

04-17-2000



101320997

3-15-00

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
 - Security Agreement Nunc Pro Tunc Assignment
 - Merger Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

- Mark if additional names of conveying parties attached
- Name Execution Date
Month Day Year
- Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

- Mark if additional names of receiving parties attached

- Name
 - DBA/AKA/TA
 - Composed of
 - Address (line 1)
 - Address (line 2)
 - Address (line 3)
- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
 - Corporation Association
 - Other
 - Citizenship/State of Incorporation/Organization

04/14/2000 DMGUYEN 00000318 430272

FOR OFFICE USE ONLY

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40.00 OP

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20503

REEL: 002051 FRAME: 0472

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="430272"/>	<input type="text"/>	<input type="text"/>
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Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

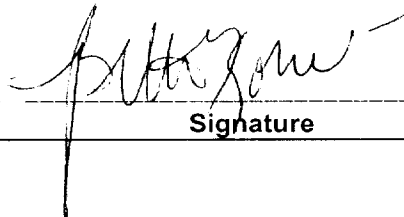
Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Beth Kotran



March 15, 2000

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

FORM PTO-1618C
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

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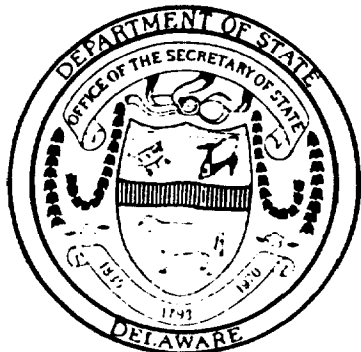
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Office of Secretary of State

I, MICHAEL RATCHFORD, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER OF "ALLIED STORES CORPORATION" MERGING WITH AND INTO "FEDERATED DEPARTMENT STORES, INC." UNDER THE NAME OF "FEDERATED DEPARTMENT STORES, INC." AS RECEIVED AND FILED IN THIS OFFICE THE FOURTH DAY OF FEBRUARY, A.D. 1992, AT 9 O'CLOCK A.M.

* * * * *



#E-101102

Michael Ratchford

Michael Ratchford, Secretary of State

AUTHENTICATION: *3478117

DATE: 06/09/1992

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, dated as of February 4, 1992 (this "Agreement"), is made and entered into by and between Federated Department Stores, Inc., a Delaware corporation ("Federated"), and Allied Stores Corporation, a Delaware corporation ("Allied").

RECITALS

A. A plan of reorganization of Federated, Allied, and certain of their subsidiaries (the "Plan") has been confirmed by the United States Bankruptcy Court for the Southern District of Ohio, Western Division, in Consolidated Case No. 1-90-00130;

B. Section 303 of the General Corporation Law of the State of Delaware (the "DGCL") provides that, among other things, any corporation incorporated under the DGCL may, pursuant to a plan of reorganization which has been confirmed by a court of competent jurisdiction, merge or consolidate without any further action by its directors or stockholders;

C. The Plan provides for the execution and delivery of this Agreement by each of Federated and Allied;

D. Prior to the Effective Date (as defined in the Plan), the authorized capital stock of Federated consisted of 1,000 shares of common stock, par value \$1.00 per share (the "Federated Common Stock"), of which one share was issued and outstanding;

E. Prior to the Effective Date, the authorized capital stock of Allied consisted of (i) 1,000,000 shares of common stock, par value \$.01 per share (the "Allied Common Stock"), of which 1,588 shares were issued and outstanding, and (ii) 19,000,000 shares of preferred stock, par value \$.01 per share, of which 14,311,008 shares of \$3.3125 Redeemable Cumulative Exchangeable Preferred Stock, Series A (the "Allied Preferred Stock"), were issued and outstanding; and

F. Pursuant to the Plan, each share of Federated Common Stock, Allied Common Stock, and Allied Preferred Stock issued and outstanding or held in the applicable issuer's treasury was canceled and retired.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto hereby agree as follows:

I. The Merger

1.1. Merger. At the Effective Time (as defined below), Allied will be merged with and into Federated and the separate corporate existence of Allied will thereupon cease (the "Merger") in accordance with the applicable provisions of the DGCL.

1.2. Effective Time. On or as promptly as practicable following the Effective Date, Federated and Allied (the "Constituent Corporations") will cause a copy of this Agreement to be filed with the Secretary of State of the State of Delaware as provided in Section 303(c) of the DGCL, whereupon the Merger will become effective (the "Effective Time").

II. Effects of the Merger

2.1. Effects of Merger. Federated will be the surviving corporation in the Merger (the "Surviving Corporation") and will continue to be governed by the laws of the State of Delaware, and the separate corporate existence of Federated and all of its rights, privileges, immunities, and franchises, public or private, and all of its duties and liabilities as a corporation organized under the DGCL, will continue unaffected by the Merger. The Merger will have the effects specified in the DGCL.

2.2. Certificate of Incorporation. The Restated Certificate of Incorporation of Federated in effect immediately prior to the Effective Time will be amended and restated at the Effective Time to read in its entirety as set forth in Annex A hereto and, from and after the Effective Time and until amended in accordance with its terms and the DGCL, will constitute the Restated Certificate of Incorporation of the Surviving Corporation.

2.3. By-Laws. The By-Laws of Federated in effect immediately prior to the Effective Time will be amended and restated at the Effective Time to read in their entirety as set forth in Annex B hereto and, from and after the Effective Time and until amended in accordance with their terms and the DGCL, will constitute the By-Laws of the Surviving Corporation.

2.4. Directors. From and after the Effective Time and until their successors are duly elected or appointed and qualified or until their earlier death, resignation, or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the Surviving Corporation and the DGCL, the persons listed on Annex C hereto will be the Directors of the Surviving Corporation.

2.5. Officers. From and after the Effective Time and until their successors are duly elected or appointed and qualified or until their earlier death, resignation, or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the Surviving Corporation and the DGCL, the officers of Federated immediately prior to the Effective Time will be the officers of the Surviving Corporation.

2.6. Issuance of Shares. At the Effective Time, the Surviving Corporation will issue shares of its common stock, par value \$.01 per share, to those persons and entities specified in the Plan in the manner and on the terms set forth in the Plan.

III. Miscellaneous

3.1. Entire Agreement. This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements among the parties with respect to such matters.

3.2. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

3.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original but all of which together will constitute but one agreement.

IN WITNESS WHEREOF, the parties to this Agreement, pursuant to the authority granted to them pursuant to the Plan, have caused this Agreement to be duly executed as of the date first above written.

ATTEST:



Boris Auerbach
Secretary

FEDERATED DEPARTMENT STORES, INC.

By: 

Dennis J. Broderick
Senior Vice President

ATTEST:



Boris Auerbach
Secretary

ALLIED STORES CORPORATION

By: 

Dennis J. Broderick
Senior Vice President

ANNEX A

RESTATED CERTIFICATE OF INCORPORATION
OF
FEDERATED DEPARTMENT STORES, INC.

FIRST. The name of the corporation is Federated Department Stores, Inc. (the "Company").

SECOND. The address of the Company's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Company's registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH. Section 1. Authorized Capital Stock. The Company is authorized to issue two classes of capital stock, designated Common Stock and Preferred Stock. The total number of shares of capital stock that the Company is authorized to issue is 375,000,000 shares, consisting of 250,000,000 shares of Common Stock, par value \$0.01 per share, and 125,000,000 shares of Preferred Stock, par value \$0.01 per share.

Section 2. Preferred Stock. The Preferred Stock may be issued in one or more series. The Board of Directors of the Company (the "Board") is hereby authorized to issue the shares of Preferred Stock in such series and to fix from time to time before issuance the number of shares to be included in any such series and the designation, relative powers, preferences, and rights and qualifications, limitations, or restrictions of all shares of such series. The authority of the Board with respect to each such series will include, without limiting the generality of the foregoing, the determination of any or all of the following:

(a) the number of shares of any series and the designation to distinguish the shares of such series from the shares of all other series;

(b) the voting powers, if any, and whether such voting powers are full or limited in such series;

(c) the redemption provisions, if any, applicable to such series, including the redemption price or prices to be paid;

(d) whether dividends, if any, will be cumulative or noncumulative, the dividend rate of such series, and the dates and preferences of dividends on such series;

(e) the rights of such series upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Company;

(f) the provisions, if any, pursuant to which the shares of such series are convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock, or any other security, of the Company or any other corporation or other entity, and the price or prices or the rates of exchange applicable thereto;

(g) the right, if any, to subscribe for or to purchase any securities of the Company or any other corporation or other entity;

(h) the provisions, if any, of a sinking fund applicable to such series; and

(i) any other relative, participating, optional, or other special powers, preferences, rights, qualifications, limitations, or restrictions thereof;

all as may be determined from time to time by the Board and stated in the resolution or resolutions providing for the issuance of such Preferred Stock (collectively, a "Preferred Stock Designation").

Section 3. Common Stock. Except as may otherwise be provided in a Preferred Stock Designation, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by such holder as of the record date for such meeting.

Section 4. Share Purchase Rights. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the Company is authorized to issue rights to purchase shares of capital stock of the Company pursuant to the Share Purchase Rights Agreement provided for in the Plan of Reorganization (as hereinafter defined), as such Share Purchase Rights Agreement may be amended from time to time in accordance with its terms.

FIFTH. The Board may make, amend, and repeal the By-Laws of the Company. Any By-Law made by the Board under the powers conferred hereby may be amended or repealed by the Board (except as specified in any such By-Law so made or amended) or by the stockholders in the manner provided in the By-Laws of the Company. Notwithstanding the foregoing and anything contained in this Certificate of Incorporation to the contrary,

By-Laws 1, 3(a), 8, 10, 11, 12, 13, 30(b), and 39 may not be amended or repealed by the stockholders, and no provision inconsistent therewith may be adopted by the stockholders, without the affirmative vote of the holders of at least 80% of the Voting Stock, voting together as a single class; provided, however, except with respect to By-Law 30(b), that if any such proposed amendment or repeal or adoption of an inconsistent provision is approved by the affirmative vote of the holders of a majority, but less than 80%, of the Voting Stock, voting together as a single class, such proposed amendment, repeal, or adoption of an inconsistent provision will become effective 12 months after such approval. The Company may in its By-Laws confer powers upon the Board in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board by applicable law. For the purposes of this Certificate of Incorporation, "Voting Stock" means stock of the Company of any class or series entitled to vote generally in the election of Directors. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the Voting Stock, voting together as a single class, is required to amend or repeal, or to adopt any provisions inconsistent with, this Article Fifth.

SIXTH. Subject to the rights of the holders of any series of Preferred Stock:

(a) any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing of such stockholders; and

(b) special meetings of stockholders of the Company may be called only by (i) the Chairman of the Board (the "Chairman"), (ii) the Secretary of the Company (the "Secretary") within 10 calendar days after receipt of the written request of a majority of the total number of Directors that the Company would have if there were no vacancies (the "Whole Board"), and (iii) as provided in By-Law 3.

At any annual meeting or special meeting of stockholders of the Company, only such business will be conducted or considered as has been brought before such meeting in the manner provided in the By-Laws of the Company. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least 80% of the Voting Stock, voting together as a single class, will be required to amend or repeal, or adopt any provision inconsistent with, this Article Sixth; provided, however, that if any proposed amendment or

repeal of, or adoption of provision inconsistent with, clause (b) of the first sentence of this Article Sixth is approved by the affirmative vote of the holders of a majority, but less than 80%, of the Voting Stock, voting together as a single class, such proposed amendment, repeal, or adoption of an inconsistent provision will become effective 12 months after such approval.

SEVENTH. Section 1. Number, Election, and Terms of Directors. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, the number of the Directors of the Company will not be less than three nor more than 15 and will be fixed from time to time in the manner described in the By-Laws of the Company. The Directors, other than those who may be elected by the holders of any series of Preferred Stock, will be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, designated Class I, Class II, and Class III. At any meeting of stockholders at which Directors are to be elected, the number of Directors elected may not exceed the greatest number of Directors then in office in either class of Directors not standing for election at such meeting. The Directors first appointed to Class I will hold office for a term expiring at the annual meeting of stockholders to be held in 1993; the Directors first appointed to Class II will hold office for a term expiring at the annual meeting of stockholders to be held in 1994; and the Directors first appointed to Class III will hold office for a term expiring at the annual meeting of stockholders to be held in 1995, with the members of each class to hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Company, the successors of the class of Directors whose terms expire at that meeting will be elected by plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, Directors may be elected by the stockholders only at an annual meeting of stockholders. Election of Directors of the Company need not be by written ballot unless requested by the Chairman or by the holders of a majority of the Voting Stock present in person or represented by proxy at a meeting of the stockholders at which Directors are to be elected.

Section 2. Nomination of Director Candidates. Advance notice of stockholder nominations for the election of Directors

must be given in the manner provided in the By-Laws of the Company.

Section 3. Newly Created Directorships and Vacancies. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal, or other cause will be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, or by a sole remaining Director. Any Director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor has been elected and qualified. No decrease in the number of Directors constituting the Board may shorten the term of any incumbent Director.

Section 4. Removal. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, any Director may be removed from office by the stockholders only for cause and only in the manner provided in this Section 4. At any annual meeting or special meeting of the stockholders, the notice of which states that the removal of a Director or Directors is among the purposes of the meeting, the affirmative vote of the holders of at least 80% of the Voting Stock, voting together as a single class, may remove such Director or Directors for cause.

Section 5. Amendment, Repeal, Etc. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least 80% of the Voting Stock, voting together as a single class, is required to amend or repeal, or adopt any provision inconsistent with, this Article Seventh; provided, however, that if any such proposed amendment or repeal or adoption of an inconsistent provision is approved by the affirmative vote of the holders of a majority, but less than 80%, of the Voting Stock, voting together as a single class, such proposed amendment, repeal, or adoption of an inconsistent provision will become effective 12 months after such approval.

EIGHTH. Section 1. Business Combinations with Interested Stockholders. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the Company will not engage in any Business Combination with any Interested Stockholder for a period of three years following the date that

such stockholder became an Interested Stockholder, unless (a) prior to such date the Board approved the transaction that resulted in the stockholder becoming an Interested Stockholder, (b) upon consummation of the transaction that resulted in the stockholder becoming an Interested Stockholder, the Interested Stockholder owned at least 85% of the Voting Stock outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares Owned by (i) Persons who are Directors and also officers of the Company and (ii) employee stock plans maintained by the Company or any direct or indirect majority-owned subsidiary of the Company in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or (c) on or subsequent to such date the Business Combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the Voting Stock which is not Owned by the Interested Stockholder.

Section 2. Exceptions. The restrictions contained in Section 1 of this Article Eighth will not apply if:

(a) a stockholder becomes an Interested Stockholder inadvertently and (i) as soon as practicable divests sufficient shares so that such stockholder ceases to be an Interested Stockholder and (ii) would not, at any time within the three-year period immediately prior to a Business Combination between the Company and such stockholder, have been an Interested Stockholder but for the inadvertent acquisition; or

(b) the Business Combination is proposed prior to the consummation or abandonment and subsequent to the earlier of the public announcement or the notice required under this paragraph (b) of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this paragraph (b); (ii) is with or by a Person who either was not an Interested Stockholder during the previous three years or who became an Interested Stockholder with the approval of the Board; and (iii) is approved or not opposed by a majority of the members of the Board then in office (but not less than one) who were Directors prior to any Person becoming an Interested Stockholder during the previous three years or were recommended for election or elected to succeed such Directors by a majority of such Directors. The proposed transactions referred to in the preceding sentence of this paragraph (b) are limited to (x) a merger or consolidation of the Company (except for a merger in respect of which, pursuant to Section 251(f) of the Delaware General

Corporation Law as in effect on the effective date of the Plan of Reorganization (the "DGCL"), no vote of the stockholders of the Company is or would have been required), (y) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Company or of any direct or indirect majority-owned subsidiary of the Company (other than to any direct or indirect wholly owned subsidiary of the Company or to the Company) having an aggregate market value equal to 50% or more of either the aggregate market value of all of the assets of the Company determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Company, or (z) a proposed tender or exchange offer for 50% or more of the outstanding Voting Stock. The Company will give at least 20 calendar days notice to all Interested Stockholders prior to the consummation of any of the transactions described in clauses (x) or (y) of the second sentence of this paragraph (b).

Section 3. Certain Definitions. For purposes of this Article Eighth:

(a) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled By, or is Under Common Control With another Person.

(b) "Associate," when used to indicate a relationship with any Person, means (i) any corporation or organization of which such Person is a Director, officer, or partner or is, directly or indirectly, the Owner of 20% or more of any class of Voting Stock, (ii) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.

(c) "Business Combination" means:

(i) any merger or consolidation of the Company or any direct or indirect majority-owned subsidiary of the Company with (A) the Interested Stockholder or (B) with any other corporation if the merger or consolidation is caused by the Interested Stockholder and as a result of such merger or consolidation Section 1 of this Article Eighth is not applicable to the surviving corporation;

(ii) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Company, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Company or of any direct or indirect majority-owned subsidiary of the Company which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Company determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Company;

(iii) any transaction which results in the issuance or transfer by the Company or by any direct or indirect majority-owned subsidiary of the Company of any stock of the Company or of such subsidiary to the Interested Stockholder, except (A) pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the Company or any such subsidiary which securities were outstanding prior to the time that the Interested Stockholder became such, (B) pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the Company or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Company subsequent to the time the Interested Stockholder became such, (C) pursuant to an exchange offer by the Company to purchase stock made on the same terms to all holders of such stock, or (D) any issuance or transfer of stock by the Company; provided, however, that in no case under subclauses (B), (C), or (D) of this clause (iii) will there be an increase in the Interested Stockholder's proportionate share of the stock of any class or series of the Company or of the Voting Stock;

(iv) any transaction involving the Company or any direct or indirect majority-owned subsidiary of the Company which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Company or of any such subsidiary which is Owned by the Interested Stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the Interested Stockholder; or

(v) any receipt by the Interested Stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Company), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in clauses (i)-(iv) of this paragraph (c)) provided by or through the Company or any direct or indirect majority-owned subsidiary of the Company.

(d) "Control," including the terms "Controlling," "Controlled By," and "Under Common Control With," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract, or otherwise. A Person who is the Owner of 20% of more of a corporation's outstanding stock entitled to vote generally in the election of directors will be presumed to have Control of such corporation, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of Control will not apply where such Person holds such voting stock, in good faith and not for the purpose of circumventing this Article Eighth, as an agent, bank, broker, nominee, custodian, or trustee for one or more Owners who do not individually or as a group have Control of such corporation.

(e) "Interested Stockholder" means any Person (other than the Company and any direct or indirect majority-owned subsidiary of the Company) that (i) is the Owner of 15% or more of the Voting Stock or (ii) is an Affiliate or Associate of the Company and was the Owner of 15% or more of the outstanding Voting Stock at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person; provided, however, that the term Interested Stockholder will not include any Person whose Ownership of shares in excess of the 15% limitation set forth herein is the result of action taken solely by the Company unless and until such Person thereafter acquires additional shares of Voting Stock, except as a result of further corporate action not caused, directly or indirectly, by such Person; provided further, however, that a Person will not be deemed to be an Interested Stockholder solely by reason of such Person, and the Affiliates and Associates of such Person, receiving, or having the right to receive, shares of Common Stock, or securities that are convertible into, or exercisable or exchangeable for, shares of Common Stock, pursuant to the Plan of Reorganization unless and until such time on or after the effective date of the Plan of

Reorganization as (A) such Person or any Affiliate or Associate of such Person becomes the Owner of additional Voting Stock representing 1% or more of the outstanding Voting Stock other than pursuant to the Plan of Reorganization or as a result of a stock dividend, stock split, or similar transaction effected by the Company in which all holders of each class or series of Voting Stock are treated equally with all other holders of such class or series of Voting Stock or (B) any Person which Owns Voting Stock representing 1% or more of the outstanding Voting Stock and was not an Affiliate or Associate of such Person as of the effective date of the Plan of Reorganization subsequently becomes an Affiliate or Associate of such Person. For the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock deemed to be outstanding will include stock deemed to be Owned by such Person through application of paragraph (f) of this Section 3 but will not include any other unissued stock of the Company that may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, options, or other rights.

