

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-8

### REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

## GUESS?, INC.

(Exact name of registrant as specified in its charter)

**Delaware**(State or other jurisdiction of  
incorporation or organization)**95-3679695**(I.R.S. Employer  
Identification No.)

**1444 South Alameda Street  
Los Angeles, California 90021  
(213) 765-3100**

(Address, including zip code, and telephone number of principal executive offices)

### Guess?, Inc. Nonqualified Deferred Compensation Plan (Full title of the plan)

**Deborah S. Siegel  
General Counsel and Secretary  
Guess?, Inc.  
1444 South Alameda Street  
Los Angeles, California 90021  
(213) 765-3100**

(Name, address and telephone number, including area code, of agent for service)

### CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Deferred Compensation Obligations(1)	\$25,000,000	100%	\$25,000,000(2)	\$2,943

(1) The Deferred Compensation Obligations are unsecured obligations of Guess?, Inc. to pay deferred compensation in the future to employees and directors of Guess?, Inc. who participate in the Guess?, Inc. Nonqualified Deferred Compensation Plan in accordance with its terms.

(2) Estimated solely for purposes of determining the registration fee.

## **PART I**

### **INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

Guess?, Inc. (the “Company” or the “Registrant”) is including the Deferred Compensation Obligations in this Registration Statement because of the uncertainty as to whether the Deferred Compensation Obligations would or should be considered “securities,” or be subject to registration, under the Securities Act of 1933, as amended (the “Securities Act”). The inclusion of the Deferred Compensation Obligations in this Registration Statement is not an admission by the Registrant that the Deferred Compensation Obligations are securities or are subject to the registration requirements of the Securities Act.

The document(s) containing the information specified in Part I of Form S-8 (plan information and registrant information) will be sent or given to employees and directors as specified by Securities Act Rule 428(b)(1). Such documents need not be filed with the Securities and Exchange Commission (the “Commission”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Securities Act Rule 424. These documents, which include the statement of availability required by Item 2 of Form S-8, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Form S-8 (Part II hereof), taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## **PART II**

### **INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

#### **Item 3. Incorporation of Certain Documents by Reference**

The following documents, which have been filed by Guess?, Inc. with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (Commission File Number 1-11893), are hereby incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

- (a) The Company’s Annual Report on Form 10-K for its fiscal year ended December 31, 2004, filed with the Commission on March 15, 2005;
- (b) The Company’s Quarterly Reports on Form 10-Q for its fiscal quarters ended April 2, 2005 and July 2, 2005, filed with the Commission on May 12, 2005 and August 10, 2005, respectively; and
- (c) The Company’s Current Reports on Form 8-K, filed with the Commission on January 5, 2005, April 8, 2005, May 16, 2005, June 24, 2005, August 29, 2005 and September 28, 2005.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in any subsequently filed document which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

**Item 4. Description of Securities**

The Guess?, Inc. Nonqualified Deferred Compensation Plan (the “Plan”) provides directors and a select group of management or highly compensated employees of the Company and certain of its subsidiaries with the opportunity to defer the receipt of certain pre-tax cash compensation. Participants in the Plan are directors and employees of the Company and certain of its subsidiaries who satisfy certain eligibility requirements and who elect to participate in the Plan.

The obligations of the Company under the Plan (the “Deferred Compensation Obligations”) will be general unsecured obligations of the Company to pay deferred compensation in the future to participating directors and eligible employees in accordance with the terms of the Plan from the general assets of the Company, and will rank pari passu with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding. The Deferred Compensation Obligations will be denominated and payable in United States dollars.

Under the Plan, select employees who satisfy certain eligibility requirements and members of the Board may make annual irrevocable elections to defer up to 75% of their base salary, 100% of their bonus, 100% of their cash compensation earned under any Company long-term incentive plan or 100% of their director fees to be earned during the following calendar year. The Company will credit an amount equal to the compensation deferred by a participant to that participant’s deferral account under the Plan. In addition, the Company may credit any lost 401(k) match amounts to the participant’s deferral account and may make other discretionary contributions. Account balances will be credited with income, gains and losses based on the performance of investment funds selected by the participant from a list of funds designated by the Company. Participants are at all times 100% vested in the amounts credited to their deferral accounts with respect to deferrals of base salary, bonuses, long-term incentive plan amounts and directors fees. Amounts credited with respect to lost 401(k) match amounts are subject to the same vesting requirements provided in the Company’s 401(k) plan and amounts credited with respect to discretionary Company contributions are subject to vesting requirements, if any, imposed on such amounts by the Company. Participants will be eligible to receive distributions of the amounts credited to their accounts at or after their termination of employment, retirement, disability, death, change in control of the Company or upon another previously determined scheduled distribution date, in a lump sum or installments pursuant to elections made under the rules of the Plan.

