

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 13, 2007

Foot Locker, Inc.

(Exact Name of Registrant as Specified in its Charter)

New York

(State or other Jurisdiction
of Incorporation)

1-10299

(Commission File Number)

13-3513936

(I.R.S. Employer
Identification No.)

112 West 34th Street, New York, New York

(Address of Principal Executive Offices)

10120

(Zip Code)

Registrant's telephone number, including area code: **212-720-3700**

Former Name/Address

(Former name or former address, if changed from last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02.**Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

At its meeting on August 13, 2007, the Board of Directors of the Company approved amendments to the Foot Locker Supplemental Executive Retirement Plan (the "SERP"). The SERP is an unfunded, nonqualified benefit plan providing for payment of supplemental retirement, death, and disability benefits to certain executive officers of the Company and certain other key employees of the Company and its subsidiaries. The principal amendments to the SERP include:

- making certain technical changes to bring the SERP into documentary compliance with Section 409A of the Internal Revenue Code of 1986, as amended, and the final rules and regulations thereunder; and
- providing for continued medical and dental insurance benefits if a participant is entitled to payment of an Award under the SERP following termination of employment.

A copy of the SERP, as amended and restated, is attached hereto as Exhibit 10.1 which, in its entirety, is incorporated herein by reference.

Item 5.03.**Amendments to Articles of Incorporation of By-laws; Change in Fiscal Year**

At its meeting on August 13, 2007, the Board of Directors of the Company approved an amendment to Article VI, Section 1 of the By-laws to provide that the shares of the corporation shall be represented by certificates or shall be uncertificated shares. A copy of the By-laws, as amended, is attached hereto as Exhibit 3.1, which in its entirety is incorporated herein by reference.

Item 9.01.**Financial Statements and Exhibits.**

- (c) Exhibits
- 3.1 By-laws of Foot Locker, Inc., as amended.
- 10.1 Foot Locker Supplemental Executive Retirement Plan, Amended and Restated as of January 1, 2005.
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SIGNATURE

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

FOOT LOCKER, INC.

(Registrant)

Date: August 16, 2007

By: /s/ Gary M. Bahler

*Senior Vice President, General Counsel
And Secretary*

BY-LAWS
of
FOOT LOCKER, INC.

Amended as of August 13, 2007

INDEX

	<u>Page</u>
ARTICLE I	1
Meetings of Shareholders	1
ARTICLE II	4
Board of Directors	4
ARTICLE III	6
Committees	6
ARTICLE IV	8
Officers	8
Chairman of the Board	8
Vice Chairmen of the Board	9
President	9
Chief Executive Officer	9
Chief Operating Officer	9
Executive Vice Presidents, Senior Vice Presidents and Other Vice Presidents	9
Chief Accounting Officer	10
Treasurer	10
Secretary	10
Powers of Officers Regulated	10
ARTICLE V	11
Execution of Contracts	11
ARTICLE VI	11
Capital Stock	11
ARTICLE VII	12
Corporate Seal	12
ARTICLE VIII	12
Fiscal Year	12
ARTICLE IX	12
Indemnification of Directors, Officers and Others	12
ARTICLE X	14
Amendments	14

BY-LAWS
OF
FOOT LOCKER, INC.

ARTICLE I

MEETINGS OF SHAREHOLDERS

SECTION 1. Any meeting of the shareholders may be held at such place within or without the United States, and at such hour, as shall be fixed by the Board of Directors and stated in the notice of meeting, or, if not so fixed, at the office of the Corporation in the State of New York at 10:00 A.M.

SECTION 2. The annual meeting of shareholders shall be held on such day and at such time as may be fixed by the Board of Directors for the election of directors and the transaction of other business.

SECTION 3. A special meeting of the shareholders may be held whenever called in writing by the Secretary upon the direction of the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer, or a majority of the entire Board of Directors. At any such special meeting only such business may be transacted which is related to the purpose or purposes set forth in the notice required by Section 5 of Article I.

A special meeting may be cancelled by resolution of the Board of Directors.

SECTION 4. For the purpose of determining the shareholders entitled to notice of, or to vote at, any meeting of shareholders or any adjournment thereof, the Board of Directors may fix, in advance, a date as the record date for such determination of shareholders. Such date shall not be more than 60 nor less than 10 days before the date of such meeting. When a determination of shareholders of record entitled to notice of, or to vote at, any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date for the adjourned meeting.

SECTION 5. Notice of any meeting of shareholders may be written or electronic. The notice shall state the place, date and hour of any meeting of shareholders

and, unless it is the annual meeting, shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders to demand payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect. Notice of any meeting shall be given, not more than 60 nor less than 10 days before the date of the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at his or her address as it appears on the record of shareholders, or, if he or she shall have filed with the Secretary a written request that notices be mailed to some other address, then such notice shall be directed to him or her at such other address. If transmitted electronically, such notice is given when directed to the shareholder's electronic mail address as supplied by the shareholder to the Secretary or as otherwise directed pursuant to the shareholder's authorization or instructions. An affidavit of the Secretary or other person giving the notice or of a transfer agent of the Corporation that the notice required by this section has been given shall, in the absence of fraud, be *prima facie* evidence of the facts therein stated.

When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date.

SECTION 6. A list of shareholders as of the record date, certified by the officer of the Corporation responsible for its preparation or by a transfer agent of the Corporation, shall be produced at any meeting of shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

SECTION 7. The holders of a majority of the votes of shares entitled to vote thereat shall constitute a quorum at a meeting of shareholders for the transaction of any business. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholder. The shareholders present may adjourn the meeting despite the absence of a quorum.

SECTION 8. Every shareholder entitled to vote at a meeting of shareholders may authorize another person or persons to act for him or her by proxy executed in writing (or in such manner permitted by law) by the shareholder or his or her attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof, unless

otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by the New York Business Corporation Law.

SECTION 9. At all meetings of shareholders the Chairman of the Board shall preside; and in his or her absence a Vice Chairman of the Board, the President or such other officer or director as may be appointed by the Board of Directors shall preside; and in the absence of any such officer, a chairman appointed by the shareholders present shall preside. The Secretary or an Assistant Secretary shall act as secretary at all meetings of the shareholders, but in the absence of the Secretary or an Assistant Secretary the presiding officer may appoint any person to act as secretary of such meeting.

SECTION 10. The Board of Directors, in advance of any meeting of shareholders, shall appoint one or more inspectors to act at the meeting or at any adjournment thereof. If inspectors are not so appointed or if such persons are unable to act at the meeting, the person presiding at the meeting shall appoint one or more inspectors. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability.