(f) "Owner" including the terms "Own," "Owned," and "Ownership" when used with respect to any stock means a Person that individually or with or through any of its Affiliates or Associates:

(i) beneficially owns such stock, directly or indirectly; or

(ii) has (A) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or other rights; provided, however, that a Person will not be deemed the Owner of stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person's Affiliates or Associates until such tendered stock is accepted for purchase or exchange or (B) the right to vote such stock pursuant to any agreement, arrangement, or understanding; provided, however, that a Person will not be deemed to be the Owner of any stock because of such Person's right to vote such stock if the agreement, arrangement, or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(iii) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in subclause (B) of clause (ii) of this paragraph (g)), or disposing of such stock with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, such stock; provided, however, that a Person will not be deemed to Own any stock solely by reason of the Agreement and Provisions Relating to Restrictions on Transfer of Certain Shares of Common Stock of Federated Department Stores, Inc. provided for in the Plan of Reorganization or solely as a result of such Person being a party to a stockholders agreement to which the Company is a party.

(g) "Person" means any individual, corporation, partnership, unincorporated association, or other entity.

(h) "Plan of Reorganization" means the plan of reorganization of Federated Department Stores, Inc., Allied Stores Corporation, and certain of their subsidiaries as confirmed by the United States Bankruptcy Court for the Southern District of Ohio, Western Division, in Consolidated Case No. 1-90-00130.

Section 4. Powers of the Board. For purposes of this Article Eighth, a majority of the Whole Board will have the power to make all determinations pursuant to this Article Eighth, including with respect to (a) whether a Person is an Interested Stockholder, (b) the number of shares of Voting Stock owned by a Person, (c) whether a Person is an Affiliate or Associate of another Person, and (d) the aggregate fair market value of assets and stock of the Company.

Section 5. Interpretations. Each of the provisions of this Article Eighth which is also a part of Section 203 of the DGCL will be interpreted in a manner consistent with the judicial interpretations that have been, or may in the future be, rendered with respect to Section 203 of the DGCL.

Section 6. Amendment, Repeal, Etc. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least a majority of the Voting Stock, voting together as a single class, is required to amend or repeal, or adopt any provision inconsistent with, this Article Eighth. An amendment or repeal, or adoption of any provision inconsistent with, this Article Eighth adopted pursuant to this Section 6 shall not be effective until 12 months after the adoption of such amendment, repeal, or adoption of an inconsistent provision, and will not apply to

any Business Combination between the Company and any Person who became an Interested Stockholder on or prior to such amendment, repeal, or adoption of an inconsistent provision.

NINTH. To the full extent permitted by the Delaware General Corporation Law or any other applicable law currently or hereafter in effect, no Director of the Company will be personally liable to the Company or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a Director of the Company. Any repeal or modification of this Article Ninth will not adversely affect any right or protection of a Director of the Company existing prior to such repeal or modification.

TENTH. Each person who is or was or had agreed to become a Director or officer of the Company, and each such person who is or was serving or who had agreed to serve at the request of the Board or an officer of the Company as an employee or agent of the Company or as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other entity, whether for profit or not for profit (including the heirs, executors, administrators, or estate of such person), will be indemnified by the Company to the full extent permitted by the Delaware General Corporation Law or any other applicable law as currently or hereafter in effect. Persons in respect of whom indemnity obligations are deemed to be assumed by the Company pursuant to Article V.E.3 of the Plan of Reorganization and Section 365 of title 11 of the United States Code as in effect on the effective date of the Plan of Reorganization (the "Bankruptcy Code") or in respect of whom indemnity obligations arise in the future by reason of such person's service as a director, officer, or employee of the Company, will be deemed to have served at the request of the predecessors of the Company to the extent that they served as directors, officers, or employees of Federated Stores, Inc. ("FSI") or any of its affiliates (as defined in Section 101(2) of the Bankruptcy Code) prior to the effective date of the Plan of Reorganization; provided, however, that the indemnity provided for in this Article Tenth will not apply to any person who continues to serve as a director of Ralphs Grocery Company ("Ralphs") as of or following the effective date of the Plan of Reorganization notwithstanding the immediately preceding sentence of this Article Tenth to the extent that the action, suit, or proceeding in respect of which a claim for indemnification is made relates to or arises out of such person's service as a director, officer, or employee of Ralphs at any time after the effective date of the Plan of Reorganization. The right of indemnification provided in this Article Tenth (a) will not be exclusive of any other rights to which any person seeking indemnification may otherwise be entitled, including without limitation pursuant to any contract

approved by a majority of the Whole Board (whether or not the Directors approving such contract are or are to be parties to such contract or similar contracts), and (b) will be applicable to matters otherwise within its scope whether or not such matters arose or arise before or after the adoption of this Article Tenth except to the extent that the obligation of the Company or its predecessors to provide such indemnification would otherwise have terminated as expressly provided in Article V.E.3 of the Plan of Reorganization. Without limiting the generality or the effect of the foregoing, the Company may adopt By-Laws, or enter into one or more agreements with any person, which provide for indemnification greater or different than that provided in this Article Tenth or the DGCL. Any amendment or repeal of, or adoption of any provision inconsistent with, this Article Tenth will not adversely affect any right or protection existing hereunder, or arising out of facts occurring, prior to such amendment, repeal, or adoption and no such amendment, repeal, or adoption, will affect the legality, validity, or enforceability of any contract entered into or right granted prior to the effective date of such amendment, repeal, or adoption.

ELEVENTH. The Company will not issue nonvoting equity securities to the extent prohibited by Section 1123 of the Bankruptcy Code; provided, however, that this Article Eleventh (a) will have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as such Section is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time in effect.

ANNEX B

FEDERATED DEPARTMENT STORES, INC.

BY-LAWS

As Adopted and in
Effect on February 4, 1992

FEDERATED DEPARTMENT STORES, INC.

BY-LAWS

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STOCKHOLDERS' MEETINGS

1. Time and Place of Meetings. All meetings of the stockholders for the election of Directors or for any other purpose will be held at such time and place, within or without the State of Delaware, as may be designated by the Board or, in the absence of a designation by the Board, the Chairman, the President, or the Secretary, and stated in the notice of meeting. The Board may postpone and reschedule any previously scheduled annual or special meeting of the stockholders.

2. Annual Meeting. An annual meeting of the stockholders will be held at such date and time as may be designated from time to time by the Board, at which meeting the stockholders will elect by a plurality vote the Directors to succeed those whose terms expire at such meeting and will transact such other business as may properly be brought before the meeting in accordance with By-Law 8. The first annual meeting of the stockholders following the confirmation of the Plan of Reorganization (the "1993 Annual Meeting") will occur on such date during 1993 as may be fixed by the Board; provided, however, that (a) such meeting will be scheduled by the Board for a date no later than June 30, 1993, (b) notwithstanding the last sentence of By-Law 1, such meeting may not be postponed and rescheduled without the affirmative vote of a majority of the Non-Employee Directors then in office, and (c) upon the conclusion of such annual meeting, the By-Laws, without further action, will be deemed to be amended so as to eliminate therefrom this sentence and the next sentence of this By-Law 2. Notwithstanding any provision of the Certificate of Incorporation or these By-Laws to the contrary, the immediately preceding sentence may not be amended or repealed by the Board, and no provision inconsistent therewith may be adopted by the Board, prior to the 1993 Annual Meeting without the affirmative vote of a majority of the Non-Employee Directors then in office. For purposes of these By-Laws, "Non-Employee Director" means any Director who is not, and who, as of the Effective Time of the Federated/Allied Combination Transactions (as defined in the Plan of Reorganization) was not then, and for the preceding two years had not been, a full-time employee of the Company, any subsidiary of the Company, any predecessor of the Company, any subsidiary of any predecessor of the Company, FSI, Ralphs, any other subsidiary of FSI, Campeau Corporation, or any other affiliate (as that term is defined in Section 101(2) of the Bankruptcy Code) of Campeau Corporation; provided, however, that any Director who is elected to the Board by the Company's stockholders and who is not at the time of such election a full-time employee of the Company or any

subsidiary of the Company, but who would not otherwise be a Non-Employee Director because he or she had been such an employee during such two-year period, will be deemed to be a Non-Employee Director for all purposes, other than membership on any committee of the Board described in clause (iii) of By-Law 19(e), effective as of the time of such election.

3. Special Meetings. (a) Special meetings of the stockholders may be called only by (i) the Chairman, (ii) the Secretary within 10 calendar days after receipt of the written request of a majority of the Whole Board, and (iii) as provided in By-Law 3(b). Any such request by a majority of the Whole Board must be sent to the Chairman and the Secretary and must state the purpose or purposes of the proposed meeting. Special meetings of holders of the outstanding Preferred Stock, if any, may be called in the manner and for the purposes provided in the applicable Preferred Stock Designation.

(b) Upon the receipt by the Company of a written request | executed by the holders of not less than 15% of the outstanding Voting Stock (a "Meeting Request"), the Board will (i) call a special meeting of the stockholders for the purposes specified in the Meeting Request and (ii) fix a record date for the determination of stockholders entitled to notice of and to vote at such meeting, which record date will not be later than 60 calendar days after the date of receipt by the Company of the Meeting Notice; provided, however, that no separate special meeting of stockholders requested pursuant to a Meeting Request will be required to be convened if (A) the Board calls an annual or special meeting of stockholders to be held not later than 90 calendar days after receipt of such Meeting Request and (B) the purposes of such annual or special meeting include (among any other matters properly brought before the meeting) the purposes specified in such Meeting Request.

Notwithstanding any provision of the Certificate of Incorporation or these By-Laws to the contrary, this By-Law 3(b) may not be amended or repealed by the Board, and no provision inconsistent therewith may be adopted by the Board, without the affirmative vote of the holders of at least a majority of the Common Stock present or represented by proxy and entitled to vote at any annual or special meeting of stockholders at which such vote is to be taken.

4. Notice of Meetings. Written notice of every meeting of the stockholders, stating the place, date, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, will be given not less than 10 nor more than 60 calendar days before the date of the meeting to each stockholder of record entitled to vote at

such meeting, except as otherwise provided herein or by law. When a meeting is adjourned to another place, date, or time, written notice need not be given of the adjourned meeting if the place, date, and time thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 calendar days, or if after the adjournment a new record date is fixed for the adjourned meeting, written notice of the place, date, and time of the adjourned meeting must be given in conformity herewith. At any adjourned meeting, any business may be transacted which properly could have been transacted at the original meeting.

5. Inspectors. The Board may appoint one or more inspectors of election to act as judges of the voting and to determine those entitled to vote at any meeting of the stockholders, or any adjournment thereof, in advance of such meeting. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer of the meeting may appoint one or more substitute inspectors.

6. Quorum. Except as otherwise provided by law or in a Preferred Stock Designation, the holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at all meetings of the stockholders for the transaction of business thereat. If, however, such quorum is not present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, will have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented.

7. Voting. Except as otherwise provided by law, by the Certificate of Incorporation, or in a Preferred Stock Designation, each stockholder will be entitled at every meeting of the stockholders to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the Company on the record date for the meeting and such votes may be cast either in person or by written proxy. Every proxy must be duly executed and filed with the Secretary. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary. The vote upon any question brought before a meeting of the stockholders may be by voice vote, unless otherwise required by

the Certificate of Incorporation or these By-Laws or unless the Chairman or the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or by proxy at such meeting otherwise determine. Every vote taken by written ballot will be counted by the inspectors of election. When a quorum is present at any meeting, the affirmative vote of the holders of a majority of the stock present in person or represented by proxy at the meeting and entitled to vote on the subject matter and which has actually been voted will be the act of the stockholders, except in the election of Directors or as otherwise provided in these By-Laws, the Certificate of Incorporation, a Preferred Stock Designation, or by law.

8. Order of Business. (a) The Chairman, or such other officer of the Company designated by a majority of the Whole Board, will call meetings of the stockholders to order and will act as presiding officer thereof. Unless otherwise determined by the Board prior to the meeting, the presiding officer of the meeting of the stockholders will also determine the order of business and have the authority in his or her sole discretion to regulate the conduct of any such meeting, including without limitation by imposing restrictions on the persons (other than stockholders of the Company or their duly appointed proxies) who may attend any such stockholders' meeting, by ascertaining whether any stockholder or his proxy may be excluded from any meeting of the stockholders based upon any determination by the presiding officer, in his sole discretion, that any such person has unduly disrupted or is likely to disrupt the proceedings thereat, and by determining the circumstances in which any person may make a statement or ask questions at any meeting of the stockholders.

(b) At an annual meeting of the stockholders, only such business will be conducted or considered as is properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board in accordance with By-Law 4, (ii) otherwise properly brought before the meeting by the presiding officer or by or at the direction of a majority of the Whole Board, or (iii) otherwise properly requested to be brought before the meeting by a stockholder of the Company in accordance with By-Law 8(c).

(c) For business to be properly requested by a stockholder to be brought before an annual meeting, the stockholder must (i) be a stockholder of the Company of record at the time of the giving of the notice for such annual meeting provided for

in these By-Laws, (ii) be entitled to vote at such meeting, and (iii) have given timely notice thereof in writing to the Secretary. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Company not less than 60 calendar days prior to the annual meeting; provided, however, that in the event public announcement of the date of the annual meeting is not made at least 75 calendar days prior to the date of the annual meeting, notice by the stockholder to be timely must be so received not later than the close of business on the 10th calendar day following the day on which public announcement is first made of the date of the annual meeting. A stockholder's notice to the Secretary must set forth as to each matter the stockholder proposes to bring before the annual meeting (A) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (B) the name and address, as they appear on the Company's books, of the stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made, (C) the class and number of shares of the Company that are owned beneficially and of record by the stockholder proposing such business and by the beneficial owner, if any, on whose behalf the proposal is made, and (D) any material interest of such stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made in such business. Notwithstanding the foregoing provisions of this By-Law 8(c), a stockholder must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this By-Law 8(c). For purposes of this By-Law 8(c) and By-Law 13, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the Company with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Securities Exchange Act of 1934, as amended, or furnished to stockholders. Nothing in this By-Law 8(c) will be deemed to affect any rights of stockholders to request inclusion of proposals in the Company's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

(d) At a special meeting of stockholders, only such business may be conducted or considered as is properly brought before the meeting. To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Chairman or a majority of the Whole Board in accordance with By-Law 4 or (ii) otherwise properly brought

before the meeting by the presiding officer or by or at the direction of a majority of the Whole Board.

(e) The determination of whether any business sought to be brought before any annual or special meeting of the stockholders is properly brought before such meeting in accordance with this By-Law 8 will be made by the presiding officer of such meeting. If the presiding officer determines that any business is not properly brought before such meeting, he or she will so declare to the meeting and any such business will not be conducted or considered.

DIRECTORS

9. Function. The business and affairs of the Company will be managed under the direction of its Board.

10. Number, Election, and Terms. Subject to the rights, if any, of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation and to the minimum and maximum number of authorized Directors provided in the Certificate of Incorporation, the authorized number of Directors may be determined from time to time only (i) by a vote of a majority of the Whole Board or (ii) by the affirmative vote of the holders of at least 80% of the Voting Stock, voting together as a single class. The Directors, other than those who may be elected by the holders of any series of the Preferred Stock, will be classified with respect to the time for which they severally hold office in accordance with the Certificate of Incorporation.

11. Vacancies and Newly Created Directorships. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal, or other cause will be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, or by a sole remaining Director. Any Director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor is elected and qualified. No decrease in the number of Directors constituting the Board will shorten the term of an incumbent Director.

12. Removal. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, any Director may be removed from office by the stockholders only for cause and only in the manner provided in the Certificate of Incorporation and, if applicable, any amendment to this By-Law 12.

13. Nominations of Directors; Election. (a) Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, only persons who are nominated in accordance with the following procedures will be eligible for election at a meeting of stockholders as Directors of the Company.

(b) Nominations of persons for election as Directors of the Company may be made only at an annual meeting of stockholders (i) by or at the direction of the Board or (ii) by any stockholder who is a stockholder of record at the time of giving of notice provided for in this By-Law 13, who is entitled to vote for the election of Directors at such meeting, and who complies with the procedures set forth in this By-Law 13. All nominations by stockholders must be made pursuant to timely notice in proper written form to the Secretary.

(c) To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Company not less than 60 calendar days prior to the annual meeting of stockholders; provided, however, that in the event that public announcement of the date of the annual meeting is not made at least 75 calendar days prior to the date of the annual meeting, notice by the stockholder to be timely must be so received not later than the close of business on the 10th calendar day following the day on which public announcement is first made of the date of the annual meeting. To be in proper written form, such stockholder's notice must set forth or include (i) the name and address, as they appear on the Company's books, of the stockholder giving the notice and of the beneficial owner, if any, on whose behalf the nomination is made; (ii) a representation that the stockholder giving the notice is a holder of record of stock of the Company entitled to vote at such annual meeting and intends to appear in person or by proxy at the annual meeting to nominate the person or persons specified in the notice; (iii) the class and number of shares of stock of the Company owned beneficially and of record by the stockholder giving the notice and by the beneficial owner, if any, on whose behalf the nomination is made; (iv) a description of all arrangements or understandings between or

among any of (A) the stockholder giving the notice, (B) the beneficial owner on whose behalf the notice is given, (C) each nominee, and (D) any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder giving the notice; (v) such other information regarding each nominee proposed by the stockholder giving the notice as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board; and (vi) the signed consent of each nominee to serve as a director of the Company if so elected. At the request of the Board, any person nominated by the Board for election as a Director must furnish to the Secretary that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. The presiding officer of any annual meeting will, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed by this By-Law 13, and if he or she should so determine, he or she will so declare to the meeting and the defective nomination will be disregarded. Notwithstanding the foregoing provisions of this By-Law 13, a stockholder must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this By-Law 13.

14. Resignation. Any Director may resign at any time by giving written notice of his resignation to the Chairman or the Secretary. Any resignation will be effective upon actual receipt by any such person or, if later, as of the date and time specified in such written notice.

15. Regular Meetings. Regular meetings of the Board may be held immediately after the annual meeting of the stockholders and at such other time and place either within or without the State of Delaware as may from time to time be determined by the Board. Notice of regular meetings of the Board need not be given.

16. Special Meetings. Special meetings of the Board may be called by the Chairman or the President on one day's notice to each Director by whom such notice is not waived, given either personally or by mail, telephone, telegram, telex, facsimile, or similar medium of communication, and will be called by the Chairman or the President in like manner and on like notice on the written request of five or more Directors. Special meetings of the Board may be held at such time and place either within or without the State of Delaware as is

determined by the Board or specified in the notice of any such meeting.

