Performance Award denominated in cash described in Section 11(a) of the Plan shall be $10,000,000.

(c) Shares of Common Stock shall be deemed to have been used in settlement of Awards whether or not they are actually delivered or the Fair Market Value equivalent of such shares is paid in cash; provided, however, that if shares of Common Stock issued upon exercise, vesting or settlement of an Award, or shares of Common Stock owned by a Participant, are surrendered or tendered to the Company (either directly or by means of attestation) in payment of the Exercise Price of an Award or any taxes required to be withheld in respect of an Award, in each case, in accordance with the terms and conditions of the Plan and any applicable Award agreement, such surrendered or tendered shares shall again become available for other Awards under the Plan; provided, further, that in no event shall such shares increase the number of shares of Common Stock that may be delivered pursuant to Incentive Stock Options granted under the Plan. In accordance with (and without limitation upon) the preceding sentence, if and to the extent all or any portion of an Award under the Plan expires, terminates or is canceled or forfeited for any reason whatsoever without the Participant having received any benefit therefrom, the

shares covered by such Award or portion thereof shall again become available for other Awards under the Plan. For purposes of the foregoing sentence, a Participant shall not be deemed to have received any "benefit" (i) in the case of forfeited Restricted Stock by reason of having enjoyed voting rights and dividend rights prior to the date of forfeiture or (ii) in the case of an Award canceled by reason of a new Award being granted in substitution therefor.

(d) Shares of Common Stock delivered by the Company in settlement of Awards may be authorized and unissued shares, shares held in the treasury of the Company, shares purchased on the open market or by private purchase, or a combination of the foregoing. Following the Effective Date, no further Awards shall be granted under any Prior Plan.

(e) Awards may, in the sole discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding Awards previously granted by the Company or any Affiliate or an entity directly or indirectly acquired by the Company or with which the Company combines ("Substitute Awards"). The number of shares of Common Stock underlying any Substitute Awards shall be counted against the aggregate number of shares of Common Stock available for Awards under the Plan; provided, however, that Substitute Awards issued in connection with the assumption of, or the substitution for, outstanding Awards previously granted by the Company of an Affiliate or by an entity that is acquired by the Company or any Affiliate through a merger or acquisition shall not be counted against the aggregate number of shares of Common Stock available for Awards under the Plan; provided, further, that Substitute Awards issued in connection with the assumption of, or in substitution for, outstanding options intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code that were previously granted by an entity that is acquired by the Company or any Affiliate through a merger or acquisition shall be counted against the aggregate number of shares of Common Stock available for Awards of Incentive Stock Options under the Plan. Subject to applicable stock exchange requirements, available shares under a stockholder approved plan of an entity directly or indirectly acquired by the Company or with which the Company combines (as appropriately adjusted to reflect the acquisition or combination transaction) may be used for Awards under the Plan and shall not reduce the number of shares of Common Stock available for delivery under the Plan.

6. **Eligibility.** Participation shall be limited to Eligible Persons who have entered into an Award agreement or who have received written notification from the Committee, or from a person designated by the Committee, that they have been selected to participate in the Plan.
7. **Options.** (a) Generally. Each Option granted under the Plan shall be evidenced by an Award agreement. Each Option so granted shall be subject to the conditions set forth in this Section 7, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable Award agreement expressly states that the Option is intended to be an Incentive Stock Option. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the shareholders of the Company in a manner intended to

comply with the shareholder approval requirements of Section 422(b)(1) of the Code, provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall be subject to and comply with such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

(b) Exercise Price. Except as otherwise provided by the Committee in the case of Substitute Awards, the exercise price ("Exercise Price") per share of Common Stock for each Option shall not be less than 100% of the Fair Market Value of such share (determined as of the date of grant); provided, however, that in the case of an Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Affiliate, the Exercise Price per share shall be no less than 110% of the Fair Market Value per share on the date of grant. Any modification to the Exercise Price of an outstanding Option shall be subject to the prohibition on repricing set forth in Section 14(b).

(c) Vesting and Expiration. Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the "Option Period"); provided, that if the Option Period (other than in the case of an Incentive Stock Option) would expire at a time when trading in the shares of Common Stock is prohibited by the Company's insider trading policy (or Company-imposed "blackout period"), the Option Period shall be automatically extended until the 30th day following the expiration of such prohibition; provided, however, that in no event shall the Option Period exceed five years from the date of grant in the case of an Incentive Stock Option granted to a Participant who on the date of grant owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Affiliate; provided, further, that notwithstanding any vesting or exercisability dates set by the Committee, the Committee may, in its sole discretion, accelerate the vesting and/or exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to vesting and/or exercisability. Notwithstanding the foregoing, a Participant's unvested Options shall immediately vest and become exercisable upon such Participant's termination of employment or service with the Company and its Affiliates due to death, Disability or Retirement, or as provided in Section 13 hereof.

Unless otherwise stated in the applicable Award agreement, an Option shall expire earlier than the end of the Option Period in the following circumstances:

(i) If prior to the end of the Option Period, the Participant's employment or service with the Company and all Affiliates is terminated without Cause or by the Participant for any reason other than Retirement, the Option shall expire on the earlier of the last day of the Option Period or the date that is 90 days after the date of such termination; provided, however, that any Participant whose employment or service with the Company or any Affiliate is terminated and who is subsequently rehired

or reengaged by the Company or any Affiliate within 90 days following such termination and prior to the expiration of the Option shall not be considered to have undergone a termination. In the event of a termination described in this clause (i), the Option shall remain exercisable by the Participant until its expiration only to the extent the Option was exercisable at the time of such termination.

(ii) If the Participant dies or is terminated on account of Disability prior to the end of the Option Period and while still in the employ or service of the Company or an Affiliate, or dies following a termination described in clause (i) above but prior to the expiration of an Option, the Option shall expire on the earlier of the last day of the Option Period or the date that is one year after the date of death or termination on account of Disability of the Participant, as applicable. In such event, the Option shall remain exercisable by the Participant or his or her beneficiary determined in accordance with Section 15(g), as applicable, until its expiration only to the extent the Option was exercisable by the Participant at the time of such event.

(iii) If the Participant ceases employment or service of the Company or any Affiliates due to a termination for Cause, the Option shall expire immediately upon such cessation of employment or service.

(iv) If the Participant terminates by reason of Retirement prior to the end of the Option Period, the Option shall expire three years after the date of termination, or, if earlier, at the end of the Option Period.

(v) If the Participant's employment or service ceases on account of Disability at a time when the Participant has attained the age and service requirements for Retirement, the Participant shall receive the better of the treatment under clause (ii) and clause (iv) above.

(d) Other Terms and Conditions. Except as specifically provided otherwise in an Award agreement, each Option granted under the Plan shall be subject to the following terms and conditions:

(i) Each Option or portion thereof that is exercisable shall be exercisable for the full amount or for any part thereof.

(ii) Each share of Common Stock purchased through the exercise of an Option shall be paid for in full at the time of the exercise. Each Option shall cease to be exercisable, as to any share, when the Participant purchases the share or when the Option expires.

(iii) Subject to Section 15(b), Options shall not be transferable by the Participant except by will or the laws of descent and distribution and shall be exercisable during the Participant's lifetime only by the Participant.

(iv) At the time of any exercise of an Option, the Committee may, in its sole discretion, require a Participant to deliver to the Committee a written representation that the shares of Common Stock to be acquired upon such exercise are to be acquired for investment and not for resale or

with a view to the distribution thereof. Upon such a request by the Committee, delivery of such representation prior to the delivery of any shares issued upon exercise of an Option shall be a condition precedent to the right of the Participant or such other person to purchase any shares. In the event certificates for shares are delivered under the Plan with respect to which such investment representation has been obtained, the Committee may cause a legend or legends to be placed on such certificates to make appropriate reference to such representation and to restrict transfer in the absence of compliance with applicable federal or state securities laws.