No amount payable under the Plan shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, voluntary or involuntary. Any attempt to dispose of any rights to benefits payable under the Plan shall be void. The Deferred Compensation Obligations are not subject to redemption, in whole or in part, prior to the individual payment dates selected by the participants, except that participants may withdraw all or a portion of the value of their Plan accounts under certain specified circumstances. The Company reserves the right to amend or terminate the Plan at any time.

The total amount of the Deferred Compensation Obligations are not determinable because the amount will vary depending upon the level of participation by eligible employees and the amounts of their salaries, bonuses, long-term incentive plan and directors' fees. The duration of the Plan is indefinite (subject to the Company's ability to terminate the Plan). The Deferred Compensation Obligations are not convertible into another security of the Company.

The Deferred Compensation Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Company. Each participant will be responsible for acting independently with respect to, among other things, the giving of notices, responding to any requests for consents, waivers or amendments pertaining to the Deferred Compensation Obligations, enforcing covenants and taking action upon a default by the Company.

**Item 5. Interests of Named Experts and Counsel**

Inapplicable.

**Item 6. Indemnification of Directors and Officers**

Section 145(a) of the General Corporation Law of the States of Delaware (the "General Corporation Law"), provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no cause to believe his or her conduct was unlawful.

Section 145(b) provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted under similar standards, except that no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged

to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine that despite the adjudication of liability, such person is fairly and reasonably entitled to be indemnified for such expenses which the court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense or any claim, issue or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the corporation may purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liabilities under such Section 145.

Section 102(b)(7) of the General Corporation Law provides that a corporation in its original certificate of incorporation or an amendment thereto validly approved by stockholders may eliminate or limit personal liability of members of its board of directors or governing body for violations of a director's duty of care. However, no such provision may eliminate or limit the liability of a director for breaching his or her duty of loyalty, acting or failing to act in good faith, engaging in intentional misconduct or knowingly violating a law, paying an unlawful dividend or approving an unlawful stock repurchase, or obtaining an improper personal benefit. A provision of this type has no effect on the availability of equitable remedies, such as injunction or rescission, for breach of fiduciary duty. The Company's Certificate of Incorporation contains such a provision.

The Company's Bylaws provide that the Company shall indemnify officers and directors to the full extent permitted by and in the manner permissible under the laws of the State of Delaware.

The Company has a directors and officers' liability insurance policy with coverage for, among other things, liability for violations of federal and state securities laws.

The Company has entered into indemnity agreements with its directors and officers for indemnification of and advancement of expenses to such persons to the full extent permitted by law. The Company intends to execute such indemnity agreements with its future officers and directors.

**Item 7. Exemption from Registration Claimed**

Inapplicable.

**Item 8. Exhibits**

See the attached Exhibit Index at page 10.

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement;*
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 6 above, or otherwise, the Registrant has been advised that in the

opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California, on the 31st day of October, 2005.

GUESS?, INC.,  
a Delaware corporation

By: /s/ Carlos Alberini  
Carlos Alberini  
President, Chief Operating Officer and  
Director

## POWER OF ATTORNEY

We, the undersigned officers and directors of Guess?, Inc., hereby severally constitute and appoint Carlos Alberini and Deborah Siegel as attorneys-in-fact, and each of them singly, our true and lawful attorneys-in-fact, with full power to them in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 (including any post-effective amendments thereto), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Maurice Marciano</u> Maurice Marciano	Co-Chairman of the Board, Co-Chief Executive Officer and Director (Principal Executive Officer)	October 31, 2005
<u>/s/ Paul Marciano</u> Paul Marciano	Co-Chairman of the Board, Co-Chief Executive Officer and Director	October 31, 2005



<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Carlos Alberini</u> Carlos Alberini	President, Chief Operating Officer and Director	October 31, 2005
<u>/s/ Frederick G. Silny</u> Frederick G. Silny	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 31, 2005
<u>/s/ Anthony Chidoni</u> Anthony Chidoni	Director	October 31, 2005
<u>/s/ Alice Kane</u> Alice Kane	Director	October 31, 2005
<u>/s/ Karen Neuburger</u> Karen Neuburger	Director	October 31, 2005
<u>/s/ Alex Yemenidjian</u> Alex Yemenidjian	Director	October 31, 2005