17. Quorum. At all meetings of the Board, a majority of the total number of Directors then in office will constitute a quorum for the transaction of business. Except for the designation of committees as hereinafter provided and except for actions required by these By-Laws or the Certificate of Incorporation to be taken by a majority of the Whole Board, the act of a majority of the Directors present at any meeting at which there is a quorum will be the act of the Board. If a quorum is not present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date, without notice other than announcement at the meeting, until a quorum is present.

18. Participation in Meetings by Telephone Conference. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or any such committee, as the case may be, by means of telephone conference or similar means by which all persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting.

19. Committees. (a) The Board, by resolution passed by a majority of the Whole Board, will designate an executive and finance committee (the "Executive and Finance Committee") of not less than five members of the Board, one of whom will be the Chairman. The Executive and Finance Committee will have and may exercise the powers of the Board, except the power to amend these By-Laws or the Certificate of Incorporation (except, to the extent authorized by a resolution of the Whole Board, to fix the designation, preferences, and other terms of any series of Preferred Stock), adopt an agreement of merger or consolidation, authorize the issuance of stock, declare a dividend, or recommend to the stockholders the sale, lease, or exchange of all or substantially all of the Company's property and assets, a dissolution of the Company, or a revocation of a dissolution, and except as otherwise provided by law.

(b) The Board, by resolution passed by a majority of the Whole Board, may designate one or more additional committees, each such committee to consist of one or more Directors and each to have such lawfully delegable powers and duties as the Board may confer.

(c) The Executive and Finance Committee and each other committee of the Board will serve at the pleasure of the Board or as may be specified in any resolution from time to time

adopted by the Board. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of such committee. In lieu of such action by the Board, in the absence or disqualification of any member of a committee of the Board, the members thereof present at any such meeting of such committee and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(d) Except as otherwise provided in these By-Laws or by law, any committee of the Board, to the extent provided in Paragraph (a) of this By-Law or, if applicable, in the resolution of the Board, will have and may exercise all the powers and authority of the Board in the direction of the management of the business and affairs of the Company. Any such committee designated by the Board will have such name as may be determined from time to time by resolution adopted by the Board. Unless otherwise prescribed by the Board, a majority of the members of any committee of the Board will constitute a quorum for the transaction of business, and the act of a majority of the members present at a meeting at which there is a quorum will be the act of such committee. Each committee of the Board may prescribe its own rules for calling and holding meetings and its method of procedure, subject to any rules prescribed by the Board, and will keep a written record of all actions taken by it.

(e) A majority of the members of the Executive and Finance Committee, and all of the members of any committee the primary responsibilities of which include (i) reviewing the professional services to be provided by the Company's independent auditors and the independence of such firm from the Company's management, reviewing financial statements with management or independent auditors, and/or reviewing internal accounting controls, (ii) reviewing and approving salaries and other compensation, whether cash or non-cash, and benefits of the Company's executive officers, or (iii) recommending candidates to the Board for nomination for election to the Board, will be Non-Employee Directors. Notwithstanding any provision of the Certificate of Incorporation or these By-Laws to the contrary, this By-Law 19(e) may not be amended or repealed by the Board, and no provision inconsistent therewith may be adopted by the Board, without the affirmative vote of the holders of at least a majority of the Common Stock present or represented by proxy and entitled to vote at any annual or special meeting of stockholders at which such vote is to be taken.

20. Compensation. The Board may establish the compensation for, and reimbursement of the expenses of, Directors for membership on the Board and on committees of the Board, attendance at meetings of the Board or committees of the Board, and for other services by Directors to the Company or any of its majority-owned subsidiaries.

21. Rules. The Board may adopt rules and regulations for the conduct of meetings and the oversight of the management of the affairs of the Company.

NOTICES

22. Generally. Except as otherwise provided by law, these By-Laws, or the Certificate of Incorporation, whenever by law or under the provisions of the Certificate of Incorporation or these By-Laws notice is required to be given to any Director or stockholder, it will not be construed to require personal notice, but such notice may be given in writing, by mail, addressed to such Director or stockholder, at the address of such Director or stockholder as it appears on the records of the Company, with postage thereon prepaid, and such notice will be deemed to be given at the time when the same is deposited in the United States mail. Notice to Directors may also be given by telephone, telegram, telex, facsimile, or similar medium of communication or as otherwise may be permitted by these By-Laws.

23. Waivers. Whenever any notice is required to be given by law or under the provisions of the Certificate of Incorporation or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time of the event for which notice is to be given, will be deemed equivalent to such notice. Attendance of a person at a meeting will constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

OFFICERS

24. Generally. The officers of the Company will be elected by the Board and will consist of a Chairman (who, unless the Board specifies otherwise, will also be the Chief

Executive Officer), a President, a Secretary, and a Treasurer. The Board of Directors may also choose any or all of the following: one or more Vice Chairmen, one or more Assistants to the Chairman, one or more Vice Presidents (who may be given particular designations with respect to authority, function, or seniority), and such other officers as the Board may from time to time determine. Notwithstanding the foregoing, by specific action the Board may authorize the Chairman to appoint any person to any office other than Chairman, President, Secretary, or Treasurer. Any number of offices may be held by the same person. Any of the offices may be left vacant from time to time as the Board may determine. In the case of the absence or disability of any officer of the Company or for any other reason deemed sufficient by a majority of the Board, the Board may delegate the absent or disabled officer's powers or duties to any other officer or to any Director.

25. Compensation. The compensation of all officers and agents of the Company who are also Directors of the Company will be fixed by the Board or by a committee of the Board. The Board may fix, or delegate the power to fix, the compensation of other officers and agents of the Company to an officer of the Company.

26. Succession. The officers of the Company will hold office until their successors are elected and qualified. Any officer may be removed at any time by the affirmative vote of a majority of the Whole Board. Any vacancy occurring in any office of the Company may be filled by the Board or by the Chairman as provided in By-Law 24.

27. Authority and Duties. Each of the officers of the Company will have such authority and will perform such duties as are customarily incident to their respective offices or as may be specified from time to time by the Board.

STOCK

28. Certificates. Certificates representing shares of stock of the Company will be in such form as is determined by the Board, subject to applicable legal requirements. Each such certificate will be numbered and its issuance recorded in the books of the Company, and such certificate will exhibit the holder's name and the number of shares and will be signed by, or in the name of, the Company by the Chairman and the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, and will also be signed by, or bear the

facsimile signature of, a duly authorized officer or agent of any properly designated transfer agent of the Company. Any or all of the signatures and the seal of the Company, if any, upon such certificates may be facsimiles, engraved, or printed. Such certificates may be issued and delivered notwithstanding that the person whose facsimile signature appears thereon may have ceased to be such officer at the time the certificates are issued and delivered.

29. Classes of Stock. The designations, preferences, and relative participating, optional, or other special rights of the various classes of stock or series thereof, and the qualifications, limitations, or restrictions thereof, will be set forth in full or summarized on the face or back of the certificates which the Company issues to represent its stock or, in lieu thereof, such certificates will set forth the office of the Company from which the holders of certificates may obtain a copy of such information.

30. Transfers and Restrictions on Transfers. (a) Subject to By-Law 30(b), upon surrender to the Company or the transfer agent of the Company of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, it will be the duty of the Company to issue, or to cause its transfer agent to issue, a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books.

(b) On the terms and subject to the conditions set forth in the Agreement and Provisions Relating to Restrictions on Transfer of Certain Shares of Common Stock of Federated Department Stores, Inc. (the "Provisions") attached as Annex I to these By-Laws, including without limitation the provisions thereof relating to termination and amendment of the Provisions, certain shares of Common Stock will be subject to restrictions on transfer and the Company, the holders of such shares, and certain other persons and entities will have the respective rights, benefits, and obligations provided for in the Provisions. Notwithstanding any provision of the Certificate of Incorporation or these By-Laws to the contrary, this By-Law 30(b) may not be amended or repealed by the Board, and no provision inconsistent herewith may be adopted by the Board, in either case until such time as the Provisions have terminated in accordance with their terms.

31. Lost, Stolen, or Destroyed Certificates. The Secretary may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact,

satisfactory to the Secretary, by the person claiming the certificate of stock to be lost, stolen, or destroyed. As a condition precedent to the issuance of a new certificate or certificates, the Secretary may require the owners of such lost, stolen, or destroyed certificate or certificates to give the Company a bond in such sum and with such surety or sureties as the Secretary may direct as indemnity against any claims that may be made against the Company with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of the new certificate.

32. Record Dates. (a) In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which will not be more than 60 nor less than 10 calendar days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders will be at the close of business on the calendar day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the calendar 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 the stockholders will apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Company 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 may fix a record date, which record date will not be more than 60 calendar days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose will be at the close of business on the calendar day on which the Board adopts the resolution relating thereto.

(c) The Company will be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes, and will not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Company has notice thereof, except as expressly provided by applicable law.

INDEMNIFICATION

33. Damages and Expenses. (a) Without limiting the generality or effect of Article Ninth of the Certificate of Incorporation, the Company will to the fullest extent permitted by applicable law as then in effect indemnify any person (an "Indemnitee") who is or was involved in any manner (including without limitation as a party or a witness) or is threatened to be made so involved in any threatened, pending, or completed investigation, claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative (including without limitation any action, suit, or proceeding by or in the right of the Company to procure a judgment in its favor) (a "Proceeding") by reason of the fact that such person is or was or had agreed to become a Director, officer, employee, or agent of the Company, or is or was serving at the request of the Board or an officer of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other entity, whether for profit or not for profit (including the heirs, executors, administrators, or estate of such person), or anything done or not by such person in any such capacity, against all expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding. Such indemnification will be a contract right and will include the right to receive payment in advance of any expenses incurred by an Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.

(b) The right of indemnification provided in this By-Law 33 will not be exclusive of any other rights to which any person seeking indemnification may otherwise be entitled, and will be applicable to Proceedings commenced or continuing after the adoption of this By-Law 33, whether arising from acts or omissions occurring before or after such adoption.

(c) In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions, and remedies will apply with respect to advancement of expenses and the right to indemnification under this By-Law 33:

(i) All reasonable expenses incurred by or on behalf of an Indemnitee in connection with any Proceeding will be advanced to the Indemnitee by the Company within 30 calendar days after the receipt by the Company of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements will describe in reasonable detail the

expenses incurred by the Indemnitee and, if and to the extent required by law at the time of such advance, will include or be accompanied by an undertaking by or on behalf of the Indemnitee to repay such amounts advanced as to which it may ultimately be determined that the Indemnitee is not entitled. If such an undertaking is required by law at the time of an advance, no security will be required for such undertaking and such undertaking will be accepted without reference to the recipient's financial ability to make repayment.

(ii) To obtain indemnification under this By-Law 33, the Indemnitee will submit to the Secretary a written request, including such documentation supporting the claim as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the Indemnitee's entitlement to indemnification will be made not less than 60 calendar days after receipt by the Company of the written request for indemnification together with the Supporting Documentation. The Secretary will promptly upon receipt of such a request for indemnification advise the Board in writing that the Indemnitee has requested indemnification. The Indemnitee's entitlement to indemnification under this By-Law 33 will be determined in one of the following ways: (A) by a majority vote of the Disinterested Directors (as hereinafter defined), if they constitute a quorum of the Board, or, in the case of an Indemnitee that is not a present or former officer of the Company, by any committee of the Board or committee of officers or agents of the Company designated for such purpose by a majority of the Whole Board; (B) by a written opinion of Independent Counsel if (1) a Change of Control has occurred and the Indemnitee so requests or (2) in the case of an Indemnitee that is a present or former officer of the Company, a quorum of the Board consisting of Disinterested Directors is not obtainable or, even if obtainable, a majority of such Disinterested Directors so directs; (C) by the stockholders (but only if a majority of the Disinterested Directors, if they constitute a quorum of the Board, presents the issue of entitlement to indemnification to the stockholders for their determination); or (D) as provided in subparagraph (iii) below. In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to clause (B) above, a majority of the Disinterested Directors will select the Independent Counsel, but only an Independent Counsel to which the Indemnitee does not reasonably object; provided, however, that if a Change of Control has occurred, the Indemnitee

will select such Independent Counsel, but only an Independent Counsel to which the Board does not reasonably object.

(iii) Except as otherwise expressly provided in this By-Law 33, the Indemnitee will be presumed to be entitled to indemnification under this By-Law 33 upon submission of a request for indemnification together with the Supporting Documentation in accordance with subparagraph (c)(ii) above, and thereafter the Company will have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under subparagraph (c)(ii) to determine entitlement to indemnification has not been appointed or has not made a determination within 60 calendar days after receipt by the Company of the request therefor together with the Supporting Documentation, the Indemnitee will be deemed to be entitled to indemnification and the Indemnitee will be entitled to such indemnification unless (A) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. The termination of any Proceeding described in paragraph (a) of this By-Law 33, or of any claim, issue, or matter therein, by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, adversely affect the right of the Indemnitee to indemnification or create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that the Indemnitee had reasonable cause to believe that his conduct was unlawful.

(iv) (A) In the event that a determination is made pursuant to subparagraph (c)(ii) that the Indemnitee is not entitled to indemnification under this By-Law 33, (1) the Indemnitee will be entitled to seek an adjudication of his or her entitlement to such indemnification either, at the Indemnitee's sole option, in (x) an appropriate court of the State of Delaware or any other court of competent jurisdiction or (y) an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association; (2) any such judicial proceeding or arbitration will be de novo and the Indemnitee will not be prejudiced by reason of such adverse determination; and (3) in any such judicial proceeding or arbitration the Company will have the burden of proving that the Indemnitee is not entitled to indemnification under this By-Law 33.

(B) If a determination is made or deemed to have been made, pursuant to subparagraph (c)(ii) or (iii) of this By-Law 33, that the Indemnitee is entitled to indemnification, the Company will be obligated to pay the amounts constituting such indemnification within five business days after such determination has been made or deemed to have been made and will be conclusively bound by such determination unless (1) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (2) such indemnification is prohibited by law. In the event that advancement of expenses is not timely made pursuant to subparagraph (c)(i) of this By-Law 33 or payment of indemnification is not made within five business days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to subparagraph (c)(ii) or (iii) of this By-Law 33, the Indemnitee will be entitled to seek judicial enforcement of the Company's obligation to pay to the Indemnitee such advancement of expenses or indemnification. Notwithstanding the foregoing, the Company may bring an action, in an appropriate court in the State of Delaware or any other court of competent jurisdiction, contesting the right of the Indemnitee to receive indemnification hereunder due to the occurrence of any event described in subclause (1) or (2) of this clause (B) (a "Disqualifying Event"); provided, however, that in any such action the Company will have the burden of proving the occurrence of such Disqualifying Event.

(C) The Company will be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to the provisions of this subparagraph (c)(iv) that the procedures and presumptions of this By-Law 33 are not valid, binding, and enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this By-Law 33.

(D) In the event that the Indemnitee, pursuant to the provisions of this subparagraph (c)(iv), seeks a judicial adjudication of, or an award in arbitration to enforce, his rights under, or to recover damages for breach of, this By-Law 33, the Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any expenses actually and reasonably incurred by the Indemnitee if the Indemnitee prevails in such judicial adjudication or arbitration. If it is determined in such judicial adjudication or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by

the Indemnitee in connection with such judicial adjudication or arbitration will be prorated accordingly.

(v) For purposes of this paragraph (c):

(A) "Change in Control" means the occurrence of any of the following events (other than the Federated/Allied Combination Transactions (as that term is defined in the Plan of Reorganization) or any other event provided for in the Plan of Reorganization):

(1) The Company is merged, consolidated, or reorganized into or with another corporation or other legal entity, and as a result of such merger, consolidation, or reorganization less than a majority of the combined voting power of the then-outstanding securities of such corporation or entity immediately after such transaction are held in the aggregate by the holders of the Voting Stock immediately prior to such transaction;

(2) The Company sells or otherwise transfers all or substantially all of its assets to another corporation or other legal entity and, as a result of such sale or transfer, less than a majority of the combined voting power of the then-outstanding securities of such other corporation or entity immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock immediately prior to such sale or transfer;

(3) There is a report filed on Schedule 13D or Schedule 14D-1 (or any successor schedule, form, or report or item therein), each as promulgated pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), disclosing that any person (as the term "person" is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) has become the beneficial owner (as the term "beneficial owner" is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) of securities representing 30% or more of the combined voting power of the Voting Stock; provided, however, that no person will be deemed a member of a "group" (as that term is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) for purposes of this paragraph (c)(v)(A) solely by reason of being a party to the New Federated Stockholders Agreement (as that term is defined in the Plan of Reorganization);

(4) The Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing in response to Form 8-K or Schedule 14A (or any successor schedule, form, or report or item therein) that a change in control of the Company has occurred or will occur in the future pursuant to any then-existing contract or transaction; or

(5) If, during any period of two consecutive years, individuals who at the beginning of any such period constitute the Directors cease for any reason to constitute at least a majority thereof; provided, however, that for purposes of this clause (5) each Director who is first elected, or first nominated for election by the Company's stockholders, by a vote of at least two-thirds of the Directors (or a committee of the Board) then still in office who were Directors at the beginning of any such period will be deemed to have been a Director at the beginning of such period.

Notwithstanding the foregoing provisions of clauses (3) or (4) of this paragraph (c)(v)(A), unless otherwise determined in a specific case by majority vote of the Board, a "Change in Control" will not be deemed to have occurred for purposes of such clauses (3) or (4) solely because (x) the Company, (y) an entity in which the Company, directly or indirectly, beneficially owns 50% or more of the voting securities (a "Subsidiary"), or (z) any employee stock ownership plan or any other employee benefit plan of the Company or any Subsidiary either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K, or Schedule 14A (or any successor schedule, form, or report or item therein) under the Exchange Act disclosing beneficial ownership by it of shares of Voting Stock, whether in excess of 30% or otherwise, or because the Company reports that a change in control of the Company has occurred or will occur in the future by reason of such beneficial ownership.

(B) "Disinterested Director" means a Director of the Company who is not or was not a party to the Proceeding in respect of which indemnification is sought by the Indemnitee.

(C) "Independent Counsel" means a law firm or a member of a law firm that neither presently is, nor in the past five years has been, retained to represent (1) the Company or the Indemnitee in any matter material to either

such party or (2) any other party to the Proceeding giving rise to a claim for indemnification under this By-Law 33. Notwithstanding the foregoing, the term "Independent Counsel" will not include any person who, under the applicable standards of professional conduct then prevailing under the law of the State of Delaware, would be precluded from representing either the Company or the Indemnitee in an action to determine the Indemnitee's rights under this By-Law 33.