(e) Method of Exercise and Form of Payment. No shares of Common Stock shall be delivered pursuant to any exercise of an Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any Federal, state, local and non-U.S. income and employment taxes required to be withheld. Options which have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company or its designee (including a third party administrator), or telephonic instructions to the extent provided by the Committee, in accordance with the terms of the Option accompanied by payment of the Exercise Price. The Exercise Price and all applicable required withholding taxes shall be payable (i) in cash, check, cash equivalent and/or shares of Common Stock valued at the Fair Market Value at the time the Option is exercised (including, pursuant to procedures approved by the Committee, by means of attestation of ownership of a sufficient number of shares of Common Stock in lieu of actual delivery of such shares to the Company); provided, that such shares of Common Stock are not subject to any pledge or other security interest; (ii) by such other method as the Committee may permit in its sole discretion, including without limitation: (A) in other property having a fair market value on the date of exercise equal to the Exercise Price and all applicable required withholding taxes or (B) if there is a public market for the shares of Common Stock at such time, by means of a broker-assisted "cashless exercise" pursuant to which the Company is delivered (including telephonically to the extent permitted by the Committee) a copy of irrevocable instructions to a stockbroker to sell the shares of Common Stock otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the Exercise Price and all applicable required withholding taxes or (C) by means of a "net exercise" procedure effected by withholding the minimum number of shares of Common Stock otherwise deliverable in respect of an Option that are needed to pay for the Exercise Price and all applicable required withholding taxes. Any fractional shares of Common Stock shall be settled in cash.

(f) Notification upon Disqualifying Disposition of an Incentive Stock Option. Each Participant Awarded an Incentive Stock Option under the Plan shall notify the Company in writing immediately after the date he makes a disqualifying disposition of any Common Stock acquired pursuant to the exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including, without limitation, any sale) of such Common Stock before the later of (A) two years after the date of grant of the Incentive Stock Option or (B) one year after the date of exercise of the Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by the Committee, retain possession, as agent for the applicable Participant, of any Common Stock acquired pursuant to the exercise of an Incentive Stock Option until the end of the period described

in the preceding sentence, subject to complying with any instruction from such Participant as to the sale of such Common Stock.

(g) Compliance With Laws, etc. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in a manner which the Committee determines would violate the Sarbanes-Oxley Act of 2002, or any other applicable law or the applicable rules and regulations of the Securities and Exchange Commission or the applicable rules and regulations of any securities exchange or inter-dealer quotation service on which the Common Stock of the Company is listed or quoted.

(h) Incentive Stock Option Grants to 10% Shareholders. Notwithstanding anything to the contrary in this Section 7, if an Incentive Stock Option is granted to a Participant who owns stock representing more than ten percent of the voting power of all classes of stock of the Company or of a Subsidiary or a parent of the Company, the Option Period shall not exceed five years from the date of grant of such Option and the Option Price shall be at least 110 percent of the Fair Market Value (on the date of grant) of the shares subject to the Option.

(i) $100,000 Per Year Limitation for Incentive Stock Options. To the extent the aggregate Fair Market Value (determined as of the date of grant) of shares of Common Stock for which Incentive Stock Options are exercisable for the first time by any Participant during any calendar year (under all plans of the Company) exceeds $100,000, such excess Incentive Stock Options shall be treated as Nonqualified Stock Options.

8. **Stock Appreciation Rights.** (a) Generally. Each SAR granted under the Plan shall be evidenced by an Award agreement. Each SAR so granted shall be subject to the conditions set forth in this Section 8, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award agreement. Any Option granted under the Plan may include tandem SARs. The Committee also may Award SARs to Eligible Persons independent of any Option.

(b) Strike Price. Except as otherwise provided by the Committee in the case of Substitute Awards, the strike price ("Strike Price") per share of Common Stock for each SAR shall not be less than 100% of the Fair Market Value of such share (determined as of the date of grant). Notwithstanding the foregoing, a SAR granted in tandem with (or in substitution for) an Option previously granted shall have a Strike Price equal to the Exercise Price of the corresponding Option. Any modification to the Strike Price of an outstanding SAR shall be subject to the prohibition on repricing set forth in Section 14(b).

(c) Vesting and Expiration. A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable and shall expire in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the "SAR Period"); provided, however, that notwithstanding any vesting or exercisability dates set by the Committee, the

Committee may, in its sole discretion, accelerate the vesting and/or exercisability of any SAR, which acceleration shall not affect the terms and conditions of such SAR other than with respect to vesting and/or exercisability. If the SAR Period would expire at a time when trading in the shares of Common Stock is prohibited by the Company's insider trading policy (or the Company-imposed "blackout period"), the SAR Period shall be automatically extended until the 30th day following the expiration of such prohibition. Notwithstanding the foregoing, a Participant's unvested SARs shall immediately vest and become exercisable upon such Participant's termination of employment or service with the Company and its Affiliates due to death, Disability or Retirement, or as provided in Section 13 hereof.

Unless otherwise stated in the applicable Award agreement, a SAR shall expire earlier than the end of the SAR Period in the following circumstances:

(i) If prior to the end of the SAR Period, the Participant's employment or service with the Company and all Affiliates is terminated without Cause or by the Participant for any reason other than Retirement, the SAR shall expire on the earlier of the last day of the SAR Period or the date that is 90 days after the date of such termination; provided, however, that any Participant whose employment or service with the Company or any Affiliate is terminated and who is subsequently rehired or reengaged by the Company or any Affiliate within 90 days following such termination and prior to the expiration of the SAR shall not be considered to have undergone a termination. In the event of a termination described in this clause (i), the SAR shall remain exercisable by the Participant until its expiration only to the extent the SAR was exercisable at the time of such termination.

(ii) If the Participant dies or is terminated on account of Disability prior to the end of the SAR Period and while still in the employ or service of the Company or an Affiliate, or dies following a termination described in clause (i) above but prior to the expiration of a SAR, the SAR shall expire on the earlier of the last day of the SAR Period or the date that is one year after the date of death or termination on account of Disability of the Participant, as applicable. In such event, the SAR shall remain exercisable by the Participant or his or her beneficiary determined in accordance with Section 15(g), as applicable, until its expiration only to the extent the SAR was exercisable by the Participant at the time of such event.

(iii) If the Participant ceases employment or service of the Company or any Affiliates due to a termination for Cause, the SAR shall expire immediately upon such cessation of employment or service.

(iv) If the Participant terminates by reason of Retirement prior to the end of the SAR Period, the SAR shall expire three years after the date of termination, or, if earlier, at the end of the SAR Period.

(v) If the Participant's employment or service ceases on account of Disability at a time when the Participant has attained the age and service requirements for Retirement, the Participant shall receive the better of the treatment under clause (ii) and clause (iv) above.

d) Method of Exercise. SARs which have become exercisable may be exercised by delivery of written (or electronic notice or telephonic instructions to the extent provided by the Committee) of exercise to the Company or its designee (including a third party administrator) in accordance with the terms of the Award, specifying the number of SARs to be exercised and the date on which such SARs were Awarded. Notwithstanding the foregoing, if on the last day of the Option Period (or in the case of a SAR independent of an Option, the SAR Period), the Fair Market Value exceeds the Strike Price, the Participant has not exercised the SAR or the corresponding Option (if applicable), and neither the SAR nor the corresponding Option (if applicable) has expired, such SAR shall be deemed to have been exercised by the Participant on such last day and the Company shall make the appropriate payment therefor.

(e) Payment. Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR that are being exercised multiplied by the excess, if any, of the Fair Market Value of one share of Common Stock on the exercise date over the Strike Price, less an amount equal to any Federal, state, local and non-U.S. income and employment taxes required to be withheld. The Company shall pay such amount in cash, in shares of Common Stock valued at Fair Market Value, or any combination thereof, as determined by the Committee. Any fractional shares of Common Stock shall be settled in cash.

(f) Substitution of SARs for Nonqualified Stock Options. The Committee shall have the authority in its sole discretion to substitute, without the consent of the affected Participant or any holder or beneficiary of SARs, SARs settled in shares of Common Stock (or settled in shares or cash in the sole discretion of the Committee) for outstanding Nonqualified Stock Options, provided that (i) the substitution shall not otherwise result in a modification of the terms of any such Nonqualified Stock Option, (ii) the number of shares of Common Stock underlying the substituted SARs shall be the same as the number of shares of Common Stock underlying such Nonqualified Stock Options and (iii) the Strike Price of the substituted SARs shall be equal to the Exercise Price of such Nonqualified Stock Options.