SECTION 11. The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report, in writing, of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be *prima facie* evidence of the facts stated and of the vote as certified by them.

SECTION 12. Every shareholder of record shall be entitled at every meeting of shareholders to one vote for every share standing in his or her name on the record date on the record of shareholders.

SECTION 13. At any annual meeting of shareholders, only such business shall be transacted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of the meeting given by or at the direction of the Board of Directors (including, if so specified, any shareholder proposal submitted pursuant to the rules and regulations of the Securities and Exchange Commission), (ii) otherwise brought before the meeting by or at the direction of the Board of Directors or (iii) otherwise properly brought before the meeting in accordance with the procedure set forth in the following paragraph, by a shareholder of the Corporation entitled to vote at such meeting.

For business to be brought by a shareholder before an annual meeting of shareholders pursuant to clause (iii) above, the shareholder must have given written notice thereof to the Secretary of the Corporation, such notice to be received at the principal executive offices of the Corporation not less than 90 nor more than 120 calendar days prior to the one-year anniversary of the date of the annual meeting of shareholders for the previous year; provided, however, that if the annual meeting of shareholders is called for a date that is not within 30 days before or after such anniversary date, notice by the shareholder must be received at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which the Corporation's notice of the date of meeting is first given or made to the shareholders or disclosed to the general public (which disclosure may be effected by means of a publicly available filing with the Securities and Exchange Commission), whichever occurs first. A shareholder's notice to the Secretary shall set forth, as to each matter the shareholder proposes to bring before the annual meeting, (i) a brief description of the business proposed to be brought before the annual meeting and of the reasons for bringing such business before the annual meeting and, if such business includes a proposal to amend either the Certificate of Incorporation or these By-laws, the text of the proposed amendment, (ii) the name and record address of the shareholder proposing such business, (iii) the number of shares of each class of stock of the Corporation that are beneficially owned by such shareholder, (iv) any material interest of the shareholder in such business being proposed, and (v) such other information relating to the proposal that is required to be disclosed in solicitations pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission or other applicable law.

Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an annual meeting of shareholders except in accordance with the procedures set forth in this Section 13; provided, however, that nothing in this Section 13 shall be deemed to preclude discussion by any shareholder of any business properly brought before the annual meeting of shareholders in accordance with such procedures and any rules of order established by the chairman of the meeting of shareholders. The chairman of the meeting of shareholders shall, if the facts warrant, determine and declare at the meeting that the business was not properly brought before the meeting in accordance with the provisions of this Section 13, and, if he should so determine, he shall so declare to the meeting that any such business not properly brought before the annual meeting shall not be transacted.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. The number of directors constituting the entire Board of Directors shall be not less than 9 or more than 17, the exact number of directors to be determined from time to time by resolution adopted by a majority of the entire Board of Directors. At each annual meeting of shareholders, directors shall be elected to hold office by a plurality of the votes cast.

SECTION 2. Nominations for election to the Board of Directors of the Corporation at a meeting of shareholders may be made by the Board of Directors, on behalf of the Board of Directors by any nominating committee appointed by such Board, or by any shareholder of the Corporation entitled to vote for the election of directors at such meeting. Such nominations, other than those made by or on behalf of the Board of Directors, shall be made by notice in writing delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation, and received by the Secretary not less than 90 nor more than 120 calendar days prior to the one-year anniversary of the date of the annual meeting of shareholders for the previous year; provided, however, that if the annual meeting of shareholders is called for a date that is not within 30 days before or after such anniversary date, notice by the shareholder must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which the Corporation's notice of the date of meeting is first given or made to the shareholders or disclosed to the general public (which disclosure may be effected by means of a publicly available filing with the Securities and Exchange Commission), whichever occurs first. Each such notice shall set forth: (a) the name and address of the shareholder who intends to make the nomination, (b) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (c) the principal occupation or employment of each proposed nominee, (d) the number of shares of stock of the Corporation which are beneficially owned by each such proposed nominee and by the nominating shareholder, (e) any other information concerning the proposed nominee that must be disclosed of nominees in proxy solicitations for elections of directors pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission or other applicable law, and (f) the executed consent of each proposed nominee to serve as director of the Corporation if so elected, together with an undertaking, executed by such proposed nominee, to furnish to the Corporation any information it may request upon the advice of counsel for the purpose of determining such proposed nominee's eligibility to serve as a director.

The chairman of the meeting of shareholders may, if the facts warrant, determine that a nomination was not made in compliance with the foregoing procedures, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination shall be disregarded.

SECTION 3. The Board of Directors or any committee thereof may hold its meetings in such place or places within or without the State of New York as the Board of Directors may, from time to time, determine. Any one or more or all of the members of the Board of Directors, or any committee thereof, may participate in any meeting of the Board or of any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

SECTION 4. Regular meetings of the Board of Directors shall be held in accordance with the schedule adopted each year by the Board of Directors, or on such other day or at such other time or place as the Board of Directors may, from time to time, determine. No notice shall be required for any such regular meeting of the Board of Directors; provided, however, that the Secretary shall forthwith give notice of any change in the place, day or time for holding regular meetings of the Board of Directors by mailing a notice thereof to each director.

SECTION 5. At the first meeting of the Board of Directors held after each annual meeting of shareholders, the Board shall (a) elect the executive officers of the Corporation, such executive officers to hold office until the first meeting of the Board of Directors following the next annual meeting of the shareholders, and (b) designate an Executive Committee and such other committees as the Board of Directors deems appropriate.

SECTION 6. Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer or a majority of the entire Board.

SECTION 7. Any notice of a meeting of directors required to be given shall be mailed to each director at least two days before the day on which such meeting is to be held, or shall be sent by telegraph, telex, cable, wireless, telecopy or electronic mail, or be delivered personally or by telephone, at least 24 hours before the time at which such meeting is to be held. Notice need not be given to any director who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice.

SECTION 8. A notice, or waiver of notice, need not specify the purpose (other than to amend these By-laws) of any regular or special meeting of the Board of Directors.

SECTION 9. At all meetings of the Board of Directors, the Chairman of the Board, a Vice Chairman of the Board, the President, or such other officer or director as may be appointed by the Board, shall preside.

SECTION 10. One-third of the entire Board of Directors shall constitute a quorum for the transaction of business. Except as otherwise provided in these By-laws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board of Directors. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of any meeting of the Board of Directors to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

ARTICLE III

COMMITTEES

SECTION 1. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate not less than three of its members who, with the Chairman of the Board, shall constitute an Executive Committee. During intervals between meetings of the Board of Directors, the Executive Committee shall possess, and may exercise, all of the powers of the Board (except as otherwise provided in this Article III) in the management of the business of the Corporation, in all cases in which specific directions shall not have been given by the Board of Directors.