(d) Notwithstanding anything contained in these By-Laws to the contrary, the Company will indemnify any person serving (i) on or after January 15, 1990 as a director, officer, or employee of Federated Department Stores, Inc. (a predecessor to the Company, "Old Federated") or Allied Stores Corporation (a predecessor to the Company, "Allied") or any of their respective majority-owned subsidiaries or (ii) as a director, officer, or employee of another corporation, partnership, joint venture, trust, or other entity, including without limitation Campeau Corporation ("Campeau"), Campeau Properties, Inc. ("Campeau Properties"), Federated Holdings, Inc. ("Holdings"), Federated Holdings II, Inc. ("Holdings II"), Federated Holdings III, Inc. ("Holdings III"), FSI, Gold Circle, Inc. ("Gold Circle"), Ralphs, and their affiliates (as defined in Section 101(2) of the Bankruptcy Code) as of the effective date of the Plan of Reorganization other than Old Federated, Allied, and their respective subsidiaries (collectively, the "FSI Companies"), to the extent that such person, by reason of such person's past or future service in such a capacity, is, or but for the merger of Old Federated and Allied would be, entitled to indemnification by Old Federated, Allied, or any of their respective subsidiaries (collectively, the "Predecessor Companies") under, and to the extent provided in, the applicable certificates of incorporation, by-laws, or similar constituent documents of any of the Predecessor Companies, under any written agreement to which any of the Predecessor Companies is or was a party, or under any applicable statute; provided, however, that no person who (A) (1) as of the Effective Date of the Plan of Reorganization (as therein defined) or prior thereto was a director, officer, or employee of any FSI Company other than Gold Circle and (2) as of the Effective Date of the Plan of Reorganization (as therein defined), had not ceased to be a director, officer, or employee of any FSI Company other than FSI, Gold Circle, or Ralphs or had not ceased to be an officer or employee of Ralphs or (B) is or becomes a director, officer, or employee of Holdings, Holdings II, Holdings III, Campeau, or Campeau Properties or an officer or employee of Ralphs following the Effective Date of the Plan of Reorganization (as therein defined) will be entitled to indemnification pursuant to this By-Law 33. Any person who is entitled to indemnification pursuant to the immediately

preceding sentence or in respect of whom indemnity obligations arise in the future by reason of his or her service as director, officer, or employee of the Company will be deemed to have served at the request of Old Federated and Allied to the extent that he or she served as a director, officer, or employee of any subsidiary of Old Federated or Allied or any FSI Company prior to the effective date of the Plan of Reorganization; provided, however, that such indemnity will not apply to any person who continues to serve as a director of Ralphs as of or following the Effective Date of the Plan of Reorganization (as therein defined) to the extent that any Proceeding relates to or arises out of such person's service as a director, officer, or employee of Ralphs at any time after the Effective Date of the Plan of Reorganization (as therein defined).

(e) If any provision or provisions of this By-Law 33 are held to be invalid, illegal, or unenforceable for any reason whatsoever: (i) the validity, legality, and enforceability of the remaining provisions of this By-Law 33 (including without limitation all portions of any paragraph of this By-Law 33 containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) will not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this By-Law 33 (including without limitation all portions of any paragraph of this By-Law 33 containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) will be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.

34. Insurance, Contracts, and Funding. The Company may purchase and maintain insurance to protect itself and any Indemnitee against any expenses, judgments, fines, and amounts paid in settlement or incurred by any Indemnitee in connection with any Proceeding referred to in By-Law 33 or otherwise, to the fullest extent permitted by applicable law as then in effect. The Company may enter into contracts with any person entitled to indemnification under By-Law 33 or otherwise, and may create a trust fund, grant a security interest, or use other means (including without limitation a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in By-Law 33.

GENERAL

35. Fiscal Year. The fiscal year of the Company will end on the Saturday closest to January 31st of each year or such other date as may be fixed from time to time by the Board.

36. Seal. The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

37. Reliance upon Books, Reports, and Records. Each Director, each member of a committee designated by the Board, and each officer of the Company will, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements presented to the Company by any of the Company's officers or employees, or committees of the Board, or by any other person or entity as to matters the Director, committee member, or officer believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

38. Time Periods. In applying any provision of these By-Laws that requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days will be used unless otherwise specified, the day of the doing of the act will be excluded, and the day of the event will be included.

39. Amendments. Except as otherwise provided by law or by the Certificate of Incorporation or these By-Laws, these By-Laws or any of them may be amended in any respect or repealed at any time, either (i) at any meeting of stockholders, provided that any amendment or supplement proposed to be acted upon at any such meeting has been described or referred to in the notice of such meeting, or (ii) at any meeting of the Board, provided that no amendment adopted by the Board may vary or conflict with any amendment adopted by the stockholders.

40. Certain Defined Terms. Terms used herein with initial capital letters that are not otherwise defined are used herein as defined in the Certificate of Incorporation.

5826C

**AGREEMENT AND
PROVISIONS RELATING TO
RESTRICTIONS ON TRANSFER
OF CERTAIN SHARES OF
COMMON STOCK OF
FEDERATED DEPARTMENT STORES, INC.**

**(ANNEX I TO THE BY-LAWS OF
FEDERATED DEPARTMENT STORES, INC.)**

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Exhibits

- Exhibit A - Form of Holder Questionnaire**
- Exhibit B - Form of Securities Pricing Sheet**

I. CERTAIN DEFINITIONS

For purposes of this Agreement and Provisions Relating to Restrictions on Transfer of Certain Shares of Common Stock of Federated Department Stores, Inc. (these "Provisions"), the following terms have the following meanings when used herein with initial capital letters:

1.1. "Actual Salable Amount" means, with respect to any Public Sale Event, that number of shares of Common Stock which the Underwriters, in their sole discretion, agree to purchase or offer for sale pursuant to the applicable Underwriting Agreement (including shares of Common Stock purchased or offered for sale pursuant to any option granted to the Underwriters pursuant to the applicable Underwriting Agreement). All determinations of the Actual Salable Amount will be made not later than 24 hours prior to the time at which an Underwriting Agreement is executed and delivered or as otherwise provided in the applicable Underwriting Agreement.

1.2. "Actual Selling Price" means the price per share of Common Stock at which shares of Common Stock are offered for sale by the Underwriters in connection with a Public Sale Event.

1.3. "Affiliate" and "Associate" have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act as in effect on the Effective Date.

1.4. "Allied Bondholders Committee" means the Official Committee of Bondholders of Allied Stores Corporation.

1.5. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Ohio, Western Division.

1.6. "Beneficial Ownership," "Beneficial Owner," and "Beneficially Own" will be defined by reference to Rule 13d-3 under the Exchange Act; provided, however, that for purposes of these Provisions in no event will a Person be deemed to have "Beneficial Ownership" of, be the "Beneficial Owner" of, or "Beneficially Own" shares of Common Stock (a) solely by reason of (i) the receipt or grant of a revocable proxy pursuant to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations of the Commission under the Exchange Act in connection with any meeting of the stockholders of the Company or any action of the Holders contemplated by these Provisions or (ii) any action taken in accordance with these Provisions or (b) unless such

Person, alone or with one or more other Persons, has or shares the power to dispose of or direct the disposition of such shares of Common Stock.

1.7. "Co-Manager" means any co-managing underwriter for a Public Sale Event designated in accordance with Section 4.6.

1.8. "Commission" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

1.9. "Committee Notice" means a written notice delivered by the Offering Committee which (i) indicates that the Offering Committee desires to pursue a Stockholder Sale Event and (ii) specifies the number of Subject Shares desired to be sold in such Stockholder Sale Event.

1.10. "Common Stock" means the Common Stock, par value \$0.01 per share, of the Company.

1.11. "Company" means Federated Department Stores, Inc., a Delaware corporation.

1.12. "Creditor Committees" means the Federated Secured Creditors Committee, the Federated Premerger Committee, the Federated Bondholders Committee, and the Allied Bondholders Committee.

1.13. "Effective Date" means February 4, 1992.

1.14. "Eligible Shares" means (a) in the case of any Stockholder Sale Event, the Subject Shares specified in the related Securities Pricing Sheets, if any, to be sold at prices at or below the Actual Selling Price and the shares of Common Stock specified by the Company in the related Inclusion Notice, if any, to be sold at prices at or below the Actual Selling Price and (b) in the case of any Federated Sale Event, the Federated Included Amount, if any, to be sold at prices at or below the Actual Selling Price and the Subject Shares specified in the related Securities Pricing Sheets, if any, to be sold at prices at or below the Actual Selling Price.

1.15. "Estimated Salable Amount" means (a) in the case of any Federated Sale Event other than the First Federated Sale Event, the Company's estimate of the Actual Salable Amount, determined after consultation with the members of the Offering Committee, and (b) in the case of any Stockholder Sale Event, the Offering Committee's estimate of the Actual Salable Amount,

determined after consultation with the Company and specified to the Company in writing for inclusion in the applicable Stockholder Offering Notice.

1.16. "Estimated Selling Price Range" means (a) in the case of any Federated Sale Event other than the First Federated Sale Event, a range of prices determined by the Company, the midpoint of which will be the Company's estimate, determined after consultation with the members of the Offering Committee, of the Actual Selling Price and the terminal points of which will be 15% above and below, respectively, such midpoint (rounded to the nearest one-eighth dollar) or such other terminal points approved by the Company and the Offering Committee in the respective sole discretion of each of them and (b) in the case of any Stockholder Sale Event, a range of prices determined by the Offering Committee and specified to the Company in writing for inclusion in the applicable Stockholder Offering Notice, the midpoint of which will be the Offering Committee's estimate, determined after consultation with the Company, of the Actual Selling Price and the terminal points of which will be 15% above and below, respectively, such midpoint (rounded to the nearest one-eighth dollar) or such other terminal points approved by the Company and the Offering Committee in the respective sole discretion of each of them.

1.17. "Exchange Act" means the Securities Exchange Act of 1934, as amended (or any similar successor federal statute), and the rules and regulations thereunder, as the same are in effect from time to time.

1.18. "Federated/Allied Companies" means Federated Department Stores, Inc., Allied Stores Corporation, and their respective subsidiaries that are debtors under the Plan.

1.19. "Federated Bondholders Committee" means the Official Committee of Bondholders of Federated Department Stores, Inc.

1.20. "Federated Included Amount" means that number of shares of Common Stock which the Company desires to sell for its own account at prices at or below the Actual Selling Price in connection with any Federated Sale Event.

1.21. "Federated Included Amount Limitation" means, in the case of a Federated Sale Event, 67% of the Actual Salable Amount.

1.22. "Federated Offering Notice" means a written notice delivered by the Company to the Offering Committee and the

Holder that, subject to Section 3.2, (a) invites each such Holder to prepare and deliver one or more Securities Pricing Sheets to the Company, (b) specifies the Estimated Selling Price Range, the Estimated Salable Amount, and the expected timing of a proposed Federated Sale Event, (c) specifies the Federated Included Amount for each Federated Sale Event, and (d) identifies the Managing Underwriter for each Federated Sale Event. Without limiting the generality or effect of any other provision of these Provisions, a Federated Offering Notice may state in substance that any estimate as to amounts, pricing, or timing reflects only the Company's, and to the extent applicable, the Offering Committee's judgment with respect to any such matter which may not be relied upon for any purpose.

1.23. "Federated Premerger Committee" means the Official Committee of Federated Premerger Bondholders.

1.24. "Federated Sale Event" means a Public Sale Event initiated by the Company.

1.25. "Federated Secured Creditors Committee" means the Official Secured Creditors' Committee of Federated Department Stores, Inc., et al.

1.26. "Federated Selling Limitation" means, in the case of a Stockholder Sale Event, 33% of the Actual Salable Amount.

1.27. "First Federated Sale Event" means the first Federated Sale Event that is consummated during the first 18 months after the Effective Date.

1.28. "Holder" means any Person (other than the Company or any subsidiary of the Company) that at any time (a) receives a distribution of Common Stock pursuant to the Plan, other than the United States Treasury, Federated Holdings III, Inc., Federated Stores, Inc., or any Small Holder, (b) acquires shares of Common Stock upon the exercise of Series A Warrants, or (c) purchases or otherwise acquires Subject Shares as a result of a Transfer pursuant to any of clauses (a), (b), (c), (d), (e), and (f) of the first sentence of Section 2.3; provided, however, that a Person will cease to be a "Holder" for all purposes of these Provisions when such Person ceases to own of record any Subject Shares. A list of all Holders (the "Holder's List"), as amended from time to time to reflect Transfers and releases of Subject Shares, will be maintained by the Company or the transfer agent (if other than the Company) for the Common Stock. Absent manifest error, the Holders' List will be conclusive evidence as to the identity of each Holder and the number of Subject Shares of such Holder.

1.29. "Holder Questionnaire" means the questionnaire provided to the Company and the Offering Committee substantially in the form of Exhibit A, as the same may from time to time be amended by the Company in conformity with any recommendation of counsel to the Company or as the Company may in good faith determine to be appropriate at the request of a Managing Underwriter, in light of actual experience in utilizing a prior form of holder questionnaire, or otherwise.

1.30. "Inclusion Notice" means a notice specifying the number of shares of Common Stock that the Company will sell for its own account at the price or ranges of prices specified therein (before deducting any applicable Registration Expenses) in connection with a Stockholder Sale Event. The Company may specify in any Inclusion Notice a price or range of prices at which, or other conditions as a result of which, any Inclusion Notice will be deemed to be automatically revoked or amended with or without further action by the Company.

1.31. "Initiating Holders" means any Holder or Holders that, as of the date of any Request, in the aggregate own of record not less than 20% of the Subject Shares.

1.32. "Invitation Period" means the period commencing on (a) the date of the delivery of the Stockholder Offering Notice in the case of a Stockholder Sale Event and (b) the date of the delivery of the Federated Offering Notice in the case of a Federated Sale Event and ending, in each case, on the 10th business day after such date or on such later date as may be specified by the Company from time to time upon notice with the approval of the Offering Committee.

1.33. "Managing Underwriter" means the Underwriter that acts as lead manager and runs the book in connection with any Public Sale Event.

1.34. "Offering Committee" means the offering committee described in Section 4.7, which will consist of (a) one natural person designated from time to time by the Company (the "Company Designee") and (b) up to four additional natural persons (the "Committee Designees") designated by Citibank, N.A., Metropolitan Life Insurance Company, PaineWebber Funding, Inc., and Fidelity Investments (the "Committee Designee Designators"), each of which was selected by a Creditor Committee. In addition, any Holder (any "partnership, limited partnership, syndicate, or other group," as that phrase is used in Section 13(d)(3) of the Exchange Act, of which a Holder is a member being a single Holder for purposes of this

Section 1.34) that becomes the Beneficial Owner of more than 5% of the outstanding shares of Common Stock by reason of distributions under the Plan and reports such Beneficial Ownership in a Schedule 13D or Schedule 13G filed with the Commission (the "5% Holder") may, for so long as the 5% Holder continues to Beneficially Own not less than 3,972,533 of the shares of Common Stock distributed to it and/or its Affiliates pursuant to the Plan, designate one additional natural person to be a member of the Offering Committee (the "5% Holder Designee"); provided, however, that the 5% Holder, together with all of its Affiliates and Associates (other than the Company), may not designate more than one 5% Holder Designee. The Company Designee may be removed only by the Company and any successor to any Company Designee will be designated by the Company. The initial Committee Designees are Thomas J. Doyle, Robert J. Noll, David J. Gallitano, and John J. Remondi each of whom was designated by a Committee Designee Designator, and the sole 5% Holder Designee is Louis J. Michianti who was designated by the sole 5% Holder. A Committee Designee or the 5% Holder Designee may be removed only for cause (including without limitation incapacitation) and then only on the vote of all remaining Committee Designees and the 5% Holder Designee then serving as such. In the event of the resignation, death, or removal of a Committee Designee or the 5% Holder Designee, the Committee Designee Designator or the 5% Holder, as the case may be, that had originally designated such Committee Designee or 5% Holder Designee will fill the vacancy thereby created with a natural person. Notwithstanding the foregoing, any 5% Holder Designee will automatically cease to be a member of the Offering Committee if the 5% Holder that designated such 5% Holder Designee ceases to be a 5% Holder. The Offering Committee will establish its own rules for the conduct of meetings and actions taken thereat (or without a meeting), including without limitation with respect to alternate Committee Designees and 5% Holder Designees appointed by the applicable Committee Designee Designator or 5% Holder, as the case may be, to act in the place of its designee in the event of the unavailability of such designee, and may (but will not be required to) use the By-Laws of the Company or such other rules as the Company may propose for this purpose as a model for such rules; provided, however, that (i) the Company designee will be a non-voting member of the Offering Committee, (ii) each Committee Designee and the 5% Holder Designee then serving as such will be entitled to one vote on all matters to be submitted to a vote of the offering Committee, (iii) upon removal of any member of the Offering Committee by the remaining members of the Offering Committee, the Person entitled to fill the vacancy thereby created will be notified

as promptly as practicable thereafter and afforded a period of not less than five business days to notify the Company and the Offering Committee of the identity of the replacement for the member so removed, during which period the Offering Committee may not take any action which could materially and adversely affect the rights or obligations of the Holders under these Provisions, and (iv) any action required or permitted to be taken by the Offering Committee may be so taken based on the vote or consent of a majority of the members of the Offering Committee then serving as such (excluding for this purpose any Company Designee).

1.35. "Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, or other entity, or a government or any political subdivision or agency.

1.36. "Phase One" means the period commencing on the Effective Date and ending 18 months after the Effective Date.

1.37. "Phase Two" means the period commencing 18 months and one day after the Effective Date and ending on the Termination Date.

1.38. "Plan" means the plan of reorganization of Federated Department Stores, Inc., Allied Stores Corporation, and certain of their subsidiaries confirmed by the Bankruptcy Court in Consolidated Case No. 1-90-00130.

1.39. "Preliminary Prospectus" means any prospectus filed as a part of a Registration Statement prior to the time at which such Registration Statement becomes effective under the Securities Act.

1.40. "Principal Market" means the New York Stock Exchange or such other national securities exchange on which the Common Stock is listed or admitted for trading at the relevant time or, if the Common Stock is not listed or admitted for trading on any national securities exchange at such time, the over-the-counter market as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if not so reported, the principal market on which Common Stock is traded at the time in question as determined by the Board of Directors of the Company.

1.41. "Private Sale Event" means any Transfer of Subject Shares or an interest therein in accordance with Section 2.3.

1.42. "Prospectus" means any prospectus filed as part of a Registration Statement at the time such Registration Statement becomes effective under the Securities Act and any post-effective amendment or supplement thereto filed pursuant to Rule 424 or any similar successor rule that may be promulgated by the Commission.

1.43. "Public Sale Event" means an underwritten public offering of a number of shares of Common Stock at least equal to the lesser of (a) 10,000,000 shares of Common Stock (subject to adjustment as provided in Section 8.9) and (b) the number of shares of Common Stock that has an aggregate market value (measured by the highest closing sales price of shares of Common Stock on the Principal Market on any of the five Trading Days immediately preceding any such determination) of at least \$200,000,000, that is registered under the Securities Act and effected through underwriters either currently or, with the approval of the Company and the Offering Committee in the respective sole discretion of each of them, from time to time pursuant to Rule 415; provided, however, that no such public offering of shares of Common Stock that is registered on Form S-4 or covering employee plans on Form S-1 or Form S-8 promulgated by the Commission or any similar successor form, or that constitutes an exchange offer (directly or pursuant to a merger or other form of business combination or reorganization transaction and, if an exchange offer made to holders of Common Stock, made on the same terms to all such holders of Common Stock), will be deemed to be a Public Sale Event. Unless the context otherwise requires, the term "Public Sale Event" includes any Federated Sale Event and any Stockholder Sale Event.

1.44. "Qualifying Shares" means Subject Shares specified in the Securities Pricing Sheets at a price within or below the Estimated Selling Price Range.