9. **Restricted Stock and Restricted Stock Units.** (a) (i) Generally. Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award agreement. Each Restricted Stock and Restricted Stock Unit grant shall be subject to the conditions set forth in this Section 9, and to such other conditions not inconsistent with the Plan as determined by the Committee and may be reflected in the applicable Award agreement. The Committee shall establish restrictions applicable to such Restricted Stock and Restricted Stock Units, including the Restricted Period, and the time or times at which Restricted Stock or Restricted Stock Units shall be granted or become vested; provided that, a Restricted Stock or Restricted Stock Unit Award whose vesting is subject to the satisfaction of Performance Goals over a Performance Period shall be subject to a Performance Period and vesting period of not less than one year. The minimum Performance Period and vesting period specified above will not, however, apply: (1) to a Restricted Stock or Restricted Stock Unit Award made in payment of or exchange for other earned compensation (including performance-based Awards), (2) upon a Change in Control and Involuntary Termination of a Participant, (3) upon termination of service due to death, Disability or

Retirement, (4) to a Substitute Award that does not reduce the vesting period of the Award being replaced, and (5) to one or more Restricted Stock Awards and/or Restricted Stock Unit Awards covering an aggregate number of shares of Common Stock not in excess of five percent (5%) of the aggregate number of shares of Common Stock available for Awards under Section 5(b)(i) of the Plan over the term of the Plan. The Committee may in its sole discretion accelerate the vesting and/or the lapse of any or all of the restrictions on the Restricted Stock and Restricted Stock Units which acceleration shall not affect any other terms and conditions of such Awards; provided that, the Committee may not amend a performance-based Restricted Stock Award or Restricted Stock Unit Award to reduce the Performance Period or vesting period to less than one year.

(ii) Automatic Grants to Non-Employee Directors. Notwithstanding any other provision of this Plan to the contrary, Restricted Stock Units shall be automatically granted to each Non-Employee Director in accordance with this Section 9(a)(ii) without any additional required action by the Committee. On the first business day of each fiscal year of the Company, each Non-Employee Director on such date shall be granted a number of Restricted Stock Units determined by dividing $100,000 by the Fair Market Value of a share on such date (which number shall be rounded up to the next whole number of shares). Each Non-Employee Director who is initially elected or appointed to the Board during the fiscal year shall be granted on the date of such election or appointment a number of Restricted Stock Units, equal to the quotient (which number of shares shall be rounded up to the next whole number of shares) of (i) the product of $100,000 multiplied by a fraction, the numerator of which shall be the number of days remaining during the fiscal year and the denominator of which shall be 365, divided by (ii) the Fair Market Value of a share of Common Stock on such Non-Employee Director's date of election or appointment. Except as otherwise provided in this Section 9, or as otherwise provided in the applicable Award agreement, or any applicable consulting, change in control, severance or other agreement between a Non-Employee Director and the Company or an Affiliate, the foregoing automatic grants of Restricted Stock Units shall have a Restricted Period of one year, and shall vest in full on the first anniversary of the date of grant, and thereafter the restrictions set forth in the applicable Award agreement shall have no further force or effect with respect to such Restricted Stock Units (and such Restricted Stock Units shall be treated as Released Units for purposes of Section 9(e)(ii)), provided that the Non-Employee Director remains in the service of the Company and its Affiliates throughout the one year period commencing on the date of grant. Each Non-Employee Director shall also be eligible to receive grants of additional Awards under the Plan; provided that, no Non-Employee Director shall be granted equity Awards under the Plan in any one calendar year having an aggregate Fair Market Value (measured on the date(s) of grant) in such calendar year in excess of $250,000 in the aggregate (including the annual $100,000 grant provided for above in this clause (ii)).

(b) Stock Certificates; Escrow or Similar Arrangement. Upon the grant of Restricted Stock, the Committee shall cause share(s) of Common Stock to be registered in the name of the Participant and held in book-entry form subject to the Company's directions and, if the Committee determines that the

Restricted Stock shall be held by the Company or in escrow rather than delivered to the Participant pending vesting and the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Committee, if applicable, and (ii) the appropriate stock power (endorsed in blank) with respect to the Restricted Stock covered by such agreement. If a Participant shall fail to execute and deliver (in a manner permitted under Section 15(a) or as otherwise determined by the Committee) an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and blank stock power within the amount of time specified by the Committee, the Award shall be null and void. Subject to the restrictions set forth in this Section 9 and the applicable Award agreement, the Participant generally shall have the rights and privileges of a shareholder as to such Restricted Stock, including without limitation the right to vote such Restricted Stock (provided that any dividends payable on such shares of Restricted Stock shall be held by the Company and delivered (without interest) to the Participant within 15 days following the date on which the restrictions on such Restricted Stock lapse (and the right to any such accumulated dividends shall be forfeited upon the forfeiture of the Restricted Stock to which such dividends relate)). The Committee shall also be permitted to cause a stock certificate registered in the name of the Participant to be issued. To the extent shares of Restricted Stock are forfeited, any stock certificates issued to the Participant evidencing such shares shall be returned to the Company, and all rights of the Participant to such shares and as a shareholder with respect thereto shall terminate without further obligation or action on the part of the Company.

(c) Restricted Stock Units. No shares shall be issued at the time an Award of Restricted Stock Units is made, and the Company will not be required to set aside a fund for the payment of any such Award. At the discretion of the Committee, each Restricted Stock Unit (representing one share of Common Stock) Awarded to a Participant may be credited with cash and stock dividends paid in respect of one share of Common Stock ("Dividend Equivalents"). Subject to Section 15(c), at the discretion of the Committee, Dividend Equivalents may be either currently paid to the Participant or withheld by the Company for the Participant's account, and interest may be credited on the amount of cash Dividend Equivalents withheld at a rate and subject to such terms as determined by the Committee. Dividend Equivalents credited to a Participant's account and attributable to any particular Restricted Stock Unit (and earnings thereon, if applicable) shall be distributed to the Participant upon settlement of such Restricted Stock Unit and, if such Restricted Stock Unit is forfeited, the Participant shall have no right to such Dividend Equivalents.

(d) Restrictions; Forfeiture.

(i) Restricted Stock Awarded to a Participant shall be subject to forfeiture until the expiration of the Restricted Period and the attainment of any other vesting criteria established by the Committee, and to the following provisions in addition to such other terms and conditions as may be set forth in the applicable Award agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the stock certificate; and (B) the shares shall be subject to the restrictions on transferability set forth in the Award agreement. In the event of any forfeiture, the stock certificates shall be returned to the Company, and all rights of the Participant

to such shares and as a shareholder shall terminate without further action or obligation on the part of the Company.

(ii) Restricted Stock Units Awarded to any Participant shall be subject to forfeiture until the expiration of the Restricted Period and the attainment of any other vesting criteria established by the Committee, and to such other terms and conditions as may be set forth in the applicable Award agreement. In the event of any forfeiture, all rights of the Participant to such Restricted Stock Units shall terminate without further action or obligation on the part of the Company.

(iii) Notwithstanding anything to the contrary in the Plan, except as otherwise provided in the applicable Award agreement, or any applicable employment, consulting, change in control, severance or other agreement between a Participant and the Company or an Affiliate, upon such Participant's termination of employment or service with the Company and its Affiliates due to death, Disability or Retirement (unless waived by a participant prior to the grant of the applicable Award), or as provided in Section 13 hereof, such Participant's outstanding Restricted Stock and Restricted Stock Units shall immediately vest in full, and the restrictions set forth in the applicable Award agreement shall have no further force or effect with respect to such Restricted Stock or Restricted Stock Units (and such Restricted Stock Units shall be treated as Released Units for purposes of Section 9(e)(ii)); provided, however, that if the vesting of any Restricted Stock or Restricted Stock Units would otherwise be subject to the achievement of performance conditions, then: (A) all applicable performance criteria shall be deemed to have been attained at target levels and (B) if such termination of employment or service or Change in Control occurs on or prior to the date on which 50% of the applicable performance period has elapsed, only 50% of such Restricted Stock or Restricted Stock Units shall immediately vest.