## EXHIBIT INDEX

Exhibit Number	Description of Exhibit
4.1	Guess?, Inc. Nonqualified Deferred Compensation Plan
5.1	Opinion of O'Melveny & Myers LLP (Opinion re Legality)
23.1	Consent of Independent Registered Public Accounting Firm - KPMG LLP
23.2	Consent of O'Melveny & Myers LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included in this Registration Statement under "Signatures")
10	

**Guess?, Inc.**

Nonqualified Deferred Compensation Plan

*Master Plan Document*

**Effective January 1, 2006**

---

## TABLE OF CONTENTS

<a href="#"><u>ARTICLE 1</u></a>	<a href="#"><u>Definitions</u></a>
<a href="#"><u>ARTICLE 2</u></a>	<a href="#"><u>Selection, Enrollment, Eligibility</u></a>
<a href="#"><u>2.1</u></a>	<a href="#"><u>Selection by Committee</u></a>
<a href="#"><u>2.2</u></a>	<a href="#"><u>Enrollment and Eligibility Requirements; Commencement of Participation</u></a>
<a href="#"><u>2.3</u></a>	<a href="#"><u>Termination of a Participant's Eligibility</u></a>
<a href="#"><u>ARTICLE 3</u></a>	<a href="#"><u>Deferral Commitments/Company Contribution Amounts/Company Restoration Matching Amounts /Vesting/Crediting/Taxes</u></a>
<a href="#"><u>3.1</u></a>	<a href="#"><u>Minimum Deferrals</u></a>
<a href="#"><u>3.2</u></a>	<a href="#"><u>Maximum Deferral</u></a>
<a href="#"><u>3.3</u></a>	<a href="#"><u>Election to Defer; Effect of Election Form</u></a>
<a href="#"><u>3.4</u></a>	<a href="#"><u>Withholding and Crediting of Annual Deferral Amounts</u></a>
<a href="#"><u>3.5</u></a>	<a href="#"><u>Company Contribution Amount</u></a>
<a href="#"><u>3.6</u></a>	<a href="#"><u>Company Restoration Matching Amount</u></a>
<a href="#"><u>3.7</u></a>	<a href="#"><u>Crediting of Amounts after Benefit Distribution</u></a>
<a href="#"><u>3.8</u></a>	<a href="#"><u>Vesting</u></a>
<a href="#"><u>3.9</u></a>	<a href="#"><u>Crediting/Debiting of Account Balances</u></a>
<a href="#"><u>3.10</u></a>	<a href="#"><u>FICA and Other Taxes</u></a>
<a href="#"><u>ARTICLE 4</u></a>	<a href="#"><u>Scheduled Distribution; Unforeseeable Financial Emergencies</u></a>
<a href="#"><u>4.1</u></a>	<a href="#"><u>Scheduled Distribution</u></a>
<a href="#"><u>4.2</u></a>	<a href="#"><u>Postponing Scheduled Distributions</u></a>
<a href="#"><u>4.3</u></a>	<a href="#"><u>Other Benefits Take Precedence Over Scheduled Distributions</u></a>
<a href="#"><u>4.4</u></a>	<a href="#"><u>Unforeseeable Financial Emergencies</u></a>
<a href="#"><u>ARTICLE 5</u></a>	<a href="#"><u>Change In Control Benefit</u></a>
<a href="#"><u>5.1</u></a>	<a href="#"><u>Change in Control Benefit</u></a>
<a href="#"><u>5.2</u></a>	<a href="#"><u>Payment of Change in Control Benefit</u></a>
<a href="#"><u>ARTICLE 6</u></a>	<a href="#"><u>Retirement Benefit</u></a>
<a href="#"><u>6.1</u></a>	<a href="#"><u>Retirement Benefit</u></a>
<a href="#"><u>6.2</u></a>	<a href="#"><u>Payment of Retirement Benefit</u></a>
<a href="#"><u>ARTICLE 7</u></a>	<a href="#"><u>Termination Benefit</u></a>
<a href="#"><u>7.1</u></a>	<a href="#"><u>Termination Benefit</u></a>
<a href="#"><u>7.2</u></a>	<a href="#"><u>Payment of Termination Benefit</u></a>