1.45. "Registration Expenses" means all expenses, other than Selling Expenses, incurred by the Company in effecting any Sale Event, including without limitation all underwriting discounts, fees, spreads, and selling commissions, in each case to the extent applicable to the sale of Common Stock for the account of the Company, all registration, qualification, listing, and filing fees applicable to any sale of Common Stock for the account of the Company or any Holder (including without limitation fees relating to registration or qualification under the "blue sky" or securities laws of any jurisdiction), printing expenses, fees and disbursements of counsel to the Company and the independent accountants of the Company relating

to any Registration Statement, and expenses associated with any communications with Holders required or permitted hereunder, including without limitation the cost of mailing such communications to Holders.

1.46. "Registration Statement" means any registration statement (including any documents incorporated therein by reference pursuant to the rules and regulations of the Commission) and all exhibits thereto, filed by the Company with the Commission on a form that complies with the requirements of the Securities Act in connection with any Public Sale Event.

1.47. "Request" means a written notice delivered by Initiating Holders to the Company which (a) sets forth the number of Subject Shares owned of record by each Initiating Holder and (b) requests that the Company file a Registration Statement under the Securities Act with respect to a Public Sale Event that the Initiating Holders desire to initiate.

1.48. "Rule 415" means Rule 415 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

1.49. "Rule 424" means Rule 424 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

1.50. "Sale Event" means any Public Sale Event or any Private Sale Event.

1.51. "Securities Act" means the Securities Act of 1933, as amended (or any similar successor federal statute), and the rules and regulations thereunder, as the same are in effect from time to time.

1.52. "Securities Pricing Sheet" means a specification of the price or prices (before deducting any applicable Selling Expenses) at which a Holder will sell any or all of the Subject Shares owned of record by such Holder (which specification may include an indication that Subject Shares would be sold at the Actual Selling Price), in substantially the form of Exhibit B, as such form may be amended at the request of a Managing Underwriter or as the Company may in good faith determine to be appropriate in light of actual experience in utilizing a prior form of securities pricing sheet or otherwise.

1.53. "Selling Expenses" means all underwriting discounts, fees, spreads, and selling commissions applicable to the sale of Subject Shares for the account of the Holders participating in a Public Sale Event, any fees and disbursements of counsel, any accountants, and financial or other advisors for the Holders participating in a Public Sale Event as a group, and any direct or indirect costs incurred under these Provisions by the Holders participating in a Public Sale Event as a group; provided, however, that Selling Expenses do not include any amount in respect of which the Company has a reimbursement obligation pursuant to Section 4.7(c).

1.54. "Series A Warrants" means the warrants issued under the Series A Warrant Agreement between the Company and the agent named therein.

1.55. "Small Holder" means any Person that, based on the Federated/Allied Companies' claim estimates, will be the Beneficial Owner of 2,000 or fewer shares of Common Stock as a result of distributions pursuant to the Plan, including without limitation distributions pursuant to Article VII of the Plan.

1.56. "Stockholder Minimum Amount" means the lesser of (a) 10,000,000 Qualifying Shares (subject to adjustment as provided in Section 8.9) and (b) the number of Qualifying Shares that has an aggregate market value (measured by the highest closing sales price of shares of Common Stock on the Principal Market on any of the five Trading Days immediately preceding the date of delivery of the applicable Request) of at least \$200,000,000.

1.57. "Stockholder Offering Notice" means a written notice delivered by the Company to the Offering Committee and the Holders that, subject to Section 3.2, (a) invites each such Holder to prepare and deliver one or more Securities Pricing Sheets to the Company, (b) specifies the Estimated Selling Price Range, the Estimated Salable Amount, and the expected timing of a proposed Stockholder Sale Event, and (c) identifies the Managing Underwriter for such Stockholder Sale Event. Without limiting the generality or effect of any other provision of these Provisions, a Stockholder Offering Notice may include statements to the effect that any estimate as to amounts, prices, or timing reflects only the Offering Committee's and, to the extent applicable, the Company's judgment with respect to any such matter which may not be relied upon for any purpose.

1.58. "Stockholder Sale Event" means a Public Sale Event initiated by Initiating Holders pursuant to Section 3.1.

1.59. "Subject Shares" means (a) 75% of all shares of Common Stock issued or distributed to each Holder pursuant to the Plan, (b) 75% of all shares of Common Stock issued to any Person (other than the Company or any subsidiary of the Company) upon the exercise of Series A Warrants, and (c) any shares of Common Stock issued to any Holder as a dividend or as a result of a stock split, reclassification, combination, or other event on or in exchange for Subject Shares described in clause (a) or (b) above; provided, however, that Subject Shares that are sold by any Holder pursuant to a Public Sale Event in accordance with Article III or pursuant to a tender offer or exchange offer in accordance with clause (h) of the first sentence of Section 2.3 and Subject Shares that are released from the restrictions set forth in Section 2.1 pursuant to Section 2.4 or 2.5 will cease to be Subject Shares upon such sale or release, as the case may be, on the terms and subject to the conditions set forth in these Provisions. Except as otherwise expressly provided, each reference in these Provisions to Subject Shares is a reference to those shares of Common Stock that are Subject Shares as of the time relevant to the particular provision in which such reference is contained. Notwithstanding the foregoing, shares of Common Stock issued to any Person upon exercise of the Company's outstanding Series B Warrants or upon conversion of the Company's outstanding Senior Convertible Discount Notes in accordance with the respective terms thereof (such shares so issued being hereinafter referred to as "Conversion Shares") will not be "Subject Shares" for purposes of these Provisions.

1.60. "Termination Date" has the meaning ascribed to that term in Section 7.1.

1.61. "Trading Day" means any day on which the Principal Market is open for the transaction of business.

1.62. "Transfer" has the meaning ascribed to that term in Section 2.1.

1.63. "Unauthorized Transfer" has the meaning ascribed to that term in Section 2.1.

1.64. "Underwriters" means any and all of the underwriters that participate in any distribution of shares of Common Stock in connection with a Public Sale Event and will include, unless the context otherwise indicates, the Managing Underwriter and the Co-Manager.

1.65. "Underwriting Agreement" means any written underwriting agreement entered into, unless the context otherwise indicates, by the Managing Underwriter, any Co-Manager, the Company, and the Holders participating in a distribution of shares of Common Stock in connection with a Public Sale Event. Neither the Company nor any Holder will have any legal obligation to sell or offer for sale any shares of Common Stock pursuant to any Underwriting Agreement except as provided in Sections 3.3 and 3.4 and then only on the terms and subject to the conditions set forth elsewhere herein and in such Underwriting Agreement.

1.66. "Wholly Owned Affiliated Group" means, with respect to any Person, the group of Persons, if any, that consists of such Person, any other Person by which such Person is directly or indirectly wholly owned, and any Person that is directly or indirectly wholly owned by such Person or the Person by which such Person is directly or indirectly wholly owned.

II. RESTRICTIONS ON TRANSFER

2.1. Restrictions on Transfer of Subject Shares. Except for Transfers pursuant to Private Sale Events specified in and effected in accordance with this Article II and Transfers pursuant to Public Sale Events specified in and effected in accordance with Article III, no Person (other than the Company or any subsidiary of the Company), including without limitation any Holder, may, at any time prior to the Termination Date, sell, transfer, pledge, or otherwise dispose of ("Transfer") any Subject Shares or interest therein to any other Person (other than the Company or any subsidiary of the Company), including without limitation any nominee or custodian, and each Holder will be and remain the sole holder of record and Beneficial Owner of the Subject Shares until the Termination Date. Any purported Transfer of any Subject Shares or any interest therein in violation of this Section 2.1 (an "Unauthorized Transfer") will be null and void. The Company will not be required to register, recognize, or give effect to any Unauthorized Transfer and the purported transferee of any Subject Shares or any interest therein pursuant to an Unauthorized Transfer will not acquire any rights in any such shares.

2.2. Legends: Stop-Transfer Orders.

(a) All certificates representing Subject Shares will conspicuously bear a legend substantially to the following

effect (as from time to time modified by the Company to comply with the requirements of the Principal Market or to conform to then-applicable legal requirements or practice):

"The shares evidenced by this certificate are subject to restrictions prohibiting the sale, transfer, pledge, or other disposition ("Transfer") of such shares to any individual, partnership, firm, corporation, or other entity, except in accordance with the terms and subject to the conditions set forth in such restrictions. The Company will not be required to register, recognize, or give effect to any unauthorized Transfer of such shares and any purported transferee thereof pursuant to an unauthorized transaction will not acquire any rights therein. The Company will furnish a copy of such restrictions to the holder of record of this certificate without charge upon written request to the Company at its principal place of business."

(b) The Company may enter a stop-transfer order with any transfer agent for the shares of Common Stock against any Unauthorized Transfer by any Holder.

(c) Upon (i) any release or waiver of the restrictions on Transfer set forth in Section 2.1 pursuant to Section 2.4, (ii) a release of the restrictions on Transfer set forth in Section 2.1 pursuant to clause (i) of the first sentence of Section 2.5, or (iii) the termination of these Provisions pursuant to Section 7.1:

(i) The Company will issue a press release announcing such release, waiver, or termination;

(ii) The Company will give notice of such release, waiver, or termination to the Offering Committee and the Holders;

(iii) The Company will properly modify any stop-transfer order under Section 2.2(b); and

(iv) Any Holder may present any certificate bearing the legend provided for in Section 2.2(a) to the transfer agent for the shares of Common Stock (or such other Person as may be specified in the press release referred to in

Section 2.2(c)(i) and the notice referred to in Section 2.2(c)(ii)) for exchange for one or more new certificates separately evidencing (A) the number of shares of Common Stock evidenced by the certificate so presented for exchange that continue to be Subject Shares, if any, and (B) the number of shares of Common Stock evidenced by the certificate so presented for exchange that have ceased to be Subject Shares.

(d) Upon any Transfer of Subject Shares by any Holder in accordance with Section 2.3, the Company will, upon surrender of the certificate or certificates evidencing such Subject Shares to the transfer agent for the shares of Common Stock and the presentation of documentation in form and substance satisfactory to the Company evidencing compliance with the applicable provisions of Section 2.3, properly modify any stop-transfer order under Section 2.2(b) and, in accordance with the written instructions of such Holder (or, in the case of a Transfer of Subject Shares in accordance with clause (a) or (b) of the first sentence of Section 2.3, the written instructions of the Holder's administrator, estate, or legal representative or heirs, successors, or assigns or spouse or former spouse, as the case may be), in each case insofar as such instructions do not conflict with any provision of these Provisions, (i) cause to be delivered for the account of such Holder one or more certificates evidencing the number of shares of Common Stock to be so Transferred in accordance with Section 2.3 (which certificates will bear the legend provided for in Section 2.2(a) if issued in connection with a Transfer pursuant to any of clauses (a), (b), (c), (d), (e), and (f) of the first sentence of Section 2.3) and (ii) cause to be delivered to such Holder one or more new certificates, bearing the legend provided for in Section 2.2(a), evidencing its remaining Subject Shares, if any, evidenced by the certificate or certificates so surrendered.

(e) Upon any Transfer of Subject Shares by any Holder pursuant to a Public Sale Event in accordance with Article III, the Company will properly modify any stop-transfer order under Section 2.2(b) and, in accordance with the Underwriting Agreement, upon surrender of the certificate or certificates evidencing such Subject Shares to the transfer agent for the shares of Common Stock, (i) cause to be delivered to the Managing Underwriter for the account of the Holders participating in the Public Sale Event one or more unlegended certificates evidencing the number of shares of Common Stock to be sold for the account of Holders in accordance with Article III and (ii) cause to be delivered to such Holders one or more

new certificates, bearing the legend provided for in Section 2.2(a), evidencing their remaining Subject Shares, if any, evidenced by the certificate or certificates so surrendered.

(f) No service charge will be made for any transfer or exchange of certificates evidencing shares of Common Stock provided for in this Section 2.2, but (without limiting the generality or effect of Section 2.1 and subject to the terms thereof) the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the issuance of any such certificate in the name of any Person other than the Person in whose name the certificate or certificates presented for transfer or exchange were issued or that otherwise may be imposed by applicable law.

2.3. Permitted Transfers. Notwithstanding the provisions of Section 2.1, Subject Shares may be Transferred:

(a) to the Holder's administrator, estate, or legal representative as a consequence of the Holder's death or incapacity or to the Holder's heirs, successors, or assigns pursuant to the laws of descent, distribution, or inheritance;

(b) to the Holder's spouse or former spouse pursuant to a property settlement agreement, order of dissolution of marriage, or other similar proceeding relating to the separation or divorce of the Holder and his or her spouse;

(c) to a creditor pursuant to a pledge agreement or arrangement existing prior to January 15, 1990 that secures bona fide indebtedness of such Holder to any Person other than such Holder or an Affiliate or Associate of such Holder and under which the Subject Shares constitute proceeds in respect of other collateral or so-called "after-acquired property" and, in either case, become subject to the lien or security interest created by such agreement or arrangement without any action on the part of the Holder;

(d) to any Person pursuant to a privately negotiated transaction, including without limitation a pledge or similar grant of a security interest, in which the Person acquiring the Subject Shares or a security interest therein agrees, in form and substance reasonably satisfactory to the Company, to be bound by the terms of these Provisions such that the Subject Shares to be acquired by such Person, including without limitation pursuant to foreclosure or the

exercise of any other available remedy, will remain subject to these Provisions;

(e) to any Person that is a member of the same "affiliated group" (within the meaning of Section 1504(a) of the Internal Revenue Code of 1986, as amended) as such Holder, provided that such Person agrees, in form and substance reasonably satisfactory to the Company, to be bound by the terms of these Provisions such that the Subject Shares to be acquired by such Person will remain subject to these Provisions;

(f) to a nominee or custodian in a transaction following which the Person that was the Holder immediately prior to such transaction, together with any other member of a Wholly Owned Affiliated Group of which such Person is a member, remains the sole Beneficial Owner of such Subject Shares and in which (i) each Person that is the Beneficial Owner of any of such Subject Shares immediately following such transaction irrevocably consents in form and substance reasonably satisfactory to the Company to the disclosure by such nominee or custodian to the Company from time to time of such Person's name, address, and securities position with respect to such Subject Shares and (ii) such nominee or custodian and each Person that is the Beneficial Owner of any of such Subject Shares immediately following such transaction agrees, in form and substance reasonably satisfactory to the Company, to be bound by the terms of these Provisions with respect to any subsequent Transfer;

(g) to a constituent corporation in any merger or consolidation to which the Company is a party and in which (i) the Company is not the surviving or resulting corporation or (ii) the Company is the surviving or resulting corporation and, in connection therewith, all of the outstanding shares of Common Stock are changed or exchanged for stock or other securities of another Person or for cash or any other property; or

(h) to the bidder pursuant to any tender offer or exchange offer subject to and conducted in compliance with Regulations 14D and 14E under the Exchange Act (including without limitation Rule 14d-10 as in effect on the Effective Date) to purchase at least 30% of the then-outstanding shares of Common Stock, provided that (i) the purchase price in such tender or exchange offer is payable solely in cash or securities for which there is an active and organized nationally recognized domestic market,

in the case of a domestic issuer, or an active and organized comparable foreign market, in the case of a foreign issuer, (ii) at the time such tender or exchange offer is commenced (determined by reference to Rule 14d-2 under the Exchange Act), such tender or exchange offer (A) is not subject, in whole or in part, to a financing contingency or condition of any kind other than the satisfaction of customary closing conditions pursuant to definitive loan documents or (B) is a tender or exchange offer in respect of which the bidder has obtained one or more commitment letters from one or more nationally recognized financial institutions (and has paid all fees required to be paid thereunder, to the extent then due and payable), subject only to customary conditions, in any such instance in an aggregate amount sufficient to enable the offeror to pay the aggregate purchase price pursuant to such tender or exchange offer and all expenses relating thereto, and (iii) such tender or exchange offer is made by a Person other than such Holder or any Affiliate or Associate of such Holder.

Notwithstanding anything to the contrary herein contained, Subject Shares Transferred pursuant to any of clauses (a), (b), (c), (d), (e), and (f) of the first sentence of this Section 2.3 will continue to be Subject Shares following such Transfer and the transferee thereof will be deemed to be a Holder upon receipt thereof. Nothing contained in this Section 2.3 will (x) affect in any way the rights and duties of the Board of Directors of the Company in determining whether to take or refrain from taking any action in connection with or in response to any tender offer or exchange offer or (y) constitute for any purpose an expression of the views of the Company's Board of Directors as to whether any particular tender offer or exchange offer or any particular type of any such offer is fair to or consistent with the best interests of the Company or its stockholders. Notwithstanding the provisions of Section 2.1, the Beneficial Ownership of Subject Shares may be Transferred by any Person to any other Person that is a member of a Wholly Owned Affiliated Group of which the first Person is a member if such other Person (a) irrevocably consents in form and substance reasonably satisfactory to the Company to the disclosure to the Company from time to time of such other Person's name, address, and securities position with respect to the Subject Shares and (b) agrees in form and substance reasonably satisfactory to the Company that such other Person will not Transfer any interest in the Subject Shares to any Person other than the first Person or any other member of the Wholly Owned Affiliated Group of

which the first Person and such other Person are members except, following a Transfer to such other Person of the record ownership of such Subject Shares in accordance with this Section 2.3, pursuant to a Private Sale Event effected in accordance with this Article II or a Public Sale Event effected in accordance with Article III.

2.4. Release, Waiver, or Termination by Board of Directors. Notwithstanding anything to the contrary contained in these Provisions, the Board of Directors of the Company may (a) release all of the Subject Shares or any portion of the Subject Shares on a pro rata basis from the restrictions set forth in Section 2.1, (b) waive any of such restrictions at any time and from time to time with respect to all of the Subject Shares or any portion of the Subject Shares on a pro rata basis, and/or (c) terminate these Provisions in accordance with Section 7.1(b).

2.5. Release of Transfer Restrictions. Without limiting the generality or effect of Section 7.1, (a) if a Public Sale Event has not been consummated during Phase One, the restrictions set forth in Section 2.1 will terminate as follows: (i) at the expiration of Phase One, such number of Subject Shares will be released from the restrictions set forth in Section 2.1, on a pro rata basis, such that the number of Subject Shares that continue to be Subject Shares after giving effect to such release equals 40% of the sum of (A) the number of then-outstanding shares of Common Stock that were issued pursuant to the Plan (excluding Conversion Shares), (B) the number of then-outstanding shares of Common Stock that were issued upon the exercise of Series A Warrants, and (C) the number of then-outstanding shares of Common Stock that became Subject Shares as a result of any stock dividend, stock split, reclassification, combination, or other event on or in exchange for any shares of Common Stock so issued or reserved for issuance prior to the expiration of Phase One (the foregoing sum or any element thereof being subject to adjustment as provided in Section 8.9) and (ii) on the date that is 24 months after the Effective Date, all remaining Subject Shares will be released from the restrictions set forth in Section 2.1 and these Provisions will thereupon terminate in accordance with Section 7.1(f) and (b) if a Federated Sale Event has been consummated during Phase One, these Provisions will terminate on the date that is 30 months after the Effective Date in accordance with Section 7.1(c).

2.6. Certain Legal Requirements. (a) The restrictions on the Transfer of Subject Shares provided for in these Provisions

are independent of any restrictions thereon that may be imposed under applicable law. Accordingly, nothing contained in these Provisions should be construed as constituting an expression of the views of the Company or any of its Affiliates or Associates or of any member of the Offering Committee as to whether or not any particular Transfer of any securities by the Company or any particular Holder requires registration, qualification, or other action under the Securities Act or the "blue sky" or securities laws of any jurisdiction or any other applicable law. Each Holder will be required to determine for itself whether or not such action is required in connection with any such Transfer by such Holder, and none of the Company, any of its Affiliates or Associates, or any director, officer, or other representative of any of the foregoing, or any member of the Offering Committee, will have any liability by reason of any such determination.