(iv) The Committee shall have the authority to remove any or all of the restrictions on the Restricted Stock and Restricted Stock Units whenever it may determine that, by reason of changes in applicable laws or other changes in circumstances arising after the date of the Restricted Stock Award or Restricted Stock Unit Award, such action is appropriate.

(e) Delivery of Restricted Stock and Settlement of Restricted Stock Units.

(i) Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock and the attainment of any other vesting criteria established by the Committee, the restrictions set forth in the applicable Award agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his or her beneficiary, without charge a notice evidencing a book entry notation (or, if applicable, the stock certificate) evidencing the shares of Restricted Stock which have not then been forfeited and with respect to which the Restricted Period has expired (rounded down to the nearest full share). Dividends, if any, that may have been withheld by the Committee and attributable to any

particular share of Restricted Stock shall be distributed to the Participant in cash or, at the sole discretion of the Committee, in shares of Common Stock having a Fair Market Value (on the date of distribution) equal to the amount of such dividends, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends.

(ii) Unless otherwise provided by the Committee in an Award agreement, upon the expiration of the Restricted Period and the attainment of any other vesting criteria established by the Committee, with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his or her beneficiary, without charge, one share of Common Stock (or other securities or other property, as applicable) for each such outstanding Restricted Stock Unit which has not then been forfeited and with respect to which the Restricted Period has expired and any other such vesting criteria are attained ("Released Unit"); provided, however, that the Committee may, in its sole discretion, elect to (i) pay cash or part cash and part Common Stock in lieu of delivering only shares of Common Stock in respect of such Released Units or (ii) defer the delivery of Common Stock (or cash or part Common Stock and part cash, as the case may be) beyond the expiration of the Restricted Period if such extension would not cause adverse tax consequences under Section 409A of the Code. If a cash payment is made in lieu of delivering shares of Common Stock, the amount of such payment shall be equal to the Fair Market Value of the Common Stock as of the date on which the Restricted Period lapsed with respect to such Restricted Stock Units, less an amount equal to any Federal, state, local and non-U.S. income and employment taxes required to be withheld. To the extent provided in an Award agreement, the holder of outstanding Released Units shall be entitled to be credited with dividend equivalent payments (upon the payment by the Company of dividends on shares of Common Stock) either in cash or, at the sole discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to the amount of such dividends (and interest may, at the sole discretion of the Committee, be credited on the amount of cash dividend equivalents at a rate and subject to such terms as determined by the Committee), which accumulated dividend equivalents (and interest thereon, if applicable) shall be payable at the same time as the underlying Restricted Stock Units are settled following the release of restrictions on such Restricted Stock Units, and, if such Restricted Stock Units are forfeited, the Participant shall have no right to such dividend equivalent payments.

(f) Legends on Restricted Stock. Each certificate representing Restricted Stock Awarded under the Plan, if any, shall bear a legend substantially in the form of the following in addition to any other information the Company deems appropriate until the lapse of all restrictions with respect to such Common Stock:

TRANSFER OF THIS CERTIFICATE AND THE SHARES REPRESENTED HEREBY IS RESTRICTED PURSUANT TO THE TERMS OF THE CHILDREN'S PLACE, INC. 2011 EQUITY INCENTIVE PLAN AND A RESTRICTED STOCK AWARD AGREEMENT, DATED AS OF _____, BETWEEN THE CHILDREN'S PLACE, INC. AND _____. A COPY OF SUCH PLAN AND AWARD

AGREEMENT IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CHILDREN'S PLACE, INC.

10. **Other Stock-Based Awards.** The Committee may issue unrestricted Common Stock, rights to receive grants of Awards at a future date, or other Awards denominated in Common Stock (including, without limitation, performance shares or performance units), under the Plan to Eligible Persons, alone or in tandem with other Awards, in such amounts as the Committee shall from time to time in its sole discretion determine. Each Other Stock-Based Award granted under the Plan shall be evidenced by an Award agreement. Each Other Stock-Based Award so granted shall be subject to such conditions not inconsistent with the Plan as may be reflected in the applicable Award agreement including, without limitation, the payment by the Participant of the Fair Market Value of such shares of Common Stock on the date of grant. Notwithstanding anything to the contrary in the Plan, except as otherwise provided in the applicable Award agreement, or any applicable employment, consulting, change in control, severance or other agreement between a Participant and the Company or an Affiliate, upon such Participant's termination of employment or service with the Company and its Affiliates due to death, Disability or Retirement, or as provided in Section 13 hereof, such Participant's outstanding Other Stock-Based Awards shall immediately vest in full, and the restrictions set forth in the applicable Award agreement shall have no further force or effect with respect to such Other Stock-Based Awards; provided, however, that if the vesting of any Other Stock-Based Awards would otherwise be subject to the achievement of performance conditions, then: (A) all applicable performance criteria shall be deemed to have been attained at target levels and (B) if such termination of employment or service or Change in Control occurs on or prior to the date on which 50% of the applicable performance period has elapsed, only 50% of each such Other Stock-Based Award shall immediately vest.

11. **Performance Compensation Awards.** (a) Generally. The Committee shall have the authority, at or before the time of grant of any Award described in Sections 7 through 10 of the Plan, to designate such Award as a Performance Compensation Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code. In addition, the Committee shall have the authority to make an Award of a cash bonus to any Participant and designate such Award as a Performance Compensation Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code. Notwithstanding the foregoing, (a.) any Award to a Participant who is a "covered employee" (within the meaning of Section 162(m) of the Code) for a fiscal year that satisfies the requirements of this Section 11 may be treated as a Performance Compensation Award in the absence of any such Committee designation and (b.) if the Company determines that a Participant who has been granted an Award designated as a Performance Compensation Award is not (or is no longer) a "covered employee" (within the meaning of Section 162(m) of the Code), the terms and conditions of such Award may be modified without regard to any restrictions or limitations set forth in this Section 11 (but subject otherwise to the provisions of Section 14 of the Plan).

(b) Discretion of Committee with Respect to Performance Compensation Awards. With regard to a particular Performance Period, the Committee shall have sole discretion to select the length of

such Performance Period [(subject to the proviso contained in the third sentence of Section 9(a)(i) above),] the type(s) of Performance Compensation Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goals(s) that is (are) to apply and the Performance Formula. Within the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code), the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence and record the same in writing (which may be in the form of minutes of a meeting of the Committee).

(c) Performance Criteria. The Performance Criteria that will be used to establish the Performance Goal(s) may be based on the attainment of specific levels of performance of the Company (and/or one or more Affiliates, divisions or operational and/or business units, product lines, brands, business segments, administrative departments, units, or any combination of the foregoing) and shall be limited to the following: (i) net earnings or net income (before or after taxes); (ii) basic or diluted earnings per share (before or after taxes); (iii) net revenue or net revenue growth; (iv)gross revenue or gross revenue growth, gross profit or gross profit growth; (v) net operating profit (before or after taxes); (vi) return measures (including, but not limited to, return on investment, assets, capital, gross revenue or gross revenue growth, invested capital, equity, or sales); (vii) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital), which may but are not required to be measured on a per share basis;) (viii) earnings before or after taxes, interest, depreciation and/or amortization (including EBIT and EBITDA); (ix) gross or net operating margins; (x) productivity ratios; (xi) share price (including, but not limited to, growth measures and total shareholder return); (xii) expense targets or cost reduction goals, general and administrative expense savings; (xiii) margins; (xiv) operating efficiency; (xv) objective measures of customer satisfaction; (xvi) working capital targets; (xvii) measures of economic value added or other ‘value creation’ metrics; (xviii) inventory control; (xix) enterprise value; (xx) sales; (xxi) stockholder return; (xxii) client retention; (xxiii) competitive market metrics; (xxiv) employee retention; (xxv) timely completion of new product rollouts; (xxvi) timely launch of new facilities; (xxvii) objective measures of personal targets, goals or completion of projects (including but not limited to succession and hiring projects, completion of specific acquisitions, reorganizations or other corporate transactions or capital-raising transactions, expansions of specific business operations and meeting divisional or project budgets); (xxviii) system-wide revenues; (xxix) royalty income; (xxx) cost of capital, debt leverage year-end cash position or book value; (xxxi) strategic objectives, development of new product lines and related revenue, sales and margin targets, or international operations; or (xxxii) any combination of the foregoing. Any one or more of the Performance Criteria may be stated as a percentage of another Performance Criteria, or a percentage of a prior period’s Performance Criteria, or used on an absolute, relative or adjusted basis to measure the performance of the Company and/or one or more Affiliates as a whole or any divisions or operational and/or business units, product lines, brands, business segments, administrative departments of the Company and/or one or more Affiliates or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Criteria may be compared to the performance of a group of comparator companies, or a published or special index

that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices. The Committee also has the authority to provide for accelerated vesting, delivery and exercisability of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria specified in this paragraph. To the extent required under Section 162(m) of the Code, the Committee shall, within the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code), define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period.