SECTION 2. The Chairman of the Board shall be the chairman of the Executive Committee, and the Secretary of the Corporation shall be the secretary of such committee, or in his or her absence any Assistant Secretary who shall have been designated by the Board of Directors to perform the duties of the Secretary. All acts and resolutions of the Executive Committee shall be recorded in the minute book and reported to the Board of Directors at its next succeeding regular meeting and shall be subject to the approval of, or revision by, the Board, but no acts or rights of third parties shall be affected by any such revision. The presence of a majority of the members of the Executive Committee shall be necessary to constitute a quorum. The affirmative vote of a majority of the members of the Executive Committee shall be necessary for the adoption of any resolution. The members of the Executive Committee who are not full-time employees of the Corporation shall receive such compensation for their services as shall, from time to time, be fixed by the Board.

SECTION 3. The Board of Directors, by resolution adopted by a majority of the entire Board, may appoint a Compensation and Management Resources Committee consisting of three or more directors who are not employees of the Corporation. All compensation paid or payable to officers of the Corporation shall be fixed by the Compensation and Management Resources Committee.

SECTION 4. From time to time the Board of Directors, by resolution adopted by a majority of the entire Board, may appoint any other committee or committees, each consisting of three or more directors or officers, with such powers as shall be specified in the resolution of appointment.

SECTION 5. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent member or members at any meeting of such committee.

SECTION 6. Each committee shall serve at the pleasure of the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his or her duty to the Corporation under the New York Business Corporation Law.

SECTION 7. No committee shall have authority as to the following matters:

(a) The submission to shareholders of any action that needs shareholders' approval under the New York Business Corporation Law;

(b) The filling of vacancies in the Board of Directors or in any committee;

(c) The fixing of compensation of the directors for serving on the Board of Directors or on any committee;

(d) The amendment or repeal of any By-law, or the adoption of any new By-law; or

(e) The amendment or repeal of any resolution of the Board of Directors which, by the terms of such resolution, shall not be so amendable or repealable.

SECTION 8. Subject to any requirements of these By-laws, each committee shall establish its own organization, fix its own rules of procedure and meet as ordered by the Board of Directors.

ARTICLE IV

OFFICERS

SECTION 1. The officers of the Corporation shall be elected by the Board of Directors, and may consist of a Chairman of the Board, a Chief Executive Officer, a President, a Chief Operating Officer, one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more other Vice Presidents, a Chief Accounting Officer, a Treasurer and a Secretary. The Board of Directors may also elect, as an officer of the Corporation, one or more Vice Chairmen of the Board. The Board of Directors may appoint one or more Assistant Treasurers or Assistant Secretaries and such other officers as shall be deemed necessary, who shall perform such duties as may, from time to time, be prescribed by the Board of Directors. Any two or more offices may be held by the same person, and no officer, except the Chairman of the Board need be a director.

All officers elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the entire Board. All other officers, agents and employees shall hold office at the discretion of the committee or of the officer appointing them. The removal of an officer without cause shall be without prejudice to his or her contract rights, if any. The election or appointment of an officer shall not, of itself, create contract rights.

The Board of Directors may require any officer to give security for the faithful performance of his or her duties.

CHAIRMAN OF THE BOARD

SECTION 2. The Chairman of the Board shall preside at all meetings of shareholders, the Board of Directors, and the Executive Committee. He or she shall perform all duties and hold all positions prescribed by these By-laws and shall perform such other duties as may be assigned to him or her by the Board.

VICE CHAIRMEN OF THE BOARD

SECTION 3. Vice Chairmen of the Board shall perform all duties and hold all positions prescribed by these By-laws and shall have such other powers and shall perform such other duties as may be assigned them by the Board. In case of the absence or disability of the Chairman of the Board, the duties of the office of Chairman of the Board shall be performed by a Vice Chairman of the Board, unless and until the Board of Directors shall otherwise direct.

PRESIDENT

SECTION 4. The President shall perform all duties and hold all positions prescribed by these By-laws and shall have such other powers and shall perform such other duties as may be assigned to him or her by the Board. In case of the absence or disability of the Chairman of the Board and any Vice Chairman of the Board, the duties of the office of Chairman of the Board shall be performed by the President unless and until the Board of Directors shall direct otherwise.

CHIEF EXECUTIVE OFFICER

SECTION 5. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall perform all duties and hold all positions prescribed by these By-laws and shall perform all other duties incidental to such office. He or she shall keep the Chairman of the Board and the Board of Directors fully informed and shall freely consult with the Chairman of the Board and the Board of Directors concerning the business of the Corporation.

CHIEF OPERATING OFFICER

SECTION 6. The Chief Operating Officer shall be the chief operating officer of the Corporation, and shall perform all duties and hold all positions prescribed by these By-laws and shall have such other powers and shall perform such other duties as may be assigned to him or her by the Board.

EXECUTIVE VICE PRESIDENTS,
SENIOR VICE PRESIDENTS
AND
OTHER VICE PRESIDENTS

SECTION 7. Each Executive Vice President, each Senior Vice President and each other Vice President shall have such powers and shall perform such duties as may be assigned to him or her by the Board of Directors.

CHIEF ACCOUNTING OFFICER

SECTION 8. The Chief Accounting Officer shall be the principal accounting officer of the Corporation and shall be designated the "principal accounting officer" for purposes for the Corporation's filings with the Securities and Exchange Commission. He or she shall be responsible for the systems of financial control, the maintenance of accounting records, the preparation of the financial statements of the Corporation. He or she shall prepare and submit regular reports to the Board of Directors when and as desired. He or she shall perform all duties incident to the office of Chief Accounting Officer and such additional duties as may be assigned to him or her by the Board of Directors, the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer, or the Chief Operating Officer.

TREASURER

SECTION 9. The Treasurer shall have the custody of all the funds and securities of the Corporation; and he or she may endorse on behalf of the Corporation for collection all checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. He or she may sign vouchers, receipts, checks, drafts, notes and orders for the payment of money and may pay out and dispose of the same under the direction of the Board of Directors, the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer, or the Chief Operating Officer. The Treasurer shall perform all the duties incident to the office of Treasurer and shall perform such additional duties as may be assigned to him or her by the Board of Directors, the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer, or the Chief Operating Officer. He or she shall give such security for the faithful performance of his or her duties as the Board of Directors may determine.