(b) In addition, but without limiting the generality or effect of any other provision of this Article II, nothing in the Provisions is intended or should be construed as requiring that any Holder participate in any Public Sale Event or other transaction referred to in Article III if the Holder elects to Transfer Subject Shares in any other manner (including without limitation pursuant to Rule 144 under the Securities Act or other exemptions from registration available under the circumstances) and such Transfer is not otherwise an Unauthorized Transfer.

III. PUBLIC SALE EVENTS

3.1. Stockholder Sale Event. In the event that the Company receives a Request from Initiating Holders at any time or times after the earlier of (a) the consummation of the First Federated Sale Event and (b) the expiration of Phase One, the Company will promptly (subject to Section 3.6) notify the Offering Committee and the Holders thereof. Such notice will include: (i) a copy of the Request, (ii) a Stockholder Offering Notice, (iii) a Securities Pricing Sheet, (iv) a Holder Questionnaire, and (v) if the Company desires to sell shares of Common Stock for its own account in connection with such Stockholder Sale Event, an Inclusion Notice; provided, however, that notice to the Holders may include a summary of the Request (rather than the Request itself) and such additional information, if any, that the Company determines to be appropriate in the circumstances. Each Holder that desires to participate in such Stockholder Sale Event must, at or prior to the expiration of the Invitation Period and at such Holder's

sole expense, prepare and deliver a Securities Pricing Sheet and a completed Holder Questionnaire to the Company and the Offering Committee. In the event that, following the expiration of the Invitation Period, the Company, following consultation with the members of the Offering Committee, determines that completed Securities Pricing Sheets have been returned within the Invitation Period pursuant to which Holders have agreed to sell not less than the Stockholder Minimum Amount of Subject Shares at prices within or below the Estimated Selling Price Range, the Company will file a Registration Statement with respect to the Estimated Salable Amount in the manner set forth in Section 4.1. In the event that the Company, following consultation with the members of the Offering Committee, determines that such condition has not been satisfied in connection with any such Request, the Company may elect, but will have no obligation, to effect any registration of shares of Common Stock (including shares of Common Stock to be offered for sale by the Company) pursuant to such Request.

3.2. Federated Sale Event. (a) At any time prior to the Termination Date, the Company will have the right to initiate one or more Federated Sale Events at such time or times and in such manner as the Company deems appropriate; provided, however, that prior to the Termination Date the Company will not complete a registration of Common Stock pursuant to a Registration Statement filed under Rule 415 in connection with any Federated Sale Event unless the Offering Committee, in its sole discretion, has consented thereto. From and after the earlier of (a) the consummation of the First Federated Sale Event and (b) the expiration of Phase One, the Company will not cause a registration statement to become effective with respect to a Federated Sale Event unless, at least 10 business days prior to such effectiveness, the Company delivers a Federated Offering Notice, a Securities Pricing Sheet, and a Holder Questionnaire to the Offering Committee and the Holders. Each Holder that desires to participate in such Federated Sale Event must, at or prior to the expiration of the Invitation Period and at such Holder's sole expense, prepare and deliver a Securities Pricing Sheet and a completed Holder Questionnaire to the Company and the Offering Committee. Notwithstanding anything to the contrary herein contained, the Company may amend the Federated Included Amount specified in any Federated Offering Notice at any time and from time to time after the delivery thereof pursuant to this Section 3.2(a) by giving notice of such amendment to the Offering Committee prior to the time the Underwriting Agreement for the related Federated Sale Event is executed and delivered.

(b) Notwithstanding the foregoing or any other provision of these Provisions, if the Company determines, after consulting with counsel, that a Federated Offering Notice or any other information contemplated by Section 3.2(a) or any other provision of these Provisions to be delivered to the Holders may not be so delivered without previously filing a registration statement with the Commission and/or taking any other action to effect compliance with applicable law, the Company may take any and all such actions as it may so determine to be required to be taken by it, including without limitation the filing of any such registration statement, prior to the taking or omitting to take any action otherwise required under Section 3.2(a) or any provision of these Provisions; provided, however, that in no event will any Invitation Period be shortened to less than 10 business days by reason thereof.

3.3. Securities Pricing Sheets; Amendment Thereof. (a) Subject to Sections 3.3(b) and 3.3(c), the delivery by a Holder to the Company of a Securities Pricing Sheet will constitute (i) the binding agreement of such Holder to sell the number of Subject Shares at the price or prices (before deducting any applicable Selling Expenses) specified therein pursuant to the Public Sale Event to which the Securities Pricing Sheet relates, (ii) the designation and appointment of the Offering Committee as the representative of such Holder with respect to the Public Sale Event to which such Securities Pricing Sheet relates and the authorization of the Offering Committee to take such actions on behalf of such Holder under the provisions of these Provisions and to exercise such powers and discretion and perform such duties as are expressly delegated to the Offering Committee by the terms of these Provisions, together with such other powers as are reasonably incidental thereto, with respect to the Public Sale Event to which the Securities Pricing Sheet relates, such designation, appointment, and authorization being irrevocable and coupled with an interest unless and until such Securities Pricing Sheet is effectively withdrawn in accordance with this Section 3.3, and (iii) without limiting the generality or effect of any other provision of these Provisions, a representation and warranty to the Company and the other Holders who deliver a Securities Pricing Sheet with respect to such Public Sale Event that such Holder Beneficially Owns the Subject Shares covered by the Securities Pricing Sheet (except for Subject Shares the record ownership of which was Transferred to such Holder pursuant to clause (f) of the first sentence of Section 2.3 or the Beneficial Ownership of which was Transferred by such Holder pursuant to the last sentence of Section 2.3) and owns such Subject Shares of record, free and clear of all liens, charges, encumbrances, or claims (except

the restrictions imposed hereunder and except for liens that will be fully released and discharged upon the sale thereof in the Public Sale Event provided that such liens or terms of release and discharge are acceptable to the Company and the Managing Underwriter in the respective sole discretion of both of them). Notwithstanding anything to the contrary herein contained, the designation, appointment, and authorization of the Offering Committee by any Holder as aforesaid will not result in the creation of any general agency relationship or the formation of any partnership, syndicate, or other group comprising such Holder and will not confer upon the Offering Committee any greater authority to act on behalf of such Holder than that expressly contemplated by these Provisions.

(b) At any time and from time to time after the delivery of a Securities Pricing Sheet to the Company by a Holder, such Holder may withdraw or amend such Securities Pricing Sheet by delivering a revised Securities Pricing Sheet to the Company and the Offering Committee. The delivery of such revised Securities Pricing Sheet to the Company and the Offering Committee will automatically revoke any and all prior Securities Pricing Sheets previously delivered by such Holder to the Company and the Offering Committee.

(c) Notwithstanding Sections 3.3(a) and 3.3(b), in order to be effective for a Public Sale Event, a Securities Pricing Sheet, including any revised Securities Pricing Sheet, must be (i) in the form in which it was furnished to the Holder in connection with such Public Sale Event, (ii) appropriately completed and duly executed and accompanied or, if permitted by the Company and the Managing Underwriter, promptly followed by, such information regarding, or evidence of, authenticity as the Company may reasonably request, and (iii) actually received by the Company and the Offering Committee in accordance with any accompanying instructions at or prior to the expiration of the applicable Invitation Period in the case of an initial Securities Pricing Sheet, and not later than a date specified by the Company from time to time upon notice to the Holders and the Offering Committee in the case of a revised Securities Pricing Sheet. Any such time periods may be extended by the Company after consultation with the members of the Offering Committee (with or without notice to Holders). If the Company and the Offering Committee do not receive a Securities Pricing Sheet (including, if applicable, a revised Securities Pricing Sheet) that satisfies each of such requirements and certificates representing Subject Shares duly endorsed and otherwise in accordance with such instructions as the Company may from time to time issue in connection with such Public Sale

Event, the Company will have no obligation to include any Subject Shares Beneficially Owned or owned of record by such Holder in such Public Sale Event or, in the case of an attempted withdrawal or amendment, may disregard the attempted withdrawal or amendment. The Company will have the sole right and absolute discretion to reject any Securities Pricing Sheet, including any revised Securities Pricing Sheet, or any notice of amendment or withdrawal thereof which, in the good faith judgment of the Company, does not comply with the requirements of these Provisions. The Company will use reasonable efforts in the circumstances (including without limitation the timing of any Public Sale Event) to notify a Holder that its Securities Pricing Sheet or any amendment or withdrawal thereof has been rejected and, provided that the Company has used such reasonable efforts, the Company will not have any liability in the event that any such notice is not given in a timely manner regardless of the underlying circumstances.

3.4. Inclusion Notice; Amendment Thereof. (a) Subject to Sections 3.4(b) and 3.4(c), the delivery by the Company to the Offering Committee of an Inclusion Notice will constitute the binding agreement of the Company to offer to sell the number of shares of Common Stock in accordance with the terms of the Inclusion Notice.

(b) At any time and from time to time after the delivery of an Inclusion Notice by the Company to the Offering Committee, the Company may withdraw or amend such Inclusion Notice by delivering a revised Inclusion Notice to the Offering Committee or as contemplated by Section 1.30. The delivery of such revised Inclusion Notice will automatically revoke any Inclusion Notice previously delivered by the Company to the Holders and the Offering Committee.

(c) Notwithstanding Sections 3.4(a) and 3.4(b), in order to be effective for a Stockholder Sale Event, an Inclusion Notice, or any notice of amendment or withdrawal thereof, must be (i) duly executed on behalf of the Company by the Chairman of the Board, any Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, any Executive Vice President, or any other officer of the Company specifically authorized so to act pursuant to a resolution adopted by the Board of Directors of the Company or a committee thereof and appropriately completed and (ii) delivered to the Offering Committee prior to the time the Underwriting Agreement is executed and delivered. If the Company does not deliver an Inclusion Notice that satisfies each of such requirements, no shares of Common Stock will be required to be sold for the Company's account in

connection with such Stockholder Sale Event or, subject to Section 1.30, in the case of an attempted amendment or withdrawal, the attempted amendment or withdrawal may be disregarded.

3.5. Proration. (a) In any Stockholder Sale Event, if the aggregate number of Eligible Shares exceeds the Actual Salable Amount, the Company, following consultation with the members of the Offering Committee, will select for inclusion in such Stockholder Sale Event (i) all Eligible Shares specified in the Inclusion Notice up to a maximum of the Federated Selling Limitation and (ii) such number of Eligible Shares specified in each Securities Pricing Sheet (rounded to the nearest whole share) as results from multiplying the number of Eligible Shares specified in such Securities Pricing Sheet by a fraction, the numerator of which will be the Actual Salable Amount minus that number of shares selected for inclusion pursuant to clause (i) of this sentence, and the denominator of which will be the aggregate number of Eligible Shares specified in all of the Securities Pricing Sheets.

(b) In any Federated Sale Event initiated after the earlier of (i) the consummation of the First Federated Sale Event and (ii) the expiration of Phase One, if the aggregate number of Eligible Shares exceeds the Actual Salable Amount, the Company, following consultation with the members of the Offering Committee, will select for inclusion in such Federated Sale Event (x) the Federated Included Amount, which may not exceed the Federated Included Amount Limitation, and (y) such number of Eligible Shares specified in each Securities Pricing Sheet (rounded to the nearest whole share) as results from multiplying the number of Eligible Shares specified in such Securities Pricing Sheet by a fraction, the numerator of which will be the Actual Salable Amount minus that number of shares selected for inclusion pursuant to clause (x) of this sentence, and the denominator of which will be the aggregate number of Eligible Shares specified in all of the Securities Pricing Sheets.

3.6. Frequency and Volume Limitations. Notwithstanding anything to the contrary in these Provisions:

(a) Unless the Board of Directors of the Company has duly adopted a resolution that expressly waives either or both of the limitations set forth in this Section 3.6(a), (i) no Holder will have any right to participate in the First Federated Sale Event and (ii) the Company will not be obligated to effect any Stockholder Sale Event until the

earlier of (A) 18 months after the Effective Date and (B) six months after the consummation of the First Federated Sale Event;

(b) (i) Unless the Board of Directors of the Company has duly adopted a resolution that expressly waives the provisions of this Section 3.6(b)(i), the Company will not be obligated to effect a Stockholder Sale Event if (A) an aggregate of two Public Sale Events have been consummated during the preceding 12 months or (B) a Public Sale Event has been consummated at any time during the preceding 180 days and (ii) without the approval of the Holders of a majority of the Subject Shares, the Company will not consummate any Federated Sale Event if the conditions referred to in subclauses (A) or (B) of clause (i) of this Section 3.6(b) exist; and

(c) The Company will not be permitted to sell more than an aggregate of 25,000,000 shares of Common Stock (subject to adjustment as provided in Section 8.9) pursuant to one or more Public Sale Events at any time after the consummation of the First Federated Sale Event and prior to the Termination Date without the prior approval of Holders owning of record at least a majority of the remaining Subject Shares.

IV. REGISTRATION AND RELATED MATTERS

4.1. Registration Procedures. (a) Subject to Section 3.6, as promptly as reasonably practicable, and in any event within 60 calendar days (45 calendar days in the case of a Registration Statement filed on Form S-3 promulgated by the Commission or any similar successor form), after the Company becomes obligated to file a Registration Statement pursuant to Section 3.1, the Company will prepare and file with the Commission a Registration Statement (which, if so requested in the Request and approved by each of the Company and the Offering Committee in the respective sole discretion of each of them, will be filed pursuant to Rule 415, provided that the applicable criteria therefor are satisfied, including without limitation as to the offering on a delayed or continuous basis of the shares of Common Stock covered thereby, including any such shares covered by any Inclusion Notice pursuant to Section 3.4) with respect to the Estimated Salable Amount and will use reasonable efforts to cause such Registration Statement to become effective as soon thereafter as practicable. Thereafter, the Company will (i) prepare and file

such amendments (including post-effective amendments) to such Registration Statement and such supplements to the Prospectus and otherwise use reasonable efforts to keep such Registration Statement effective until the completion of the distribution contemplated by such Registration Statement and for so long thereafter as a dealer is required by law to deliver a Prospectus in connection with the offer and sale of shares of Common Stock covered by such Registration Statement; (ii) furnish to each Holder participating in the distribution and the Offering Committee such number of copies of such Registration Statement and the related Preliminary Prospectus and Prospectus, and any amendment or supplement thereto, as the Underwriters (including any Holder that is or may reasonably be deemed to be acting as such) may reasonably request so as to facilitate the sale or other disposition of Subject Shares covered thereby; (iii) take all action (other than qualifying to do business as a foreign corporation or filing a general consent to service of process in any jurisdiction or taking any action that would subject it to general taxation in any jurisdiction) necessary under the "blue sky" or securities laws of such jurisdictions as may be reasonably requested by the Underwriters (including any Holder that is or may reasonably be deemed to be acting as such) participating in the distribution or by the Offering Committee to qualify Subject Shares for offering and sale in such jurisdictions and to comply with such laws so as to permit the continuance of sale of and dealings in such Subject Shares in such jurisdictions for as long as may reasonably be required to permit the distribution of such Subject Shares in such jurisdictions; and (iv) use its best efforts to cause the Subject Shares covered by such Registration Statement to be listed or admitted for trading on the Principal Market (to the extent that they are not already so listed or admitted for trading). For purposes of these Provisions, it will not be deemed to be reasonable to request that the Company register or qualify under the laws of any jurisdiction in which an Underwriter (including any Holder that is or may reasonably be deemed to be acting as such) does not have a reasonable basis to believe that such Underwriter can reasonably offer for sale in such jurisdiction not less than 25,000 Subject Shares (subject to adjustment as provided in Section 8.9) with a reasonable prospect that the Subject Shares so offered will be sold in such jurisdiction.

(b) Notwithstanding any other provision of these Provisions, the Company may delay the filing of any Registration Statement for up to 120 days if (i) the Company would, in the opinion of its counsel, be required to disclose in such Registration Statement information not otherwise then

required by law to be publicly disclosed and (ii) in the judgment of the Board of Directors of the Company there is a reasonable likelihood that such disclosure, or any other action to be taken in connection with any Registration Statement, would adversely affect any existing or prospective material business situation, transaction, or negotiation or otherwise materially and adversely affect the Company.

4.2. Agreements Related to Offerings. In connection with any Public Sale Event pursuant to which any Subject Shares will be offered:

(a) The Company will enter into an Underwriting Agreement not inconsistent in any material respect with the terms and conditions of these Provisions and containing such other terms and conditions as the Company determines in good faith would be customary or appropriate in the circumstances and take all such other actions as the Company determines in good faith are necessary or advisable to permit, expedite, and facilitate the distribution of shares of Common Stock, in each case to the same extent as if the shares of Common Stock then being offered were being offered solely for the account of the Company;

(b) The Company will not file any Registration Statement or any amendment or supplement thereto with the Commission until the members of the Offering Committee have had a reasonable opportunity to review such Registration Statement and, if material, such amendment or supplement thereto;

(c) The Company will use reasonable efforts to keep the members of the Offering Committee informed of the Company's best estimate of the earliest date on which any Registration Statement or any post-effective amendment thereto will become effective; and

(d) In the event of the issuance of any stop order suspending the effectiveness of any Registration Statement or of any order suspending or preventing the use of any related Preliminary Prospectus or any related Prospectus or suspending the qualification of any shares of Common Stock included in any Registration Statement for sale in any jurisdiction, the Company will use reasonable efforts to promptly obtain its withdrawal; provided, however, that nothing in these Provisions will prevent the Company from ceasing any efforts to register shares of Common Stock in connection with any Federated Sale Event or from

withdrawing any Registration Statement theretofore filed in connection with any Federated Sale Event at any time prior to the execution of the related Underwriting Agreement.

Except as otherwise expressly provided in these Provisions, and without limiting the generality or effect of any such express provision, the Company will have the sole and absolute right in connection with any Public Sale Event to take any action that it determines to be in the best interests of the Company.

4.3. Public Sale Event Expenses. All Registration Expenses incurred in connection with any Public Sale Event will be borne by the Company. All Selling Expenses incurred in connection with any Public Sale Event will be borne by the Holders pro rata on the basis of the number of Subject Shares so registered and sold on their behalf.

4.4. Indemnification. (a) In connection with any Public Sale Event and the related Registration Statement, provisions substantially in conformity with the following provisions will be contained in the related Underwriting Agreement unless the Company and each Holder that is a party to such Underwriting Agreement agree otherwise (as used in this Section 4.4, "Holder" will mean a Holder participating in the Public Sale Event covered by such Registration Statement):

(i) The Company will indemnify and hold harmless each Holder that becomes a party to an Underwriting Agreement to which the Company is a party and each Person, if any, who "controls" such Holder (within the meaning of the Securities Act) against any losses, claims, damages, or liabilities, joint or several, or actions in respect thereof to which such Holder or controlling Person may become subject under the Securities Act, or otherwise, insofar as such losses, claims, damages, liabilities, or actions in respect thereof arise out of, or are based upon, any untrue statement or alleged untrue statement of any material fact contained in such Registration Statement, any related Preliminary Prospectus, or any related Prospectus or any amendment or supplement thereto, or arise out of, or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse such Holder or controlling Person for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the Company will not be so liable to the extent that

any such loss, claim, damage, liability, or action arises out of, or is based upon, an untrue statement or alleged untrue statement of a material fact or an omission or alleged omission to state a material fact in such Registration Statement, such Preliminary Prospectus, or such Prospectus, or any such amendment or supplement thereto in reliance upon, and in conformity with, written information furnished to the Company by or on behalf of a Holder or an Underwriter specifically for use therein.