<a href="#"><u>ARTICLE 8</u></a>	<a href="#"><u>Disability Benefit</u></a>
<a href="#"><u>8.1</u></a>	<a href="#"><u>Disability Benefit</u></a>
<a href="#"><u>8.2</u></a>	<a href="#"><u>Payment of Disability Benefit</u></a>
<a href="#"><u>ARTICLE 9</u></a>	<a href="#"><u>Death Benefit</u></a>
<a href="#"><u>9.1</u></a>	<a href="#"><u>Death Benefit</u></a>
<a href="#"><u>9.2</u></a>	<a href="#"><u>Payment of Death Benefit</u></a>
<a href="#"><u>ARTICLE 10</u></a>	<a href="#"><u>Beneficiary Designation</u></a>
<a href="#"><u>10.1</u></a>	<a href="#"><u>Beneficiary</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>Beneficiary Designation; Change; Spousal Consent</u></a>
<a href="#"><u>10.3</u></a>	<a href="#"><u>Acknowledgement</u></a>
<a href="#"><u>10.4</u></a>	<a href="#"><u>No Beneficiary Designation</u></a>
<a href="#"><u>10.5</u></a>	<a href="#"><u>Doubt as to Beneficiary</u></a>
<a href="#"><u>10.6</u></a>	<a href="#"><u>Discharge of Obligations</u></a>
<a href="#"><u>ARTICLE 11</u></a>	<a href="#"><u>Leave of Absence</u></a>
<a href="#"><u>11.1</u></a>	<a href="#"><u>Paid Leave of Absence</u></a>
<a href="#"><u>11.2</u></a>	<a href="#"><u>Unpaid Leave of Absence</u></a>
<a href="#"><u>ARTICLE 12</u></a>	<a href="#"><u>Termination of Plan, Amendment or Modification</u></a>
<a href="#"><u>12.1</u></a>	<a href="#"><u>Termination of Plan</u></a>
<a href="#"><u>12.2</u></a>	<a href="#"><u>Amendment</u></a>
<a href="#"><u>12.3</u></a>	<a href="#"><u>Effect of Payment</u></a>
<a href="#"><u>ARTICLE 13</u></a>	<a href="#"><u>Administration</u></a>
<a href="#"><u>13.1</u></a>	<a href="#"><u>Committee Duties</u></a>
<a href="#"><u>13.2</u></a>	<a href="#"><u>Administration Upon Change In Control</u></a>
<a href="#"><u>13.3</u></a>	<a href="#"><u>Agents</u></a>
<a href="#"><u>13.4</u></a>	<a href="#"><u>Binding Effect of Decisions</u></a>
<a href="#"><u>13.5</u></a>	<a href="#"><u>Indemnity of Committee</u></a>
<a href="#"><u>13.6</u></a>	<a href="#"><u>Employer Information</u></a>
<a href="#"><u>ARTICLE 14</u></a>	<a href="#"><u>Other Benefits and Agreements</u></a>
<a href="#"><u>14.1</u></a>	<a href="#"><u>Coordination with Other Benefits</u></a>
<a href="#"><u>ARTICLE 15</u></a>	<a href="#"><u>Claims Procedures</u></a>
<a href="#"><u>15.1</u></a>	<a href="#"><u>Presentation of Claim</u></a>
<a href="#"><u>15.2</u></a>	<a href="#"><u>Notification of Decision</u></a>

<a href="#"><u>15.3</u></a>	<a href="#"><u>Review of a Denied Claim</u></a>
<a href="#"><u>15.4</u></a>	<a href="#"><u>Decision on Review</u></a>
<a href="#"><u>15.5</u></a>	<a href="#"><u>Legal Action</u></a>
<a href="#"><u>ARTICLE 16</u></a>	<a href="#"><u>Trust</u></a>
<a href="#"><u>16.1</u></a>	<a href="#"><u>Establishment of the Trust</u></a>
<a href="#"><u>16.2</u></a>	<a href="#"><u>Interrelationship of the Plan and the Trust</u></a>
<a href="#"><u>16.3</u></a>	<a href="#"><u>Distributions From the Trust</u></a>
<a href="#"><u>ARTICLE 17</u></a>	<a href="#"><u>Miscellaneous</u></a>
<a href="#"><u>17.1</u></a>	<a href="#"><u>Status of Plan</u></a>
<a href="#"><u>17.2</u></a>	<a href="#"><u>Unsecured General Creditor</u></a>
<a href="#"><u>17.3</u></a>	<a href="#"><u>Employer's Liability</u></a>
<a href="#"><u>17.4</u></a>	<a href="#"><u>Nonassignability</u></a>
<a href="#"><u>17.5</u></a>	<a href="#"><u>Not a Contract of Employment</u></a>
<a href="#"><u>17.6</u></a>	<a href="#"><u>Furnishing Information</u></a>
<a href="#"><u>17.7</u></a>	<a href="#"><u>Terms</u></a>
<a href="#"><u>17.8</u></a>	<a href="#"><u>Captions</u></a>
<a href="#"><u>17.9</u></a>	<a href="#"><u>Governing Law</u></a>
<a href="#"><u>17.10</u></a>	<a href="#"><u>Notice</u></a>
<a href="#"><u>17.11</u></a>	<a href="#"><u>Successors</u></a>
<a href="#"><u>17.12</u></a>	<a href="#"><u>Spouse's Interest</u></a>
<a href="#"><u>17.13</u></a>	<a href="#"><u>Validity</u></a>
<a href="#"><u>17.14</u></a>	<a href="#"><u>Incompetent</u></a>
<a href="#"><u>17.15</u></a>	<a href="#"><u>Court Order</u></a>
<a href="#"><u>17.16</u></a>	<a href="#"><u>Insurance</u></a>
<a href="#"><u>17.17</u></a>	<a href="#"><u>Legal Fees To Enforce Rights After Change in Control</u></a>