SECRETARY

SECTION 10. The Secretary shall keep the minutes of all meetings of the Board of Directors, the minutes of all meetings of the shareholders, and the minutes of the proceedings of all committees of which he or she shall act as secretary, in books provided for such purpose. He or she shall have charge of the certificate books, transfer books and

stock ledgers and such other books and papers as the Board of Directors may direct, all of which shall, at all reasonable times during business hours, be open to the examination of any director. The Secretary shall, in general, perform all duties incident to the office of Secretary, subject to the control of the Board of Directors.

POWERS OF OFFICERS REGULATED

SECTION 11. The Board of Directors may, from time to time, extend or restrict the powers and duties of any officer.

ARTICLE V

EXECUTION OF CONTRACTS

All contracts of the Corporation shall be executed on behalf of the Corporation by (i) any one of the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Executive Officer, the Chief Operating Officer, an Executive Vice President, a Senior Vice President, or another Vice President, (ii) such other officer or employee of the Corporation authorized in writing by the Chairman of the Board and the President, or either one of such officers together with a Senior Vice President, with such limitations or restrictions on such authority as they deem appropriate, or (iii) such other person as may be authorized by the Board of Directors, and, if required, the seal of the Corporation shall be thereto affixed and attested by the Secretary or an Assistant Secretary.

ARTICLE VI

CAPITAL STOCK

SECTION 1. The shares of the corporation shall be represented by certificates or shall be uncertificated shares. The certificates for shares of the capital stock of the Corporation shall be in such form, in conformity with the Business Corporation Law, as shall be approved by the Board of Directors. All stock certificates shall be signed by the Chairman of the Board, a Vice Chairman of the Board, the President, an Executive Vice President, a Senior Vice President or another Vice President, and also by the Secretary or the Treasurer, and sealed with the seal of the Corporation or a facsimile thereof; provided, however, that upon certificates countersigned by a transfer agent or registered by a registrar, the signatures of such officers of the Corporation may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer at the date of issuance of such certificate.

SECTION 2. Shares of the capital stock of the Corporation shall be transferable only on the books of the Corporation by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares. The Board of

Directors may, from time to time, make proper provisions for the issuance of new certificates in place of lost or destroyed certificates.

SECTION 3. The Board of Directors shall have power and authority to make all such rules and regulations as may be deemed expedient concerning the issue, transfer and registration of certificates for shares of the capital stock of the Corporation; and the Board of Directors may appoint one or more transfer agents and one or more registrars and may require all stock certificates to bear the signatures of a transfer agent and of a registrar.

SECTION 4. For the purpose of determining the shareholders entitled to receive payment of any dividend or the allotment of any rights, the Board of Directors may fix, in advance, a date as the record date for such determination of shareholders. Such date shall not be more than 60 days prior to the date of any such payment or allotment.

ARTICLE VII

CORPORATE SEAL

The Board of Directors shall provide a suitable seal containing the name of the Corporation and the year of incorporation, which seal shall be in the charge of the Secretary.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Corporation shall end on the Saturday closest to the last day in January of each year.

ARTICLE IX

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

SECTION 1. The Corporation shall, to the fullest extent permitted by applicable law, indemnify any person who is or was made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, whether involving any actual or alleged breach of duty, neglect or error, any accountability, or any actual or alleged misstatement, misleading statement or other act or omission and whether brought or threatened in any court or administrative or legislative body or agency, including an action by, or in the right of, the Corporation to procure a judgment in its favor and an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint

venture, trust, employee benefit plan or other enterprise, which any director or officer of the Corporation is serving or served in any capacity at the request of the Corporation, by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the Corporation, or is serving or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement, and expenses (including attorneys' fees, costs and charges) incurred as a result of such action or proceeding, or appeal therein; provided, however, that no indemnification shall be provided to any such person who is a director or officer of the Corporation if a judgment or other final adjudication adverse to such director or officer establishes that (a) his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

SECTION 2. The Corporation may indemnify any person (including a person entitled to indemnification pursuant to Section 1) to whom the Corporation is permitted to provide indemnification or the advancement of expenses to the fullest extent permitted by applicable law, whether pursuant to rights granted pursuant to, or provided by, the New York Business Corporation Law or other rights created by (a) a resolution of shareholders, (b) a resolution of directors, or (c) an agreement providing for such indemnification, it being expressly intended that this Article IX authorizes the creation of other rights in any such manner.

SECTION 3. The Corporation shall, from time to time, reimburse or advance to any person referred to in Section 1 the funds necessary for payment of expenses incurred in connection with any action or proceeding referred to in Section 1, upon receipt of a written undertaking by or on behalf of such person to repay such amount(s) if a judgment or other final adjudication adverse to the director or officer establishes that (a) his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

SECTION 4. Without limitation of any indemnification provided by Section 1, any director or officer of the Corporation serving (a) another corporation, partnership, joint venture or trust of which 20 percent or more of the voting power or residual economic interest is held, directly or indirectly, by the Corporation, or (b) any employee benefit plan of the Corporation or any entity referred to in clause (a), in any capacity shall be deemed to be doing so at the request of the Corporation.

SECTION 5. Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article IX may elect to have the right to indemnification (or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification is sought.

SECTION 6. The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Sections 1 or 3 of this Article IX or a resolution authorized pursuant to Section 2 of this Article IX (a) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Corporation and such person, (b) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof, and (c) shall continue to exist after the rescission or restrictive modification hereof with respect to events occurring prior thereto. The Corporation shall not be obligated under this Article IX (including any resolution or agreement authorized by Section 2 of this Article IX) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amounts otherwise indemnifiable hereunder (or under any such resolution or agreement).

SECTION 7. If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to Sections 1 or 3 of this Article IX is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or shareholders) to have made a determination prior to the commencement of such action that indemnification of, or reimbursement or advancement of expenses to, the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or shareholders) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

ARTICLE X

AMENDMENTS

These By-laws may be amended or repealed, and any new By-law may be adopted, by vote of a majority of the entire Board of Directors at any meeting, provided written notice of the proposed amendment or repeal, or new By-law, shall have been given to each director before the meeting. Notwithstanding the foregoing sentence, the Board of Directors may not amend or repeal any By-law adopted by the shareholders. Any By-law adopted by the Board of Directors may be amended or repealed by the shareholders at any annual meeting or at any special meeting, provided notice of the proposed amendment or repeal be included in the notice of meeting.