(ii) With respect to written information furnished to the Company by or on behalf of a Holder specifically for use in a Registration Statement, any related Preliminary Prospectus, or any related Prospectus or any supplement or amendment thereto, each Holder that becomes a party to an Underwriting Agreement to which the Company is a party will severally indemnify and hold harmless the Company, each Underwriter, each other Holder, and each Person, if any, who "controls" the Company, such Underwriter, or such other Holder (within the meaning of the Securities Act) against any losses, claims, damages, or liabilities, joint or several, or actions in respect thereof to which the Company, such Underwriter, such other Holder, or such controlling Person may become subject under the Securities Act, or otherwise, insofar as such losses, claims, damages, liabilities, or actions in respect thereof arise out of, or are based upon, any untrue statement or alleged untrue statement of any material fact contained in such Registration Statement, such Preliminary Prospectus, or such Prospectus, or any such amendment or supplement thereto, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, such Underwriter, such other Holder, or such controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action, in each case to the extent, but only to the extent, that any such loss, claim, damage, liability, or action arises out of, or is based upon, an untrue statement or alleged untrue statement of a material fact or an omission or alleged omission to state a material fact in such Registration Statement, such Preliminary Prospectus, or such Prospectus or any such amendment or supplement thereto in reliance upon, and in conformity with, such written information.

(iii) Promptly after receipt by an indemnified party pursuant to the indemnification provisions of such Underwriting Agreement of notice of any claim or the commencement of any action, the indemnified party will, if a claim in respect thereof is to be made against the indemnifying party pursuant to the indemnification provisions of such Underwriting Agreement, notify the indemnifying party in writing of the claim or the commencement of that action; provided, however, that the failure to notify the indemnifying party will not relieve it from any liability which it may have to the indemnified party except to the extent it was actually damaged or suffered any loss as a result thereof and as may be otherwise provided pursuant to the indemnification provisions of such Underwriting Agreement. If any such claim or action is brought against an indemnified party, and it notifies the indemnifying party thereof, the indemnifying party will be entitled to participate therein, and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, (A) the indemnifying party will not be liable to the indemnified party pursuant to the indemnification provisions of such Underwriting Agreement for any legal or other expense subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation, (B) the indemnifying party will not be liable for the costs and expenses of any settlement of such claim or action unless such settlement was effected with the consent of the indemnifying party or the indemnified party waived any rights under the indemnification provisions of such Underwriting Agreement, in which case the indemnified party may effect a settlement without such consent, and (C) the indemnified party will be obligated to cooperate with the indemnifying party in the investigation of such claim or action; provided, however, that the Holders and the Underwriters will each as a group have the right to employ one separate counsel to represent such Holders and Underwriters and their respective controlling Persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by such Holders and Underwriters against the Company pursuant to the indemnification provisions of such Underwriting Agreement if, in the reasonable judgment of a majority in interest of the Holders or the Underwriters, it is

advisable for such Holders or Underwriters, respectively, and their controlling Persons to be represented by separate counsel, and in that event the fees and expenses of such separate counsel will also be paid by the Company.

(b) Notwithstanding anything to the contrary herein contained, provisions for indemnification of any Underwriter or any Person who "controls" such Underwriter (within the meaning of the Securities Act) by any Holder will not be included in any Underwriting Agreement unless such Underwriting Agreement provides in substance for the indemnification by such Underwriter of each Holder and each Person who "controls" such Holder (within the meaning of the Securities Act) against any loss, claim, damage, liability, or action that arises out of, or is based upon, an untrue statement or alleged untrue statement of a material fact or an omission or alleged omission to state a material fact in the Registration Statement relating to the applicable Public Sale Event, any related Preliminary Prospectus, or any related Prospectus or any amendment or supplement thereto to the extent that any such loss, claim, damage, liability, or action arises out of, or is based upon, an untrue statement or alleged untrue statement of a material fact or an omission or alleged omission to state a material fact in such Registration Statement, such Preliminary Prospectus, or such Prospectus or any such amendment or supplement thereto in reliance upon, and in conformity with, written information furnished to the Company by or on behalf of such Underwriter specifically for use therein. Any such indemnification by an Underwriter may be subject to limitations as to the Underwriter's total financial liability and other customary provisions. The Company will use reasonable efforts to cause to be included in any Underwriting Agreement pursuant to which Holders may have liability to indemnify any Underwriter provisions limiting each such Holder's financial liability in respect of such indemnity to the lesser of (i) the indemnifiable loss otherwise incurred and (ii) the net proceeds from the sale of Common Stock by the Holder in the transaction that gave rise to the indemnifiable event. In the event that such efforts are unsuccessful, the Company will notify the members of the Offering Committee thereof, whereupon the Offering Committee may request that the Company use reasonable efforts to seek to replace the Managing Underwriter for the Public Sale Event with another Managing Underwriter that will agree to the inclusion of such provisions in the applicable Underwriting Agreement.

4.5. Certain Conditions. As a condition to the obligation of the Company to register Subject Shares, the Company may

require the Holders thereof to provide such information for inclusion in a Registration Statement and execute such documents as may be required under the Securities Act. The Company will be entitled to rely on the Holder Questionnaire of each Holder and any other written information provided by such Holder specifically for inclusion in a Registration Statement.

4.6. Selection of Underwriters, Etc. (a) In the case of any Federated Sale Event, the Company will designate the Managing Underwriter and will have the right to approve the pricing (including the underwriting discounts and commissions) and the timing of such Federated Sale Event. In the case of any Federated Sale Event (other than the First Federated Sale Event) in which Subject Shares are to be included in accordance with the provisions hereof, the Offering Committee will have the right to designate one Co-Manager. Any additional Co-Manager for any Federated Sale Event will be designated by the Company.

(b) In the case of any Stockholder Sale Event, (i) the Offering Committee will have the right to designate the Managing Underwriter and to approve the pricing (including the underwriting discounts and commissions) and the timing of such Stockholder Sale Event and (ii) if shares of Common Stock are to be included therein for the Company's account in accordance with the provisions hereof, the Company will have the right to designate one Co-Manager; provided, however, that if a Federated Sale Event is completed within Phase One, if reasonably requested by the Company, the Managing Underwriter for each Stockholder Sale Event will be the Person that was the Managing Underwriter for such Federated Sale Event, in which case the Offering Committee will have the right to designate one Co-Manager for such Stockholder Sale Event. Any additional Co-Manager for any Stockholder Sale Event will be selected by the Offering Committee.

(c) Any Managing Underwriter or Co-Manager designated by the Offering Committee will be a nationally recognized investment banking firm. If so requested by the Company, the Offering Committee will consult with the Company prior to designating any Managing Underwriter or Co-Manager in circumstances in which it has the right to designate a Managing Underwriter or Co-Manager.

(d) In the event that the Offering Committee waives its right to designate the Managing Underwriter or a Co-Manager, as the case may be, for any Public Sale Event, the Company will make such designation.

4.7. Offering Committee. (a) Subject to these Provisions, the Offering Committee is authorized and empowered on behalf of the Holders to (i) receive proposals for Stockholder Sale Events, (ii) solicit proposals for Stockholder Sale Events, including without limitation upon the request of any Holder, (iii) consult with the Holders and the Company with respect to the time or times that, and the manner in which, a Public Sale Event will be effected, (iv) monitor and assist the Company in all aspects of the conduct of a Stockholder Sale Event, (v) consult with the Company concerning all aspects of such conduct, including without limitation the determination of (w) the Estimated Salable Amount, (x) the Estimated Selling Price Range, (y) whether the Stockholder Minimum Amount has been achieved, and (z) the prorations contemplated by Section 3.5, (vi) consult with the Company with respect to the release of Subject Shares, waiver of restrictions, or termination of these Provisions pursuant to Section 2.4, and (vii) exercise the powers and duties assigned to it under these Provisions. The exercise or failure to exercise any of the foregoing authorizations and powers will be binding on or restrict, as the case may be, all Holders.

(b) If (i) the Company has consummated the First Federated Sale Event during the first 12 months following the Effective Date and (ii) at least 24,000,000 Subject Shares (subject to adjustment pursuant to Section 8.9) have not been sold pursuant to one or more Public Sale Events within the 12-month period following the First Federated Sale Event, the Offering Committee will have the authority to determine by majority vote either to (x) pursue a Stockholder Sale Event, if otherwise permitted by the terms of these Provisions, designed to effect the sale of such number of Subject Shares as will result in the total cumulative number of Subject Shares sold pursuant to Public Sale Events being equal to or exceeding 24,000,000 Subject Shares (subject to adjustment pursuant to Section 8.9) or (y) cause these Provisions to terminate in accordance with Section 7.1(e). If the Offering Committee so elects to pursue a Stockholder Sale Event, the Offering Committee will deliver a Committee Notice to the Company. Subject to Section 3.6, promptly upon receipt of the Committee Notice, the Company will notify the Holders thereof and deliver to the Offering Committee and the Holders (i) a Stockholder Offering Notice, (ii) a Securities Pricing Sheet, (iii) a Holder Questionnaire, and (iv) if the Company desires to sell shares of Common Stock for its own account in connection with such Stockholder Sale Event, an Inclusion Notice. The rights and obligations of the Company, the members of the Offering Committee, and the Holders with respect to such Stockholder Sale Event will be identical

to the rights and obligations that such parties would have if such Stockholder Sale Event were initiated pursuant to Section 3.1 rather than this Section 4.7(b), with the Committee Notice being deemed to be a Request for this purpose.

(c) The Offering Committee may, but will not be required to, retain counsel and an independent financial advisor to advise the Offering Committee in connection with its performance hereunder, including without limitation its review of the Registration Statement, the Underwriting Agreement, and any other pertinent documentation relating to any Public Sale Event. In no event will (i) the retention of such counsel or financial advisor impose upon such counsel or such financial advisor any professional responsibility or duties or liabilities to any Holder in respect of any Public Sale Event or these Provisions, the role of such counsel and financial advisor being solely to render advice to the Offering Committee as aforesaid, and (ii) the failure of the Offering Committee to retain such counsel or financial advisor result in any liability of the Offering Committee or any member thereof to any Person. Accordingly, such counsel and financial advisor may, but will not be required to, be counsel or the financial advisor to the Company or any Underwriter or Committee Designee Designator or other Person (or may act as such in other matters); provided, however, that in no event will the Company be obligated to pay or reimburse in respect of the fees and expenses of more than one law firm and investment banking firm for the Offering Committee. Upon receipt of a reasonably detailed invoice therefor, the Company will reimburse the Offering Committee for its reasonable out-of-pocket expenses incurred in connection with the performance of its duties hereunder, including without limitation the reasonable fees and expenses of its counsel and the reasonable advisory fees and expenses of its independent financial advisor as aforesaid.

(d) Members of the Offering Committee are or may be partners or employees of or may have other relationships with or interests in one or more Persons which have or may have existing or future relationships with the Company and/or one or more Affiliates or Associates thereof. The existence or nonexistence of any such relationships will not affect the standard of care or other provisions applicable under Section 8.1 or any other legal right or obligation, whether or not the Company enters into one or more indemnification or other agreements with or otherwise has any direct or indirect liabilities in respect of any member of the Offering Committee (any of which will be permitted hereunder).

V. REPRESENTATIONS AND WARRANTIES TO BE INCLUDED IN UNDERWRITING AGREEMENTS

5.1. Representations and Warranties of the Company. At the time each Underwriting Agreement in connection with any Public Sale Event pursuant to which Subject Shares will be offered is executed and delivered, except as may otherwise be agreed upon by the Holders participating in any distribution and the Company, the Company will represent and warrant in such Underwriting Agreement for the benefit of the Holders participating in any distribution in connection with such Underwriting Agreement as follows (unless otherwise indicated, as used in this Section 5.1, "Registration Statement" will mean the Registration Statement in connection with any such Public Sale Event at the time it becomes effective) substantially to the following effect:

(a) The Company meets the requirements under the Securities Act for use of the form of Registration Statement filed with the Commission;

(b) At the time of filing, the Preliminary Prospectus filed with the Commission (i) complied in all material respects with the applicable requirements of the Securities Act and (ii) did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein in light of the circumstances under which they were made not misleading; provided, however, that the Company will make no representations or warranties as to the information contained in or omitted from such Preliminary Prospectus in reliance upon and in conformity with the information furnished in writing to the Company by or on behalf of any Holder specifically for use in connection with the preparation of such Preliminary Prospectus or any information furnished in writing to the Company by any Underwriter specifically for use in connection with the preparation of such Preliminary Prospectus;

(c) Neither the Registration Statement nor the Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein in light of the circumstances in which they were made not misleading; provided, however, that the Company will make no representations or warranties as to the information contained in or omitted from the Registration

Statement or the Prospectus in reliance upon and in conformity with the information furnished in writing to the Company by or on behalf of any Holder specifically for use in connection with the preparation of such Registration Statement or the Prospectus or any information furnished in writing to the Company by any Underwriter specifically for use in connection with the preparation of such Registration Statement or the Prospectus;

(d) The public accountants who certified the financial statements of the Company included in the Registration Statement are independent public accountants within the meaning of the Securities Act, and the historical financial statements, together with the related schedules and notes, forming part of the Registration Statement and the Prospectus (i) comply, in all material respects, with the requirements of the Securities Act, including any so-called "no-action" letter addressed to the Company and obtained from the Commission's staff, (ii) present fairly, in all material respects, the consolidated financial condition, results of operations, and cash flows of the Company and its consolidated subsidiaries at the respective dates and for the respective periods indicated in accordance with generally accepted accounting principles consistently applied throughout such periods (except as specified therein), and (iii) were derived from the accounting records of the Company and its subsidiaries;

(e) Except as set forth in the Prospectus, since the date of the most recent financial statements included in the Prospectus, there has been no material adverse change in the business, financial condition, or results of operations of the Company and its consolidated subsidiaries, taken as a whole;

(f) The authorized capital stock of the Company is as set forth in the Prospectus, the capital stock of the Company conforms to the description thereof contained in the Prospectus, and all of the outstanding shares of Common Stock have been duly and validly authorized and issued and, except as set forth in the Prospectus, are fully paid and nonassessable;

(g) The Company has all requisite corporate power and authority, and has all requisite consents, approvals, and authorizations of any governmental authority required to be obtained by it, to enter into and carry out the terms of the Underwriting Agreement, except for such approvals or

authorizations as may be required under the federal securities laws or the "blue sky" or securities laws of any jurisdiction in connection with the purchase and distribution of shares of Common Stock by the Underwriters in the offering; and

(h) The Underwriting Agreement has been duly authorized, executed, and delivered by or on behalf of the Company and constitutes a valid and binding obligation of the Company.

5.2. Representations and Warranties of the Holders. At the time each Underwriting Agreement in connection with any Public Sale Event pursuant to which Subject Shares will be offered is executed and delivered, except as may otherwise be agreed upon by the Company and the Holders participating in such distribution, each such Holder for itself severally and not jointly will represent and warrant in such Underwriting Agreement to the Company, the Underwriters, and the other Holders participating in such distribution (pursuant to documentation reasonably acceptable to the Company, the Offering Committee, and the Underwriters) substantially as follows:

(a) Such Holder has all requisite power and authority, and has all requisite consents, approvals, or authorizations of any governmental authority required to be obtained by it, to enter into and carry out the terms of the Underwriting Agreement, except for such approvals or authorizations as may be required under the federal securities laws or the "blue sky" or securities laws of any jurisdiction in connection with the purchase and distribution of shares of Common Stock by the Underwriters in the offering;

(b) The Underwriting Agreement has been duly authorized, executed, and delivered by or on behalf of such Holder and constitutes a valid and binding obligation of such Holder (insofar as applicable to such Holder);

(c) Such Holder, immediately prior to any sale of Subject Shares, will own of record and Beneficially Own the Subject Shares (except for Subject Shares the record ownership of which was Transferred to such Holder pursuant to clause (f) of the first sentence of Section 2.3 or the Beneficial Ownership of which was Transferred by such Holder pursuant to the last sentence of Section 2.3) free and clear of all liens, charges, encumbrances, or claims

(except for the restrictions imposed hereunder and except for liens that will be fully released and discharged upon the sale thereof in the Public Sale Event provided that such liens or terms of release and discharge are acceptable to the Company and the Managing Underwriter in the respective sole discretion of both of them);

(d) Such Holder has not taken and will not take, directly or indirectly, any action to stabilize or manipulate the price of any security of the Company to facilitate the sale or resale of Subject Shares in contravention of the Exchange Act; and

(e) Any written information furnished by or on behalf of such Holder to the Company expressly for use in any Preliminary Prospectus, Prospectus, or Registration Statement or any amendment or supplement thereto does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading.

VI. CONDITIONS

6.1. Conditions to the Obligations of the Holders. The Holders participating in a distribution of Subject Shares pursuant to an Underwriting Agreement will not be obligated to consummate the sale of the Subject Shares unless the following conditions shall have been satisfied or waived by the Offering Committee upon the affirmative vote of a majority of the total number of the members thereof and, if requested by a member of the Offering Committee that was designated to be a member of the Offering Committee by a Person that is a Holder participating in the distribution of Subject Shares, by a majority of the members thereof that were so designated:

(a) The representations and warranties of the Company set forth in the Underwriting Agreement relating to such offering shall be true and correct in all material respects on the closing date of the offering, after giving effect to the transactions which are to occur on such date, and the Company shall have performed in all material respects all of its obligations under the Underwriting Agreement; and

(b) The shares of Common Stock involved in such offering shall be or have been approved for listing

(subject to official notice of issuance) or admitted for trading on the Principal Market.

6.2. Conditions to the Obligations of the Company. The Company will not be obligated to consummate the transactions contemplated by an Underwriting Agreement insofar as they relate to the sale of Subject Shares by any particular Holder participating in a distribution of Subject Shares pursuant thereto unless, in addition to any other conditions set forth therein, the representations and warranties of such Holder set forth therein shall be true and correct in all material respects on the closing date of the offering, after giving effect to the transactions which are to occur on such date, and such Holder shall have performed in all material respects all of its obligations under the Underwriting Agreement. Any Subject Shares as to which the Company is not so obligated may be excluded from the offering at the Company's election and without prior notice; provided, however, that the Company will use reasonable efforts in light of the circumstances (including without limitation the timing of the Public Sale Event) promptly to notify such Holder of such exclusion or proposed exclusion, as the case may be.

VII. TERMINATION

7.1. Termination. These Provisions, except for Article VIII and any representation, warranty, or covenant pursuant to Articles V and VI or Section 4.4, and the related definitions in Article I (all of which will survive the expiration or termination of these Provisions), will terminate and be of no further force or effect upon the earliest to occur of the following dates (the "Termination Date"):

(a) the date on which the Holders, in the aggregate, cease to own of record a number of Subject Shares equal to at least 10% of the number of initial Subject Shares (subject to adjustment as provided in Section 8.9);

(b) the date specified in a resolution duly adopted by the Board of Directors of the Company that expressly terminates these Provisions;

(c) if the Company has consummated a Federated Sale Event during Phase One, August 4, 1994;

(d) if the Offering Committee elects to pursue a Stockholder Sale Event pursuant to Section 4.7(b), the date

that is the earlier of (i) 12 months following the consummation of such Stockholder Sale Event or (ii) August 4, 1994;

(e) if the Offering Committee elects pursuant to Section 4.7(b) to cause these Provisions to terminate in accordance with this Section 7.1(e), the date that is 18 months following the First Federated Sale Event; or

(f) if a Sale Event has not been consummated during Phase One, February 4, 1994.