(d) Modification of Performance Goal(s). In the event that applicable tax and/or securities laws change to permit Committee discretion to alter the governing Performance Criteria without obtaining shareholder approval of such alterations, the Committee shall have sole discretion to make such alterations without obtaining shareholder approval. Unless otherwise determined by the Committee at the time a Performance Compensation Award is granted, the Committee is authorized at any time during the first 90 days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code), or at any time thereafter to the extent the exercise of such authority at such time would not cause the Performance Compensation Awards granted to any Participant for such Performance Period to fail to qualify as "performance-based compensation" under Section 162(m) of the Code, specify adjustments or modifications to be made to the calculation of a Performance Goal for such Performance Period, based on and in order to appropriately reflect the following events: (i) asset write-downs; (ii) litigation or claim judgments or settlements; (iii) the effect of changes in tax laws, accounting principles, or other laws or regulatory rules affecting reported results; (iv) any reorganization and restructuring programs; (v) nonrecurring items as described in Accounting Standards Codification Topic 225-20 (or any successor pronouncement thereto) and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (vi) acquisitions or divestitures; (vii) any other specific unusual or nonrecurring events, or objectively determinable category thereof; (viii) foreign exchange gains and losses; (ix) discontinued operations and nonrecurring charges; and (x) a change in the Company's fiscal year.

(e) Payment of Performance Compensation Awards.

(i) Condition to Receipt of Payment. Unless otherwise provided in the applicable Award agreement or any employment, consulting, change in control, severance agreement or other arrangement between a Participant and the Company or an Affiliate, a Participant must be employed by or rendering services to the Company or an Affiliate on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period.

(ii) Limitation. Unless otherwise provided in the applicable Award agreement, or any employment, consulting, change in control, severance or other agreement between a Participant and the Company or an Affiliate, a Participant shall be eligible to receive payment or delivery, as applicable, in respect of a Performance Compensation Award only to the extent that: (A) the Performance Goals for such period are achieved, as determined by the Committee in its

sole discretion; and (B) all or some of the portion of such Participant's Performance Compensation Award has been earned for the Performance Period based on the application of the Performance Formula to such achieved Performance Goals, as determined by the Committee in its sole discretion, and except as otherwise provided in Section 13; provided, however, that in the event of the termination of a Participant's employment or service due to death or Disability, (A) the Participant shall receive payment in respect of a Performance Compensation Award assuming for such purpose that the applicable performance criteria shall be deemed to have been attained at target levels and (B) if such termination of employment or service occurs on or prior to the date on which 50% of the applicable performance period has elapsed, only 50% of the Performance Compensation Award shall be payable.

(iii) Certification. Following the completion of a Performance Period, the Committee shall review and certify in writing (which may be in the form of minutes of a meeting of the Committee) whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, calculate and certify in writing (which may be in the form of minutes of a meeting of the Committee) that amount of the Performance Compensation Awards earned for the period based upon the Performance Formula. The Committee shall then determine the amount of each Participant's Performance Compensation Award actually payable for the Performance Period and, in so doing, may apply Negative Discretion.

(iv) Use of Negative Discretion. In determining the actual amount of an individual Participant's Performance Compensation Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Compensation Award earned under the Performance Formula in the Performance Period through the use of Negative Discretion if, in its sole judgment, such reduction or elimination is appropriate; provided, that Negative Discretion shall not apply to any Performance Compensation Award (other than cash bonuses contemplated by the second sentence of Section 11(a)) unless the Award agreement so provides for the use of Negative Discretion. Unless otherwise provided in the applicable Award agreement, the Committee shall not have the discretion to (A) provide payment or delivery in respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained; or (B) increase a Performance Compensation Award above the applicable limitations set forth in Section 5 of the Plan.

(f) Timing of Award Payments. Unless otherwise provided in the applicable Award agreement, Performance Compensation Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following completion of the certifications required by this Section 11. Any Performance Compensation Award that has been deferred shall not (between the date as of which the Award is deferred and the payment date) increase (i) with respect to a Performance Compensation Award that is payable in cash, by a measuring factor for each fiscal year greater than a reasonable rate of interest set by the Committee or (ii) with respect to a Performance Compensation Award that is payable in shares of Common Stock, by an amount greater than the appreciation of a share of Common Stock from the date such Award is deferred to the payment date. Unless otherwise provided

in an Award agreement, any Performance Compensation Award that is deferred and is otherwise payable in shares of Common Stock shall be credited (during the period between the date as of which the Award is deferred and the payment date) with dividend equivalents (in a manner consistent with the methodology set forth in the last sentence of Section 9(d)(ii)).

12. **Changes in Capital Structure and Similar Events.** In the event of (a) any dividend (other than regular cash dividends) or other distribution (whether in the form of cash, shares of Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire shares of Common Stock or other securities of the Company, or other similar corporate transaction or event (including, without limitation, a Change in Control) that affects the shares of Common Stock, or (b) unusual or nonrecurring events (including, without limitation, a Change in Control) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer quotation service, accounting principles or law, such that in any case an adjustment is determined by the Committee in its sole discretion to be necessary or appropriate, then the Committee shall make any such adjustments in such manner as it may deem equitable, including without limitation any or all of the following:

    (i) adjusting any or all of (A) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) which may be delivered in respect of Awards or with respect to which Awards may be granted under the Plan (including, without limitation, adjusting any or all of the limitations under Section 5 of the Plan) and (B) the terms of any outstanding Award, including, without limitation, (1) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) subject to outstanding Awards or to which outstanding Awards relate, (2) the Exercise Price or Strike Price with respect to any Award or (3) any applicable performance measures (including, without limitation, Performance Criteria, Performance Formula and Performance Goals);

    (ii) providing for a substitution or assumption of Awards (or Awards of an acquiring company), accelerating the delivery, vesting and/or exercisability of, lapse of restrictions and/or other conditions on, or termination of, Awards or providing for a period of time (which shall not be required to be more than ten (10) days) for Participants to exercise outstanding Awards prior to the occurrence of such event (and any such Award not so exercised shall terminate upon the occurrence of such event); and

    (iii) cancelling any one or more outstanding Awards (or Awards of an acquiring company) and causing to be paid to the holders thereof, in cash, shares of Common Stock, other securities or other property, or any combination thereof, the value of such Awards, if any, as determined by the Committee (which if applicable may be based upon the price per share of

Common Stock received or to be received by other shareholders of the Company in such event), including without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the shares of Common Stock subject to such Option or SAR over the aggregate Exercise Price or Strike Price of such Option or SAR, respectively (it being understood that, in such event, any Option or SAR having a per share Exercise Price or Strike Price equal to, or in excess of, the Fair Market Value of a share of Common Stock subject thereto may be canceled and terminated without any payment or consideration therefor);

provided, however, that in the case of any "equity restructuring" (within the meaning of the Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor pronouncement thereto) ("ASC 718"), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring. Except as otherwise determined by the Committee, any adjustment in Incentive Stock Options under this Section 12 (other than any cancellation of Incentive Stock Options) shall be made only to the extent not constituting a "modification" within the meaning of Section 424(h)(3) of the Code, and any adjustments under this Section 12 shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3 under the Exchange Act. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