FOOT LOCKER SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

(Amended and Restated as of January 1, 2005)

1. Purpose.

The purpose of this Plan is to provide supplemental retirement, death and disability benefits to, or in respect of, certain corporate officers and certain other key employees of the Company and its Affiliates as part of an integrated executive compensation program which is intended to assist the Company and its Affiliates in attracting, motivating and retaining key employees of superior ability, industry and loyalty. Benefits under this Plan are based on incentive awards relating to Company performance against target goals. This Plan was originally effective for fiscal years of the Company commencing on or after January 28, 1996 and is amended and restated in the current form as of January 1, 2005 to among other things, comply with the requirements of Code Section 409A and the guidance issued thereunder.

2. Definitions.

Unless the context requires otherwise, the following words as used in the Plan shall have the meanings ascribed to each below:

- (a) "**Account**" shall mean an unfunded bookkeeping account maintained for the Participant under the Plan.
 - (b) "**Affiliate**" shall mean the Company and any entity affiliated with the Company within the meaning of Code Section 414(b) with respect to controlled group of corporations, Code Section 414(c) with respect to trades or businesses under common control with the Company, Code Section 414(m) with respect to affiliated service groups, and any other entity required to be aggregated with the Company under Section 414(o) of the Code. No entity shall be treated as an Affiliate for any period during which it is not part of the controlled group, under common control or otherwise required to be aggregated under Code Section 414.
 - (c) "**Award**" shall mean the total annual incentive award as determined by a percentage of Salary and Bonus, depending upon the Company's actual performance measured against targeted performance.
 - (d) "**Beneficiary**" shall mean the individual designated by the Participant, on a form acceptable by the Committee, to receive benefits payable under this Plan in the event of Participant's death. If no Beneficiary is designated, the Participant's Beneficiary shall be his or her spouse, or if the Participant
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is not married or is not survived by a spouse, the Participant's estate.

- (e) "**Board**" shall mean the Board of Directors of the Company.
- (f) "**Bonus**" shall mean an amount equal to the bonus earned by a Participant for a Plan Year under the Company's Annual Incentive Compensation Plan or such other annual bonus plan or program that may then be applicable to a Participant and shall exclude any amounts paid pursuant to a severance program or policy of the Employer. Nothing herein guarantees a Bonus payment to a Participant. The determination of a Participant's Bonus shall be governed by the policies of the Employer.
- (g) "**Cause**" shall mean (with regard to the Participant's Termination of Employment with the Control Group): (i) with regard to any member of the Control Group or any of such member's assets or business, the refusal or willful failure by the Participant to substantially perform his or her duties, (ii) with regard to any member of the Control Group or any of such member's assets or business, the Participant's dishonesty, willful misconduct, misappropriation, breach of fiduciary duty or fraud, or (iii) the Participant's conviction or plea of guilty or *nolo contendere* of a felony (other than a traffic violation) or any other crime involving, in the sole discretion of the Committee, moral turpitude.
- (h) "**Change in Control**" shall mean the occurrence of any of the following:

(A) the merger or consolidation of the Company with, or the sale or disposition of all or Substantially All of the Assets of the Company to, any person or entity or group of associated persons or entities (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "Exchange Act")) (a "Person") other than (a) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or parent entity) fifty percent (50%) or more of the combined voting power of the voting securities of the Company or such surviving or parent entity outstanding immediately after such merger or consolidation; or (b) a merger or capitalization effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly (as determined under Rule 13d-3 promulgated under the Exchange Act), of securities representing more than the amounts set forth in (B) below;

(B) the acquisition of direct or indirect beneficial ownership (as determined under Rule 13d-3 promulgated under the Exchange Act), in the aggregate, of securities of the Company representing thirty-five percent (35%) or more of the total combined voting power of the

Company's then issued and outstanding voting securities by any Person (other than the Company or any of its subsidiaries, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of Common Stock of the Company) acting in concert; or

(C) during any period of not more than twelve (12) months, individuals who at the beginning of such period constitute the Board, and any new director whose election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds ($\frac{2}{3}$) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof.

- (i) "**Code**" shall mean the Internal Revenue Code of 1986, as amended and as hereafter amended from time to time.
- (j) "**Committee**" shall mean the Compensation and Management Resources Committee of the Board.
- (k) "**Company**" shall mean Foot Locker, Inc., a New York corporation, and any successor by merger, consolidation or transfer of assets.
- (l) "**Competition**" shall mean the (i) participating, directly or indirectly, as an individual proprietor, stockholder, officer, employee, director, joint venturer, investor, lender, or in any capacity whatsoever (within the United States of America, or in any country where any of the Participant's former Employing Members (as defined below) of the Control Group does business) in a business in competition with any business conducted by any member of the Control Group for, or with regard to, which the Participant worked, or had confidential information with regard to, at any time (the "Employing Member"), provided, however, that such participation shall not include (A) the mere ownership of not more than one percent (1%) of the total outstanding stock of a publicly held company; (B) the performance of services for any enterprise to the extent such services are not performed, directly or indirectly, for a business in which any of a Participant's Employing Members of the Control Group is engaged; or (C) any activity engaged in with the prior written approval of the Board or the Committee; or (ii) intentional recruiting, soliciting or inducing, of any employee or employees of the Control Group to terminate their employment with, or otherwise cease their relationship with the former employing members of the Control Group where such employee or employees do in fact so terminate their employment. If the restriction set forth in this subsection is found by any court of competent jurisdiction to

be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

- (m) "**Confidentiality**" shall mean a Participant's requirement not to communicate or disclose to any unauthorized person, or use for the Participant's own account, without the prior written consent of the Board, any proprietary processes, or other confidential information of the Employer concerning their business or affairs, accounts or customers, it being understood, however, that the obligations of this section shall not apply to the extent that the aforesaid matters (a) are disclosed in circumstances in which the Participant is legally required to do so and the Participant gives the Company prior written notice before doing so, or (b) become generally known to and available for use by the public other than by the Participant's wrongful act or omission.
- (n) "**Control Group**" shall mean the Company and its Affiliates.
- (o) "**Disability**" shall mean a medically determinable physical or mental impairment which can be expected to result in the Participant's death or can be expected to last for a continuous period of not less than twelve (12) months, for which the Participant is receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Employer.
- (p) "**Employee**" shall mean any officer, member of senior management or other key employee employed by an Employer.
- (q) "**Employer**" shall mean the Company and any Affiliate which has adopted this Plan.
- (r) "**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.
- (s) "**Individual Target Award**" shall mean the targeted incentive award for a Plan Year specified by the Committee as provided in Section 4 hereof.
- (t) "**Participant**" shall mean any Employee determined by the Committee to be eligible to participate in the Plan.
- (u) "**Plan**" shall mean the Foot Locker Supplemental Executive Retirement Plan.
- (v) "**Plan Year**" shall mean a fiscal year of the Company.