VIII. MISCELLANEOUS

8.1. Limitations on Liability; Reliance on Documents.

Notwithstanding any other provision of these Provisions, except as expressly provided in Section 4.4(a)(i), none of the Company, any Committee Designee Designator, any 5% Holder, any Affiliate or Associate or director, officer, or other representative of any of the foregoing, or any member of the Offering Committee, will have any liability or may incur any liability for damages or any other cost, expense, or other financial liability to any Holder, any Affiliate or Associate of any Holder, any director, officer, or other representative of any of the foregoing, or any other Person under or by reason of these Provisions, at law, in equity, or otherwise with respect to any loss, liability, cost, expense, damage, or other injury relating to, resulting from, or arising out of or in connection with the discharge or failure to discharge any right or obligation under any provision of Sections 2.4, 2.5, 3.1, 3.3(c), 3.4, 3.5, 3.6, 4.1, 4.2, 4.6, 4.7, 6.2, 7.1, or the related general provisions of Articles I and VIII, except and only to the extent that such loss, liability, cost, expense, damage, or injury is finally determined by a court of competent jurisdiction upon a showing by clear and convincing evidence to have been the proximate result of an intentional material breach by, in the case of the Company, any duly authorized employee or agent of the Company, and, in the case of any member of the Offering Committee, such member of the Offering Committee and all other members of the Offering Committee affirmatively participating therein, of any provision contained in these Provisions. Any such liability arising out of any such breach by any such duly authorized employee or agent of the Company will, as between the Company and any Affiliate or Associate of the Company, be a liability solely of the Company and not of any such Affiliate or Associate. Without limiting the generality or effect of the foregoing, the Company and each other Person referred to in the first sentence of this Section

8.1 will be protected and will incur no liability for or in respect of any action taken or thing suffered by it in connection with these Provisions in good faith in reliance upon the advice of counsel or a financial advisory firm (as to matters within the general expertise thereof) or upon any notice, direction, consent, certificate, affidavit, statement, or other paper or document prepared or given by or on behalf of any Holder, and will be under no duty whatsoever to inquire into or investigate the validity, accuracy, or content of any such item; the Company and each member of the Offering Committee will be similarly protected in reliance upon any notice, direction, consent, certificate, affidavit, statement, or other paper or document prepared or given by or on behalf of the Offering Committee or any member thereof, on the one hand, and the Company, on the other hand. The provisions of this Section 8.1 will survive indefinitely, notwithstanding any termination of these Provisions.

8.2. Information Confidential. None of the Company, any member of the Offering Committee, and any Holder may use any confidential information received by it pursuant to these Provisions in violation of the Exchange Act or reproduce, disclose, or disseminate such information to any other Person (other than its employees or agents having a need to know the contents of such information, and its attorneys), except to the extent reasonably related to the exercise of rights under these Provisions, unless such information has been made available to the public generally (other than by such recipient in violation of this Section 8.2) or such recipient is required to disclose such information by a governmental body or regulatory agency or by law in connection with a transaction that is not otherwise prohibited hereby or pursuant to a governmental or regulatory investigation.

8.3. Notices. All notices, requests, waivers, releases, consents, and other communications required or permitted by these Provisions must be in writing and will be deemed sufficiently given and delivered for all purposes when delivered in person or when dispatched by telegram or electronic facsimile transmission or upon confirmation of receipt when dispatched by a nationally recognized overnight courier service or, as to notices given to Holders, three business days after being deposited in the United States mail (first class postage prepaid) to the appropriate party as follows: (a) if to a Holder, as indicated on the Holders' List or at such other address as such Holder may have furnished to the Company and the Offering Committee in writing prior to the giving of such notice, (b) if to the Company, at 7 West Seventh

Street, Cincinnati, Ohio 45202, Telecopy No. (513) 579-7897 (marked for the attention of the Chief Financial Officer and the General Counsel) or at such other address as the Company may have furnished to the Holders and the Offering Committee in writing prior to the giving of such notice, and (c) if to the Offering Committee, (i) with respect to a Public Sale Event as to which a Federated Offering Notice or a Stockholders Offering Notice has been delivered to the Holders, as indicated in such Federated Offering Notice or Stockholder Offering Notice or the materials accompanying such Federated Offering Notice or Stockholder Offering Notice and (ii) otherwise, at the principal business address of a designee of the Offering Committee selected from time to time by the Committee Designees or, absent such selection, by a filing with the Bankruptcy Court or the Commission. If the Company receives a notice from the Offering Committee to the effect that a designee of the Offering Committee has been selected to receive all notices on behalf of the Offering Committee and stating the name and principal business address of such designee, the Company will publicly disclose such information in a filing with the Commission or otherwise and will give notice of such information to the Holders as provided in this Section 8.3. Without limiting the generality or effect of the other provisions of this Section 8.3, any Holder having questions relating to these Provisions or any of the matters contemplated hereby may address such questions in writing to the Company in accordance with instructions furnished to the Holders from time to time.

8.4. Amendment. Subject to Sections 2.4, 2.5, and 7.1, these Provisions may be amended only by an instrument in writing signed by the Company and approved by (i) the Board of Directors, (ii) a majority of the members of the Offering Committee then serving as such, and (iii) the Holders of at least a majority of the Subject Shares present or represented by proxy and entitled to vote thereon at a meeting called for such purpose upon at least 20 calendar days advance notice to the Holders; provided, however, that no amendment to these Provisions that would materially and adversely discriminate against any Holder or category of Holders may be effected pursuant to this Section 8.4 without the additional approval of 80% or more of the Holders so discriminated against; and provided further that the first sentence of this Section 8.4 may not be amended without the additional approval of all Holders. A summary of any amendment so approved will be described in a notice to Holders as promptly as reasonably practicable after the effective date thereof. Any amendment approved as provided in the first sentence of this Section 8.4 will be binding upon all Holders.

8.5. Successors and Assigns. These Provisions will be binding upon and inure to the benefit of the Company, the members of the Offering Committee, and the Holders and their respective successors and permitted assigns, but will not be assignable or delegable by any Person without the prior written consent of each of the Holders, in the case of assignment or delegation by the Company, or the Company and each of the other Holders, in the case of assignment or delegation by a Holder; provided, however, that these Provisions will be binding upon and inure to the benefit of any Person that becomes a Holder as a result of a Transfer of Subject Shares pursuant to any of clauses (a), (b), (c), (d), (e), and (f) of the first sentence of Section 2.3 and nothing in this Section 8.5 affects the rights of any Holder to effect any Transfer permitted by Section 2.3. Except as aforesaid, in the absence of such prior written consent, any purported assignment or delegation of any right or obligation hereunder will be null and void.

8.6. Rights of Certain Persons. Except as provided in Sections 4.4, 4.7, and 8.5, nothing expressed or implied in these Provisions is intended or will be construed to confer upon or give any person or entity other than the Company, the members of the Offering Committee, and the Holders any rights or remedies under or by reason of these Provisions or any transaction contemplated hereby.

8.7. Expenses. Except as otherwise expressly provided in these Provisions, each of the Company, the members of the Offering Committee, and the Holders will bear its own expenses incurred in connection with these Provisions and the transactions contemplated hereby.

8.8. Certain Interpretive Matters and Definitions. (a) Titles and headings to Sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of these Provisions.

(b) Unless the context otherwise requires, (i) all references to Sections or Exhibits are to Sections or Exhibits of or to these Provisions, (ii) each term defined in these Provisions has the meaning assigned to it, (iii) "or" is disjunctive but not necessarily exclusive, and (iv) words in the singular include the plural and vice versa. All references to "\$" or dollar amounts will be to lawful currency of the United States of America.

(c) No provision of these Provisions will be interpreted in favor of, or against, the Company or any Holder by reason of the extent to which such Person or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

(d) The Company will have the right to interpret any provision of these Provisions. Any good faith interpretation adopted by the Company after consultation with the members of the Offering Committee will be binding on all Holders if the Company has given notice of such interpretation to the Offering Committee and the Offering Committee has not objected thereto within the period (not less than five business days) specified in such notice. Neither the failure by the Company to give any such notice nor the objection by the Offering Committee will create any presumption or have any other legal or evidentiary effect.

(e) Without limiting the generality or effect of any other provision contained herein, upon notice given by the Company to the members of the Offering Committee, the Company may request that the Court of Chancery of the State of Delaware (the "Chancery Court") interpret any provision of these Provisions. Neither the Company nor any Holder or other Person may institute any action, suit, or proceeding in any court or tribunal other than the Chancery Court to interpret any provision or assert any right or liability under these Provisions or any provision hereof; provided, however, that this Section 8.8(e) will not restrict the right of any Person to appeal from any ruling, order, or decision of the Chancery Court that is otherwise appealable.

(f) In computing any period of time specified in these Provisions, (i) the date of the act or event from which such period of time is to be measured will be included, (ii) any such period will expire at 5:00 p.m., Cincinnati, Ohio time on the last day of such period, and (iii) any such period denominated in months will expire on the date in the last month of such period that has the same numerical designation as the date of the act or event from which such period is to be measured; provided, however, that if there is no date in the last month of such period that has the same numerical designation as the date of such act or event, such period will expire on the last day of the last month of such period.

(g) An agreement to be bound by these Provisions as contemplated by clauses (d) and (e) of Section 2.3 will be

deemed to be in substance reasonably satisfactory to the Company if such agreement, including any such agreement as may be set forth on a certificate evidencing Subject Shares, (i) is set forth in writing, (ii) makes reference to these Provisions, (iii) states in substance that the Person acquiring Subject Shares or an interest therein agrees for the benefit of the Company and the Holders to be bound by the terms of these Provisions such that the Subject Shares acquired by such Person will remain subject to these Provisions, and (iv) is signed by or on behalf of such Person.

8.9. Certain Adjustments to Share Amounts.

Notwithstanding anything to the contrary herein contained, the Board of Directors of the Company may make or provide for such adjustments in the numbers of shares of Common Stock specified in Sections 1.43, 1.55, 1.56, 2.5, 3.6(c), 4.1(a), 4.7(b), and 7.1(a), and any other provisions of these Provisions containing a specified number of shares of Common Stock or Subject Shares, as the Board may determine, after consultation by representatives of the Company with the members of the Offering Committee, is equitably required to prevent diminution or enlargement of the rights of Holders that otherwise would result from any stock dividend, stock split, combination of shares, recapitalization, or other similar change in the capital structure of the Company.

8.10. Severability. In case any provision contained in these Provisions, other than Section 2.1, is invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and the provision so held to be invalid, illegal, or unenforceable will be reformed to the minimum extent necessary, and in a manner as consistent with the purposes thereof as is practicable, so as to render it valid, legal, and enforceable.

8.11. Governing Law. These Provisions will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

8.12. Implementation. (a) On the terms and subject to the conditions herein contained, including without limitation the provisions of Sections 2.4 and 7.1, (i) the Company and the initial Holders have agreed or will agree, or have been or will be deemed to have agreed, to be bound by these Provisions in accordance with the Plan and the order of the Bankruptcy Court confirming the Plan and (ii) the Company will be deemed to have

agreed to be bound by these Provisions for the benefit of any Person who becomes a Holder in accordance with Section 2.3, either by separate written agreement or without further action upon the issuance to such Holder of one or more certificates evidencing Subject Shares.

(b) These Provisions have also been adopted by the Company pursuant to the By-Laws of the Company. No amendment to such By-Laws will affect the rights and obligations of the Company and the Holders under these Provisions unless these Provisions are also amended in accordance with Section 8.4. The invalidity, illegality, or unenforceability of these Provisions, on the one hand, or of such By-Laws, on the other hand, will not affect the validity, legality, or enforceability of the other.

HOLDER QUESTIONNAIRE

**pursuant to the
AGREEMENT AND PROVISIONS RELATING TO RESTRICTIONS
ON TRANSFER OF CERTAIN SHARES OF COMMON STOCK
OF
FEDERATED DEPARTMENT STORES, INC.**

Please complete and return immediately to the Company at:

Federated Department Stores, Inc.

Telecopy No.: _____

Attention: _____

[with a copy to the Offering Committee at (or care of):

Telecopy No.: _____

Attention: _____

As described in the accompanying materials, the information requested below is required for purposes of any Public Sale Event relating to shares of Common Stock of the Company that may be initiated from time to time (including payment to you of any proceeds thereof to which you may be entitled should you timely elect to participate in such Public Sale Event and otherwise satisfy all requirements applicable thereto).

IMPORTANT

Please refer to the accompanying materials for a description of a possible Public Sale Event, definitions of certain terms used herein, and other important information.

By signing this Questionnaire, you agree to update and amend this Questionnaire if there is any material change in the information provided by you below and to provide any additional information requested by the Company pursuant to Section 4.5 of the Provisions.

PART I

**Information Required for Prospectus Pursuant
to the Federal Securities Laws**

1. Please state your name and principal business address as it is to appear in any Prospectus:

2. Please describe the nature of any position, office, or other material relationship which you have had within the past three years with the Company or any of its predecessors or affiliates:

3. Please state the aggregate number of shares of Common Stock and any other securities issued by the Company beneficially owned by you or your affiliates and associates, and provide the additional information requested (attach additional sheets if necessary referencing this Item 3):

<u>Number of Shares</u>	<u>CUSIP No.(s)</u>	<u>Certificate No.(s)</u>	<u>Record Owner(s)</u>	<u>Other Beneficial Owners (Include Name and Relationship)</u>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

For purposes of this Item 3, beneficial ownership is to be determined in accordance with Rule 13d-3 under the Exchange Act (which, in general, extends to securities that a Person has or shares the direct or indirect power to vote or dispose of, or to direct the voting or disposition of, through any contract, arrangement, understanding, relationship, or otherwise, and includes securities that a Person has a right to acquire within 60 days).

PART II

Instructions Concerning Payment

Please specify the manner in which the payment of any proceeds from the consummation of a Public Sale Event to which you may be entitled are to be disbursed. [Note: The reasonable cost of wire and international transfers (Options 1, 2, and 3) will be deducted from the amount to be paid to you if you elect to receive payment of proceeds other than by check (Option 4). Under the Company's By-Laws and the Provisions, such proceeds may also be reduced to reflect certain selling expenses and certain taxes and other amounts which may be withheld.]

(Choose one option only from the four options included below)

1. Federal Reserve Wire (Choose one sub-option only)

A. Payment made directly to your bank.

ABA Number: _____
Account Number to be credited: _____
Advice to be sent to: _____
Telex Number: _____
Bank Wire Number: _____

B. Payment made to a correspondent bank

Bank Name and Full Address:

ABA Number: _____
Account Number to be Credited: _____
Advice to be sent to: _____
Telex Number: _____
Bank Wire Number: _____

2. Bank Wire

Bank Wire Address:

3. International Transfers (Choose one sub-option only)

A. Swift

Swift Address:

B. Chips

Correspondence Bank to be paid: _____

Account Number at that bank: _____

Universal ID Number: _____

4. Check

Name and Address where the check is to be sent:

SIGNATURE

Name and address of Holder
(print or type):

By: _____

Name: _____

Title: _____

(Must be signed exactly as name appears in the Company's records; if signing on behalf of a corporation or other legal entity or in any representative capacity, such capacity must be stated and the signature constitutes a representation and warranty that the person so signing has the authority to act in such representative capacity.)

SECURITIES PRICING SHEET

pursuant to the

AGREEMENT AND PROVISIONS RELATING TO RESTRICTIONS

ON TRANSFER OF CERTAIN SHARES OF COMMON STOCK

OF

FEDERATED DEPARTMENT STORES, INC.

Please complete and return as promptly as practicable and in any event by not later than _____ P.M. on _____, 199_ to the Company at:

Federated Department Stores, Inc.

Telecopy No.: _____
Attention: _____

[with a copy to the Offering Committee at [or care of]:

Telecopy No.: _____
Attention: _____]

This Securities Pricing Sheet is (indicate by check mark):

_____ an initial Securities Pricing Sheet submitted in response to the [Federated] [Stockholder] Offering Notice dated _____, 199_

_____ an amendment to the Securities Pricing Sheet of the Holder named below dated _____, 199_

IMPORTANT

Receipt of the [Federated] [Stockholders] Offering Notice dated _____, 199_ (the "Notice") and [describe other materials furnished together with the Notice] is hereby expressly acknowledged.

By signing this Securities Pricing Sheet, you are agreeing to all of the conditions under the caption "Conditions to Participation in Public Sale Event" set forth in (and incorporated by reference into) the Notice. More specifically, by signing this Securities Pricing Sheet you are agreeing to sell shares of Common Stock at the prices indicated below if the Public Sale Event referred to in the accompanying materials is completed and certain other conditions are satisfied (as to which there can be no assurance). While such agreement is revocable, your right to revoke it is subject to various conditions precedent which you may not be able to satisfy (in which event the submission of this Securities Pricing Sheet will in effect constitute your binding agreement to sell the shares indicated to be sold below).

In no event will the Company, any underwriter or any other person or entity have any obligation to purchase any shares of Common Stock from you or any other person or entity by reason of your execution of this Securities Pricing Sheet or any other action taken or omitted to be taken by you or any related parties. The provisions under which your shares of Common Stock could be purchased or offered for sale are complex and contain various terms and conditions which may significantly affect your economic interests. You are encouraged to read carefully the accompanying materials for a summary of such provisions.

The number of shares of Common Stock that the Holder desires to offer for sale pursuant to the Public Sale Event to which the Notice relates, and the price(s) at which the Holder desires to offer such shares for sale, are as follows:

<u>Per Share Price to the Public*</u>	<u>Cumulative Maximum Number of Shares to be Sold**</u>
\$ _____ and above.....	_____
\$ _____ and above.....	_____
\$ _____ and above.....	_____
\$ _____ and above.....	_____
\$ _____ and above.....	_____
\$ _____ and above.....	_____
At the Actual Selling Price.	_____

* NOTE: The per share price to be specified is before reduction for any applicable underwriting discounts or commissions or other costs and expenses for which the Holder may be responsible.

** Number should be shown cumulatively so that the number on each line (after the first line) includes the number on all preceding lines.

[Add Form W-9, signature guarantees, provisions for transmitting stock certificates, and other provisions appropriate in light of the circumstances of the particular Public Sale Event.]

SIGNATURE

Name and address of Holder (print or type):

By: _____
Title: _____
Date: _____

(Must be signed exactly as name appears in the Company's records; if signing on behalf of a corporation or other legal entity or in any representative capacity, such capacity must be stated and the signature constitutes a representation and warranty that the person so signing has the authority to act in such representative capacity.)

RECORDED
OFFICE

JUL 17 92

ANNEX C

The directors of the Surviving Corporation will be as follows:

Charlotte Beers
Robert A. Charpie
Lyle Everingham
Reginald H. Jones
John K. McKinley
G. William Miller
Allen I. Questrom
Ronald W. Tysse
James M. Zimmerman

SCHEDULE A

TRADEMARK

REGISTRATION NO.

AMBASSADOR

430,272