13. **Effect of Change in Control.** Except to the extent otherwise provided in an Award agreement, or any applicable employment, consulting, change in control, severance or other agreement between a Participant and the Company or an Affiliate, in the event of a Change in Control, notwithstanding any provision of the Plan to the contrary:

(a) In the case of Options, SARs and other Awards which are service-based and not subject to Performance Goals or other performance conditions, in the event that an Involuntary Termination of a Participant occurs within six (6) months prior to the occurrence of a Change in Control (in respect of Participants designated by the Committee) or within twelve (12) months following a Change in Control (in respect of all Participants), all Options and SARs held by such Participant shall become immediately exercisable with respect to all of the shares of Common Stock subject to such Options and SARs, and the Restricted Period (and any other non-performance based conditions) applicable to all Restricted Stock Awards, Restricted Stock Unit Awards and any other service-based Awards held by such Participant shall expire immediately, and all such Awards shall immediately become fully vested and the shares of Common Stock subject to all such Awards shall be immediately delivered to such Participant.

(b) In the case of equity Awards which are subject to the achievement of Performance Goals or other performance conditions, immediately prior to the occurrence of a Change in Control, the target number of shares of Common Stock set forth in the applicable Award agreement shall automatically convert into service-based Awards, and such service-based Awards shall vest and be delivered to the Participant on the vesting date set forth in the applicable Award agreement (without regard to the achievement of any applicable Performance Goals or other performance conditions), provided that the

Participant is in the employ of the Company or an Affiliate on the applicable vesting date; provided that, in the event that an Involuntary Termination of a Participant occurs within six (6) months prior to the occurrence of a Change in Control (in respect of Participants designated by the Committee) or on or within twelve (12) months following a Change in Control (in respect of all Participants), all such unvested service-based Awards held by such Participant shall immediately become fully vested and the shares of Common Stock subject to such Awards shall be immediately delivered to such Participant.

(c) In addition, in the event of a Change of Control, the Committee may in its discretion and upon at least 5 days' advance notice to the affected persons, cancel any outstanding Award and pay to the holders thereof, in cash, securities or other property (including of the acquiring or successor company) or any combination thereof, the value of such Awards based upon the price per share of Common Stock received or to be received by other shareholders of the Company in the event. Notwithstanding the above, the Committee shall exercise such discretion over any Award subject to Code Section 409A at the time such Award is granted.

(d) The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company.

To the extent practicable, the provisions of this Section 13 shall occur in a manner and at a time which allows affected Participants the ability to participate in the Change in Control transaction with respect to the Common Stock subject to their Awards.

14. **Amendments and Termination.** (a) Amendment and Termination of the Plan. The Committee may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; provided, that no such amendment, alteration, suspension, discontinuation or termination shall be made without shareholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including, without limitation, as necessary to comply with any rules or requirements of any securities exchange or inter-dealer quotation service on which the shares of Common Stock may be listed or quoted or for changes in GAAP to new accounting standards, to prevent the Company from being denied a tax deduction under Section 162(m) of the Code); provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary. Notwithstanding the foregoing, no amendment shall be made to the last proviso of Section 14(b) without stockholder approval.

(b) Amendment of Award Agreements. The Committee may, to the extent not inconsistent with the terms of any applicable Award agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award agreement, prospectively or retroactively (including after a Participant's termination of

employment or service with the Company); provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any Participant with respect to any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant; provided, further, that without shareholder approval, except as otherwise permitted under Section 12 of the Plan, (i) no amendment or modification may reduce the Exercise Price of any Option or the Strike Price of any SAR, (ii) the Committee may not cancel any outstanding Option or SAR and replace it with a new Option or SAR (with a lower Exercise Price or Strike Price, as the case may be) or other Award or cash in a manner which would either (A) be reportable on the Company's proxy statement as Options which have been "repriced" (as such term is used in Item 402 of Regulation S-K promulgated under the Exchange Act), or (B) result in any "repricing" for financial statement reporting purposes (or otherwise cause the Award to fail to qualify for equity accounting treatment) and (iii) the Committee may not take any other action which is considered a "repricing" for purposes of the shareholder approval rules of the applicable securities exchange or inter-dealer quotation service on which the Common Stock is listed or quoted.

15. **General.** (a) Award Agreements. Each Award under the Plan shall be evidenced by an Award agreement, which shall be delivered to the Participant and shall specify the terms and conditions of the Award and any rules applicable thereto. For purposes of the Plan, an Award agreement may be in any such form (written or electronic) as determined by the Committee (including, without limitation, a Board or Committee resolution, an employment agreement, a notice, a certificate or a letter) evidencing the Award.

(b) Nontransferability. (i) Each Award shall be exercisable only by a Participant during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards (other than Incentive Stock Options) to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award agreement to preserve the purposes of the Plan, to: (A) any person who is a "family member" of the Participant, as such term is used in the instructions to Form S-8 under the Securities Act or any successor form of registration statements promulgated by the Securities and Exchange Commission (collectively, the "Immediate Family Members"); (B) a trust solely for the benefit of the Participant and his or her Immediate Family Members; (C) a partnership or limited liability company whose only partners or shareholders are the Participant and his or her Immediate Family Members; or (D) any other transferee as may be approved either (I) by the Board or the Committee in its sole discretion, or (II) as provided in the applicable Award agreement; (each transferee described in clauses (A), (B), (C) and (D) above is hereinafter

referred to as a "Permitted Transferee"); provided that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

(iii) The terms of any Award transferred in accordance with the immediately preceding sentence shall apply to the Permitted Transferee and any reference in the Plan, or in any applicable Award agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the shares of Common Stock to be acquired pursuant to the exercise of such Option if the Committee determines, consistent with any applicable Award agreement, that such a registration statement is necessary or appropriate; (C) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise; and (D) the consequences of the termination of the Participant's employment by, or services to, the Company or an Affiliate under the terms of the Plan and the applicable Award agreement shall continue to be applied with respect to the Permitted Transferee, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award agreement.

(c) Dividends and Dividend Equivalents. The Committee in its sole discretion may provide a Participant as part of an Award with dividends or dividend equivalents, payable in cash, shares of Common Stock, other securities, other Awards or other property, on a current or deferred basis, on such terms and conditions as may be determined by the Committee in its sole discretion, including without limitation, payment directly to the Participant, withholding of such amounts by the Company subject to vesting of the Award or reinvestment in additional shares of Common Stock, Restricted Stock or other Awards; provided, that no dividend equivalents shall be payable in respect of outstanding (i) Options or SARs or (ii) unearned Performance Compensation Awards or other unearned Awards subject to performance conditions (other than or in addition to the passage of time) (although dividend equivalents may be accumulated in respect of unearned Awards and paid as soon as administratively practicable, but no more than 60 days, after such Awards are earned and become payable or distributable.

(d) Tax Withholding.

(i) A Participant shall be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right (but not the obligation) and is hereby authorized to withhold, from any cash, shares of Common Stock, other securities or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount

(in cash, Common Stock, other securities or other property) of any required withholding taxes in respect of an Award, its exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding and taxes.

(ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing withholding liability (but no more than the minimum required statutory liability withholding liability, if required to avoid adverse accounting treatment of the Award as a liability Award under ACS 718) by (A) payment in cash; (B) the delivery of shares of Common Stock (which are not subject to any pledge or other security interest) owned by the Participant having a Fair Market Value equal to such withholding liability or (C) having the Company withhold from the number of shares of Common Stock otherwise issuable or deliverable pursuant to the exercise or settlement of the Award a number of shares with a Fair Market Value equal to such withholding liability.