- (w) "**Retirement**" shall mean separation from service with the Control Group on or after the date that the Participant's age added together with his or her Years of Service equals or exceeds the sum of sixty-five (65).
- (x) "**Salary**" shall mean a Participant's base monthly cash compensation rate for services paid by the Employer to the Participant at the time of his or her Termination of Employment. Salary shall not include commissions, bonuses, overtime pay, incentive compensation, amounts paid pursuant to a severance program or policy of the Employer, benefits paid under any qualified plan, any group medical, dental or other welfare benefit plan, noncash compensation or any other additional compensation, but shall include amounts reduced pursuant to a Participant's salary reduction agreement under Sections 125, 132(f) or 401(k) of the Code (if any) or a nonqualified elective deferred compensation arrangement to the extent that in each such case the reduction is to base salary.
- (y) "**Section 409A**" shall mean Section 409A of the Code including the regulations issued thereunder by the Department of the Treasury.
- (z) "**Specified Employee**" shall have the meaning set forth in Section 409A as determined on the date of Termination of Employment in accordance with procedures established by the Company and consistent with Section 409A.
- (aa) "**Substantially All of the Assets of the Company**" shall mean at least 66 percent of the total gross fair market value of the assets of the Company immediately prior to the acquisition by a non-related third party, determined without regard to any liabilities associated with such assets.
- (bb) "**Termination of Employment**" shall mean separation from service with the Control Group in accordance with Section 409A for any reason, including, but not limited to Retirement, death, Disability, resignation or dismissal with or without Cause; provided, however, that if an Employer is no longer a member of the Control Group and the Participant is transferred in connection with the sale of the assets of an Employer and the successor assumes the obligations hereunder in accordance with Section 16 hereof, a Termination of Employment shall not occur until termination of employment with the new control group.
- (cc) "**Year of Service**" shall mean each twelve (12) consecutive month period commencing on the Employee's date of hire by the Employer and each anniversary thereof in which the Employee is paid by the Employer for the performance of full-time services as an Employee. For purposes of this section, full-time services shall mean that the Employee is employed for at least thirty (30) hours per week. A Year of Service shall include any period during which an Employee is not working due to disability, leave

of absence or layoff so long as he or she is being paid by the Employer (other than through any employee benefit plan). A Year of Service also shall include service in any branch of the armed forces of the United States by any person who is an Employee on the date such service commenced, but only to the extent required by applicable law.

3. Eligibility and Participation.

No person shall be entitled to any Award under this Plan for any Plan Year unless the Committee sets an Individual Target Award for such person for that Plan Year. The Committee may determine those Employees who shall be Participants at any time and from time to time, in its sole discretion and, at any time, the Committee, subject to the provisions of Section 18, may exclude any Participant from further participation in the Plan.

4. Individual Target Award.

For each Participant for each Plan Year, the Committee may specify a targeted incentive award. The Individual Target Award consists of a percentage of Salary and Bonus. Such percentage shall be based on Company performance against target. Achievement of target shall result in an eight percent (8%) credit to the Participant's Account. Such percentage shall decrease in direct proportion to the percentage of Company performance below target, but not below four percent (4%), and increase in direct proportion to Company performance above target, but not above twelve percent (12%). Establishment of an Individual Target Award for an Employee for a Plan Year shall not imply or require that the same level Individual Target Award (if any such award is established by Committee for the relevant Employee) be set for any subsequent Plan Year.

5. Calculation of Benefit.

The Award credited on a Participant's behalf, calculated in accordance with Section 4 hereof, shall be credited to the Participant's Account. A Participant's Account shall accrue simple interest at a rate of six percent (6%) per annum.

6. Payment.

(a) Payment of an Award under the Plan is based on the Company's unfunded obligation to pay. If a Participant incurs a Termination of Employment for Cause, the Participant shall not receive any payments under this Plan. Subject to the preceding sentence and Sections 6(c), 7 and 8 hereof, payment of an Award shall be made as follows:

(i) Retirement. In the event of the Participant's Retirement, amounts credited to a Participant's Account shall be paid in twelve (12) quarterly substantially equal installments in arrears on the first day of each calendar quarter commencing as

soon as administratively feasible following such Participant's Retirement. Notwithstanding the foregoing, amounts payable pursuant to this Section 6(a)(i) to a Participant who is a Specified Employee during the first six (6) months following such Participant's Retirement shall be delayed during the six (6) month period following such Participant's Retirement and shall commence to be paid on the first day of the calendar quarter which occurs following such six (6) month period and the first such payment shall include any quarterly installment delayed due to the foregoing provision. Amounts payable pursuant to this Section 6(a)(i) after the six (6) month period following a Specified Employee's Retirement shall be paid as originally scheduled without regard to the six (6) month delay.

In the event a Participant becomes entitled to the payment of an Award under the Plan upon Retirement on or after August 13, 2007, the Participant shall be entitled to medical and dental insurance benefits substantially the same as those to which senior executives of the Company are entitled under the medical and dental plans of the Company applicable to actively employed senior executives, less any benefits such Participant or his or her covered dependents may receive from Medicare. The Participant shall be responsible for the payment of the insurance premiums applicable to actively employed senior executives, including any subsequent increases in such premiums. The medical and dental insurance coverage provided for herein shall cease in the event the Participant engages in Competition during the one-year period following his Retirement or becomes a participant in a new employer's medical and dental plan.

No Participant shall be entitled to the benefits described in the preceding paragraph unless (i) the Participant, the Participant's spouse and other covered dependents, as applicable, were enrolled at the time of the Participant's Retirement in the medical and/or dental insurance plan (as applicable) applicable to actively employed senior executives, and (ii) the Participant, the Participant's spouse and other covered dependents, as applicable, are, as soon as eligible, enrolled in Medicare, including Part B.

(ii) Change in Control. In the event that the Plan is terminated upon a Change in Control as contemplated under Section 18(b)(1) hereof, amounts credited as of the date of termination of the Plan to the Accounts of all Participants, whether or not in pay status, shall be made in a lump sum in accordance with Section 18(b) hereof and the requirements of Section 409A. For purposes of this section, the Participants' Accounts shall include the Individual Target Award for the year in which the Plan termination occurs based on Company performance at target, prorated to the Plan termination date.

(iii) Other Plan Terminations. In the event that the Plan is terminated for the reasons set forth in Section 18(b)(ii), (iii) or (iv) hereof, payment shall be made in a lump sum to the Participants in accordance with Section 18(b) hereof and the requirements of Section 409A.

(b) A Participant shall only be entitled to receive the remainder of any installment payments payable on his or her behalf, if the Participant does not engage in Competition during employment or during the one (1) year period following his or her

Retirement and does not violate his or her obligation with regard to Confidentiality at any time. The remainder of a Participant's installment payments shall be immediately forfeited in the event of the Participant's Competition during employment or during the one (1) year period following his or her Retirement or violation of his or her obligation with regard to Confidentiality at any time.

(c) Solely with respect to 2005, the Committee, in its sole discretion, may select one (or more) Participants who have attained at least age 55 and whose Termination of Employment occurs during 2005 to be eligible to receive payment. All distributions shall be made solely during 2005 and shall be subject to such terms and conditions as the Committee may specify consistent with the requirements of the Plan, Section 409A and Internal Revenue Service Notice 2005-1 (as permitted by proposed Treasury regulations issued under Section 409A). The Committee shall be permitted to adopt such rules and regulations as it may, in its discretion, deem necessary or desirable to administer the provisions of this Section 6(c). A Participant who terminates participation in this Plan pursuant to this Section 6(c) shall not be permitted to recommence participation in this Plan.

7. Death or Disability of a Participant.

(a) In the event of the death of a Participant, whether before or after Retirement, the balance, if any, of the Participant's Account shall be paid to the Participant's Beneficiary in a lump sum as soon as administratively feasible following the Participant's death.

(b) In the event of the Disability of a Participant prior to Participant's Retirement, the balance, if any, of the Participant's Account shall be distributed to the Participant in a lump sum as soon as administratively feasible following the determination of such Disability.

8. Termination of Employment Before Retirement.

Subject to Section 18(c) hereof, in the event a Participant incurs a Termination of Employment prior to his or her Retirement, the Participant shall not receive any payments under this Plan and shall forfeit his or her right to any benefits hereunder.

9. Claims Procedure.

Any claim by a Participant or Beneficiary ("Claimant") with respect to eligibility, participation, contributions, benefits or other aspects of the operation of the Plan shall be made in writing to the Secretary of the Company or such other person designated by the Committee from time to time for such purpose. If the designated person receiving a claim believes, following consultation with the Chairman of the Committee, that the claim should be denied, he or she shall notify the Claimant in writing of the denial of the claim within ninety (90) days after his or her receipt thereof (this period may be extended an additional ninety (90) days in special circumstances and, in such event, the Claimant

shall be notified in writing of the extension). Such notice shall (a) set forth the specific reason or reasons for the denial making reference to the pertinent provisions of the Plan or of Plan documents on which the denial is based, (b) describe any additional material or information necessary to perfect the claim, and explain why such material or information, if any, is necessary, (c) inform the Claimant of his or her right pursuant to this Section 9 to request review of the decision, and (d) a statement of the Claimant's right to bring a civil action under Section 502(a) of the ERISA following an adverse determination on review.

A Claimant may appeal the denial of a claim by submitting a written request for review to the Committee, within sixty (60) days after the date on which such denial is received. Such period may be extended by the Committee for good cause shown. The claim will then be reviewed by the Committee. A Claimant or his or her duly authorized representative may (i) upon request and free of charge, be provided with reasonable access to, and copies of, relevant documents, records and other information relevant to the Claimant's claim, and (ii) submit written comments, documents, records and other information relating to the claim. The review of the claim determination shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. If the Committee deems it appropriate, it may hold a hearing as to a claim. If a hearing is held, the Claimant shall be entitled to be represented by counsel. The Committee shall decide whether or not to grant the claim within sixty (60) days after receipt of the request for review, but this period may be extended by the Committee for up to an additional sixty (60) days in special circumstances. Written notice of any such special circumstances shall be sent to the Claimant. The decision on review shall be in writing and shall include (i) the specific reason or reasons for the decision, with references to the specific Plan provisions on which the determination is based, (ii) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claim and (iii) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA. Any claim not decided upon in the required time period shall be deemed denied. All interpretations, determinations and decisions of the Committee with respect to any claim shall be made in its sole discretion based on the Plan and other relevant documents and shall be final, conclusive and binding on all persons.

10. Construction of Plan.

Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Employer and the Participants, their Beneficiaries or any other person. Any funds which may be invested under the provisions of this Plan shall continue for all purposes to be part of the general funds of the Employer and no person other than the Employer shall by virtue of the provisions of this Plan have any interest in such funds. To the extent that any person acquires a right to receive payments from the Employer under this Plan, such right shall be no greater than the right of any unsecured general creditor of the Employer. If the Company decides to establish any advance

accrued reserve on its books against the future expense of benefits payable hereunder, or if the Company is required to fund a trust under this Plan, such reserve or trust shall not under any circumstances be deemed to be an asset of the Plan.

11. Minors and Incompetents.

In the event that the Committee finds that a Participant is unable to care for his or her affairs because of illness or accident, then benefits payable hereunder, unless claim has been made therefor by a duly appointed guardian, committee, or other legal representative, shall be paid at such time or times as would otherwise be paid to the Participant pursuant to the terms of the Plan to such person or persons as the Committee shall determine in its sole discretion is or are appropriate and such payment shall be a complete discharge of all liability for any payments or benefits to which such Participant was or would have been otherwise entitled under this Plan. Any payments to a minor from this Plan may be paid by the Committee in its sole and absolute discretion (a) directly to such minor; (b) to the legal or natural guardian of such minor; or (c) to any other person, whether or not appointed guardian of the minor, who shall have the care and custody of such minor. The receipt by such individual shall be a complete discharge of all liability under the Plan therefor.

12. Administration of the Plan.

The Plan shall be administered by the Committee. The Committee (or its delegate) shall have the exclusive right, power, and authority, in its sole and absolute discretion, to administer, apply and interpret the Plan and any other Plan documents and to decide all matters arising in connection with the operation or administration of the Plan. Without limiting the generality of the foregoing, the Committee shall have the sole and absolute discretionary authority: (a) to take all actions and make all decisions with respect to the eligibility for, and the amount of, benefits payable under the Plan; (b) to formulate, interpret and apply rules, regulations and policies necessary to administer the Plan in accordance with its terms; (c) to decide questions, including legal or factual questions, relating to the calculation and payment of benefits under the Plan; (d) to resolve and/or clarify any ambiguities, inconsistencies and omissions arising under the Plan or other Plan documents; (e) to decide for purposes of paying benefits hereunder, whether, based on the terms of the Plan, a Termination of Employment is for Cause; and (f) except as specifically provided to the contrary in Section 9, to process and approve or deny benefit claims and rule on any benefit exclusions. All determinations made by the Committee (or any delegate) with respect to any matter arising under the Plan and any other Plan documents shall be final, binding and conclusive on all parties.