(e) No Claim to Awards; No Rights to Continued Employment; Waiver. No employee of the Company or an Affiliate, or other person, shall have any claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. There is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or an Affiliate, nor shall it be construed as giving any Participant any rights to continued service on the Board. The Company or any of its Affiliates may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or any Award agreement. By accepting an Award under the Plan, a Participant shall thereby be deemed to have waived any claim to continued exercise or vesting of an Award or to damages or severance entitlement related to non-continuation of the Award beyond the period provided under the Plan or any Award agreement, notwithstanding any provision to the contrary in any written employment contract or other agreement between the Company and its Affiliates and the Participant, whether any such agreement is executed before, on or after the date of grant.

(f) International Participants. Without limiting the generality of Section 4(d), with respect to Participants who reside or work outside of the United States of America and who are not (and who are not expect to be) "covered employees" within the meaning of Section 162(m) of the Code, the Committee may in its sole discretion amend the terms of the Plan or subplans or appendices thereto, or outstanding Awards, with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for a Participant, the Company or its Affiliates.

(g) Designation and Change of Beneficiary. Each Participant may file with the Committee a written designation of one or more persons as the beneficiary(ies) who shall be entitled to receive the

amounts payable with respect to an Award, if any, due under the Plan upon his or her death. A Participant may, from time to time, revoke or change his or her beneficiary designation without the consent of any prior beneficiary by filing a new designation with the Committee. The last such designation received by the Committee shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his or her spouse (or domestic partner if such status is recognized by the Company according to the procedures established by the Company and in such jurisdiction), or if the Participant is otherwise unmarried at the time of death, his or her estate. After receipt of Options in accordance with this paragraph, beneficiaries will only be able to exercise such options in accordance with Section 7(c)(ii) of this Plan.

(h) Termination of Employment or Service. Except as otherwise provided in an Award agreement, or any employment, consulting, change in control, severance or other agreement between a Participant and the Company or an Affiliate, unless determined otherwise by the Committee: (i) neither a temporary absence from employment or service due to illness, vacation or leave of absence (including, without limitation, a call to active duty for military service through a Reserve or National Guard unit) nor a transfer from employment or service with the Company to employment or service with an Affiliate (or vice-versa) shall be considered a termination of employment or service with the Company or an Affiliate; and (ii) if a Participant's employment with the Company and its Affiliates terminates, but such Participant continues to provide services to the Company or its Affiliates in a non-employee capacity (including as a Non-Employee Director) (or vice-versa), such change in status shall not be considered a termination of employment or service with the Company or an Affiliate for purposes of the Plan.

(i) No Rights as a Shareholder. Except as otherwise specifically provided in the Plan or any Award agreement, no person shall be entitled to the privileges of ownership in respect of shares of Common Stock which are subject to Awards hereunder until such shares have been issued or delivered to that person.

(j) Government and Other Regulations.

(i) The obligation of the Company to settle Awards in Common Stock or other consideration shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any shares of Common Stock pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the shares of Common Stock to be offered or sold under

the Plan. The Committee shall have the authority to provide that all shares of Common Stock or other securities of the Company or any Affiliate delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan, the applicable Award agreement, the Federal securities laws, or the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or inter-dealer quotation service upon which such shares or other securities of the Company are then listed or quoted and any other applicable Federal, state, local or non-U.S. laws, rules, regulations and other requirements, and, without limiting the generality of Section 9 of the Plan, the Committee may cause a legend or legends to be put on any such certificates of Common Stock or other securities of the Company or any Affiliate delivered under the Plan to make appropriate reference to such restrictions or may cause such Common Stock or other securities of the Company or any Affiliate delivered under the Plan in book-entry form to be held subject to the Company's instructions or subject to appropriate stop-transfer orders. Notwithstanding any provision in the Plan to the contrary, the Committee reserves the right to add any additional terms or provisions to any Award granted under the Plan that it in its sole discretion deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

(ii) The Committee may cancel an Award or any portion thereof if it determines, in its sole discretion, that legal or contractual restrictions and/or blockage and/or other market considerations would make the Company's acquisition of shares of Common Stock from the public markets, the Company's issuance of Common Stock to the Participant, the Participant's acquisition of Common Stock from the Company and/or the Participant's sale of Common Stock to the public markets, illegal, impracticable or inadvisable. If the Committee determines to cancel all or any portion of an Award in accordance with the foregoing, the Company shall pay to the Participant an amount equal to the excess of (A) the aggregate Fair Market Value of the shares of Common Stock subject to such Award or portion thereof canceled (determined as of the applicable exercise date, or the date that the shares would have been vested or delivered, as applicable), over (B) the aggregate Exercise Price or Strike Price (in the case of an Option or SAR, respectively) or any amount payable as a condition of delivery of shares of Common Stock (in the case of any other Award). Such amount shall be delivered to the Participant as soon as practicable following the cancellation of such Award or portion thereof.

(k) No Section 83(b) Elections Without Consent of Company. No election under Section 83(b) of the Code or under a similar provision of law may be made unless expressly permitted by the terms of the applicable Award agreement or by action of the Committee in writing prior to the making of such election. If a Participant, in connection with the acquisition of shares of Common Stock under the Plan or otherwise, is expressly permitted to make such election and the Participant makes the election, the Participant shall notify the Company of such election within ten days of filing notice of the election with the Internal Revenue Service or other governmental authority, in addition to any filing and notification required pursuant to Section 83(b) of the Code or other applicable provision.

(l) Payments to Persons Other Than Participants. If the Committee shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs because of illness or accident, or is a minor, or has died, then any payment due to such person or his or her estate (unless a prior claim therefor has been made by a duly appointed legal representative or a beneficiary designation form has been filed with the Company) may, if the Committee so directs the Company, be paid to his or her spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(m) Nonexclusivity of the Plan. Neither the adoption of this Plan by the Board nor the submission of this Plan to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

(n) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate, on the one hand, and a Participant or other person or entity, on the other hand. No provision of the Plan or any Award shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees under general law.

(o) Reliance on Reports. Each member of the Committee and each member of the Board (and their respective designees) shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and its Affiliates and/or any other information furnished in connection with the Plan by any agent of the Company or the Committee or the Board, other than himself or herself.

(p) Relationship to Other Benefits. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(q) Purchase for Investment. Whether or not the Options and shares covered by the Plan have been registered under the Securities Act, each person exercising an Option under the Plan or acquiring shares under the Plan, may be required by the Company to give a representation in writing that such person is acquiring such shares for investment and not with a view to, or for sale in connection with,

the distribution of any part thereof. The Company will endorse any necessary legend referring to the foregoing restriction upon the certificate or certificates representing any shares issued or transferred to the Participant upon the exercise of any Option granted under the Plan.

(r) Governing Law. The Plan shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware, without giving effect to the conflict of laws provisions thereof.

(s) Severability. If any provision of the Plan or any Award or Award agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or entity or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be construed or deemed stricken as to such jurisdiction, person or entity or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(t) Obligations Binding on Successors. The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company.

(u) 409A of the Code.

(i) Notwithstanding any provision of the Plan to the contrary, it is intended that the provisions of this Plan comply with Section 409A of the Code, and all provisions of this Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code. Each Participant is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or in respect of such Participant in connection with this Plan or any other plan maintained by the Company (including any taxes and penalties under Section 409A of the Code), and neither the Company nor any Affiliate shall have any obligation to indemnify or otherwise hold such Participant (or any beneficiary) harmless from any or all of such taxes or penalties. With respect to any Award that is considered “deferred compensation” subject to Section 409A of the Code, references in the Plan to “termination of employment” (and substantially similar phrases) shall mean “separation from service” within the meaning of Section 409A of the Code. For purposes of Section 409A of the Code, each of the payments that may be made in respect of any Award granted under the Plan is designated as separate payments.

(ii) Notwithstanding anything in the Plan to the contrary, if a Participant is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code, no payments or deliveries in respect of any Awards that are “deferred compensation” subject to Section 409A

of the Code shall be made to such Participant prior to the date that is six months after the date of such Participant's "separation from service" (as defined in Section 409A of the Code) or, if earlier, the Participant's date of death. Following any applicable six month delay, all such delayed payments or deliveries will be paid or delivered (without interest) in a single lump sum on the earliest date permitted under Section 409A of the Code that is also a business day.