Decisions of the Committee shall be made by a majority of its members attending a meeting at which a quorum is present (which meeting may be held telephonically) or by written action in accordance with applicable law. All decisions of the Committee on any question concerning the interpretation and administration of the Plan shall be final, conclusive and binding upon all parties.

No member of the Committee and no officer, director or employee of the Company or any other Affiliate shall be liable for any action or inaction with respect to his or her functions under the Plan unless such action or inaction is adjudged to be due to gross negligence, willful misconduct or fraud. Further, no such person shall be personally liable merely by virtue of any instrument executed by him or her or on his or her behalf in connection with the Plan.

Each Employer shall indemnify, to the full extent permitted by law and its Certificate of Incorporation and By-laws (but only to the extent not covered by insurance) its officers and directors (and any employee involved in carrying out the functions of such Employer under the Plan) and each member of the Committee against any expenses, including amounts paid in settlement of a liability, which are reasonably incurred in connection with any legal action to which such person is a party by reason of his or her duties or responsibilities with respect to the Plan (other than as a Participant), except with regard to matters as to which he or she shall be adjudged in such action to be liable for gross negligence, willful misconduct or fraud in the performance of his or her duties.

13. Limitation of Rights.

Nothing contained herein shall be construed as conferring upon an Employee the right to continue in the employ of the Employer as a Participant or in any other capacity or to interfere with the Employer's right to discharge him or her at any time for any reason whatsoever.

14. Payment Not Salary.

Any amounts payable under this Plan shall not be deemed Salary or other compensation to the Employee for the purposes of computing benefits to which he or she may be entitled under any pension plan or other arrangement of the Employer for the benefit of its Employees.

15. Withholding.

The Employer shall have the right to make such provisions as it deems necessary or appropriate to satisfy any obligations it may have to withhold federal, state or local income or other taxes incurred by reason of payments or accrual pursuant to this Plan. In lieu thereof, the Employer shall have the right to withhold the amount of such taxes from any other sums due or to become due from the Employer to the Participant upon such terms and conditions as the Committee may prescribe.

16. Assignment.

This Plan shall be binding upon and inure to the benefit of the Employer, its successors and assigns and the Participants and their heirs, executors, administrators and legal representatives. In addition to any obligations imposed by law upon any successor of the Employer, the Employer shall require any successor (whether direct or indirect, by

purchase, merger, consolidation or otherwise) to all or substantially all of the business or all or Substantially All of the Assets of the Employer to expressly assume and agree in writing to assume the obligations under this Plan to the same extent that the Employer would be responsible if no such succession had taken place. In the event that the Employer sells all or Substantially All of the Assets of its business and the acquiror of such assets assumes the obligations hereunder, the Employer shall be released from any liability imposed herein and shall have no obligation to provide any benefits payable hereunder.

17. Non-Alienation of Benefits.

The benefits payable under this Plan shall not be subject to alienation, transfer, assignment, garnishment, execution or levy of any kind, and any attempt to cause any benefits to be so subjected shall not be recognized.

18. Amendment or Termination of Plan.

(a) The Board may amend this plan from time to time in any respect.

(b) The Board may terminate the Plan in its entirety and make payment to the Participants following termination of the Plan only in the following circumstances:

(i) within the thirty (30) days preceding or the twelve (12) months following a Change in Control of the Company, to the extent required by Section 409A, if and only if all other nonqualified deferred compensation plans (as determined under Section 409A) maintained by the Employer are terminated and that all participants under such plans are required to receive all amounts deferred under such plans within twelve (12) months of the date of termination of the plans;

(ii) no earlier than twelve (12) months and no later than twenty-four (24) months following termination of the Plan, to the extent required by Section 409A, if and only if all other nonqualified deferred compensation plans (as determined under Section 409A) maintained by the Employer are terminated and no such plan is adopted within the three (3) year period following such plan termination;

(iii) within the twelve (12) month period following a bankruptcy court's approval of a petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code, subject to the requirements of Section 409A; or

(iv) such other event permitted under Section 409A.

In the event of termination of the Plan under this Section 18(b), the Employer shall distribute to each Participant the balance of his or her Account as of the date of termination in accordance with the provisions of Section 6(a)(ii) or (iii) hereof and shall have no further obligation hereunder.

(c) At any time other than the circumstances set out in Section 18(b)(i)-(iv) above, the Board may terminate the Plan. In such event, the Accounts of any Participant who is eligible for Retirement, as defined herein, at the time of the Plan's termination shall be frozen and, following such Participant's Termination of Employment, the balance of his or her Account shall be distributed to him or her in accordance with the payment provisions of Section 6(a)(i) hereof, and the Employer shall have no further obligation hereunder. In the event of the Plan's termination under this Section 18(c), the Account of any Participant who is not eligible for Retirement at the time of the Plan's termination shall be forfeited, and such Participant shall have no rights hereunder.

(d) At any time, the Board may exclude any Participant from further participation in the Plan. Any such action by the Board with respect to the Plan shall be binding on the Employer and Employee. Except as otherwise specifically provided herein, in no event shall any termination, amendment or change of the Plan reduce the Account balance hereunder accrued through the date of such termination, amendment or change, based on service and compensation through such date of termination, amendment or change.

19. Non-Exclusivity.

The adoption of the Plan by the Employer shall not be construed as creating any limitations on the power of the Employer to adopt such other supplemental retirement income arrangements as it deems desirable, and such arrangements may be either generally applicable or limited in application.

20. Severability.

Should any provisions of the Plan be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the other provisions of the Plan unless such determination shall render impossible or impracticable the functioning of the Plan, and in such case, an appropriate provision or provisions shall be adopted so that the Plan may continue to function properly. If it is determined by a court of competent jurisdiction in any state that any restriction herein with respect to Competition or Confidentiality is excessive in duration or scope or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by applicable state law.

21. Section 409A.

The Plan is intended to comply with Section 409A and all provisions hereof shall be construed in a manner to so comply.

22. Headings and Captions.

The headings and captions herein are provided for reference and convenience only. They shall not be considered part of the Plan and shall not be employed in the construction of the Plan.

23. Governing Law.

This Plan is maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees of the Employer within the meaning of Section 201(2) of ERISA and shall be construed, interpreted and governed by ERISA. To the extent not governed by ERISA, this Plan shall be governed by the laws of the State of New York (without regard to conflict of law provisions).