(iii) Unless otherwise provided by the Committee, in the event that the timing of payments in respect of any Award (that would otherwise be considered "deferred compensation" subject to Section 409A of the Code) would be accelerated upon the occurrence of (A) a Change in Control, no such acceleration shall be permitted unless the event giving rise to the Change in Control satisfies the definition of a change in the ownership or effective control of a corporation, or a change in the ownership of a substantial portion of the assets of a corporation pursuant to Section 409A of the Code and any Treasury Regulations promulgated thereunder or (B) a Disability, no such acceleration shall be permitted unless the Disability also satisfies the definition of "Disability" pursuant to Section 409A of the Code and any Treasury Regulations promulgated thereunder.

(v) Clawback/Forfeiture. Notwithstanding anything to the contrary contained herein, an Award agreement may provide that the Committee may in its sole discretion cancel such Award if the Participant, without the consent of the Company, while employed by or providing services to the Company or any Affiliate or after termination of such employment or service, violates a non-competition, non-solicitation, non-disparagement, non-disclosure covenant or agreement or otherwise has engaged in or engages in activity that is in conflict with or adverse to the interest of the Company or any Affiliate, including fraud or conduct contributing to any financial restatements or irregularities, as determined by the Committee in its sole discretion. The Committee may also provide in an Award agreement that if the Participant otherwise has engaged in or engages in any activity referred to in the preceding sentence, the Participant will forfeit any compensation, gain or other value realized thereafter on the vesting, exercise or settlement of such Award, the sale or other transfer of such Award, or the sale of shares of Common Stock acquired in respect of such Award, and must promptly repay such amounts to the Company. The Committee may also provide in an Award agreement that if the Participant receives any amount in excess of what the Participant should have received under the terms of the Award for any reason (including without limitation by reason of a financial restatement, mistake in calculations or other administrative error), all as determined by the Committee in its sole discretion, then the Participant shall be required to promptly repay any such excess amount to the Company. To the extent required by applicable law (including without limitation Section 302 of the Sarbanes Oxley Act and Section 954 of the Dodd Frank Act) and/or the rules and regulations of NASDAQ or other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, or if so required pursuant to a written policy adopted by the Company (as in effect and/or amended from time to time), Awards shall be subject (including on a retroactive basis) to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into all outstanding Award agreements).

(w) Code Section 162(m) Re-approval. If so determined by the Committee, the provisions of the Plan regarding Performance Compensation Awards shall be submitted for re-approval by the shareholders of the Company no later than the first shareholder meeting that occurs in the fifth year following the year that shareholders previously approved such provisions following the date of initial shareholder approval, for purposes of exempting certain Awards granted after such time from the deduction limitations of Section 162(m) of the Code. Nothing in this subsection, however, shall affect the validity of Awards granted after such time if such shareholder approval has not been obtained.

(x) Expenses; Gender; Titles and Headings. The expenses of administering the Plan shall be borne by the Company and its Affiliates. Masculine pronouns and other words of masculine gender shall refer to both men and women. The titles and headings of the sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings shall control.

* * *

As adopted by the Board of Directors of the Company on May 20, 2011.

As approved by the shareholders of the Company on May 20, 2011.

As amended by the Compensation Committee of the Board of Directors of the Company on February 13, 2015.

As amended and restated by the Compensation Committee of the Board of Directors of the Company on February 9, 2016.

EXHIBIT 21.1

THE CHILDREN'S PLACE, INC. AND SUBSIDIARIES

SUBSIDIARIES OF THE COMPANY

The Children's Place, Inc. has the following direct and indirect wholly-owned subsidiaries:

TCP (Gibraltar) Company Limited, a Gibraltar limited company

TCP Canada Holdings, LP, an Alberta limited partnership

TCP Canada, Inc., a Nova Scotia limited liability company

TCP Gibfin, LLC, a Delaware limited liability company

TCP Global Holdings, S.A R.L., a Luxembourg private limited liability company

TCP Global Sourcing Holdings, S.A R.L., a Luxembourg private limited liability company

TCP IH I LLC, a Delaware limited liability company

TCP IH II LLC, a Delaware limited liability company

TCP International Financing S.A R.L., a Luxembourg private limited liability company

TCP International Holdings, LP, an Alberta limited partnership

TCP International IP Holdings, LLC, a Delaware limited liability company

TCP International Product Holdings, LLC, a Delaware limited liability company

TCP Investment Canada I Corp., a Nova Scotia unlimited liability company

TCP Investment Canada II Corp., a Nova Scotia unlimited liability company

TCP Retail Holdings Limited, a Hong Kong corporation

TCP Worldwide Holdings Limited, a Hong Kong corporation

The Children's Place (Barbados) Inc., a Barbados corporation

The Children's Place (Canada), LP, an Ontario limited partnership

The Children's Place (Hong Kong) Limited, a Hong Kong corporation

The Children's Place Bangladesh Limited, a private company incorporated under the laws of Bangladesh

The Children's Place Canada Holdings, Inc., a Delaware corporation

The Children's Place India Private Limited, a private company incorporated under the laws of India

The Children's Place International, LLC, a Virginia limited liability company

The Children's Place Mauritius Holdings Limited, a company incorporated under the laws of the Republic of Mauritius

The Children's Place Services Company, LLC, a Delaware limited liability company

The Children's Place Asia Holdings Limited, a Hong Kong corporation

The Children's Place (Hong Kong) Holdings Limited, a Hong Kong corporation

The Children's Place Trading (Shanghai) Co., Ltd., a wholly foreign owned Shanghai trading company incorporated under the laws of the People's Republic of China

thechildrensplace.com, inc. a Delaware corporation

Twin Brook Insurance Company, Inc., an inactive New York insurance captive corporation

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
The Children's Place, Inc.
Secaucus, New Jersey:

We hereby consent to the incorporation by reference in the Registration Statements on Form S3 (No. 333-88378) and Form S-8 (No. 333-47065, 333-135211, 333-85834 and 333-176569) of The Children's Place, Inc. and subsidiaries of our reports dated March 24, 2016 relating to the consolidated financial statements and financial statement schedule and the effectiveness of The Children's Place, Inc. and subsidiaries' internal control over financial reporting, which appear in this Form 10-K.

/S/ BDO USA, LLP

New York, NY
March 24, 2016

EXHIBIT 31.1

Certificate of Principal Executive Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Jane T. Elfers, certify that:

1. I have reviewed this annual report on Form 10-K of The Children's Place, Inc.;

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

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

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

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

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

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

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

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the Audit Committee of the registrant's Board of Directors (or persons performing equivalent functions):

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

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

Date: March 24, 2016

By: /S/ JANE T. ELFERS

JANE T. ELFERS
Chief Executive Officer and President
(Principal Executive Officer)

EXHIBIT 31.2

Certificate of Principal Accounting Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Anurup Pruthi, certify that:

1. I have reviewed this annual report on Form 10-K of The Children's Place, Inc.;

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

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

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

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

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

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

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

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the Audit Committee of the registrant's Board of Directors (or persons performing equivalent functions):

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

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

Date: March 24, 2016

By: /S/ ANURUP PRUTHI

ANURUP PRUTHI
Chief Financial Officer
(Principal Accounting and Financial Officer)

EXHIBIT 32

Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

I, Jane T. Elfers, Chief Executive Officer and President of The Children's Place, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The Annual Report of the Company on Form 10-K for the year ended January 30, 2016 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such annual report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 24th day of March, 2016.

By: /S/ JANE T. ELFERS

Chief Executive Officer and President
(Principal Executive Officer)

I, Anurup Pruthi, Chief Financial Officer of The Children's Place, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The Annual Report of the Company on Form 10-K for the year ended January 30, 2016 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such annual report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 24th day of March, 2016.

By: /S/ ANURUP PRUTHI

Chief Financial Officer
(Principal Accounting and Financial Officer)

This certification accompanies the Annual Report on Form 10-K of The Children's Place, Inc. for the year ended January 30, 2016 pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original copy of this written statement required by Section 906 of the Sarbanes Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission and its staff upon request.