**GUESS?, INC.**  
**NONQUALIFIED DEFERRED COMPENSATION PLAN**

Effective January 1, 2006

**Purpose**

The purpose of this Plan is to provide specified benefits to Directors and a select group of management or highly compensated Employees who contribute materially to the continued growth, development and future business success of Guess?, Inc., a Delaware corporation, and its subsidiaries, if any, that sponsor this Plan. This Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA.

**ARTICLE 1**

**Definitions**

For the purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

- 1.1 “Account Balance” shall mean, with respect to a Participant, an entry on the records of the Employer equal to the sum of the Participant’s Annual Accounts. The Account Balance shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.
- 1.2 “Annual Account” shall mean, with respect to a Participant, an entry on the records of the Employer equal to the following amount: (i) the sum of the Participant’s Annual Deferral Amount, Company Contribution Amount and Company Restoration Matching Amount for any one Plan Year, plus (ii) amounts credited or debited to such amounts pursuant to this Plan, less (iii) all distributions made to the Participant or his or her Beneficiary pursuant to this Plan that relate to the Annual Account for such Plan Year. The Annual Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.
- 1.3 “Annual Deferral Amount” shall mean that portion of a Participant’s Base Salary, Bonus, Director Fees and LTIP Amounts that a Participant defers in accordance with Article 3 for any one Plan Year, without regard to whether such amounts are withheld and credited during such Plan Year. In the event of a Participant’s Retirement, Disability, death or Termination of Employment prior to the end of a Plan Year, such year’s Annual Deferral Amount shall be the actual amount withheld prior to such event.
- 1.4 “Annual Installment Method” shall be an annual installment payment over the number of years selected by the Participant in accordance with this Plan, calculated as follows: (i) for the first annual installment, the vested portion of each Annual Account shall be calculated as of the close of business on or around the Participant’s Benefit Distribution Date, as determined by the Committee in its sole discretion, and (ii) for remaining annual installments, the vested portion of each applicable Annual Account shall be calculated on or around the first business day of each Plan Year following the Plan Year in which the Participant’s Benefit Distribution Date occurs.

Each annual installment shall be calculated by multiplying this balance by a fraction, the numerator of which is one and the denominator of which is the remaining number of annual payments due to the Participant. By way of example, if the Participant elects a ten (10) year Annual Installment Method as the form of Retirement Benefit for an Annual Account, the first payment shall be 1/10 of the vested balance of such Annual Account, calculated as described in this definition. The following year, the payment shall be 1/9 of the vested balance of such Annual Account, calculated as described in this definition.

- 1.5 “Base Salary” shall mean the annual cash compensation relating to services performed during any calendar year, excluding distributions from nonqualified deferred compensation plans, bonuses, commissions, overtime, fringe benefits, stock options, relocation expenses, incentive payments, non-monetary awards, director fees and other fees, and automobile and other allowances paid to a Participant for employment services rendered (whether or not such allowances are included in the Employee’s gross income). Base Salary shall be calculated before reduction for compensation voluntarily deferred or contributed by the Participant pursuant to all qualified or nonqualified plans of any Employer and shall be calculated to include amounts not otherwise included in the Participant’s gross income under Code Sections 125, 402(e)(3), 402(h), or 403(b) pursuant to plans established by any Employer; provided, however, that all such amounts will be included in compensation only to the extent that had there been no such plan, the amount would have been payable in cash to the Employee.
- 1.6 “Beneficiary” shall mean one or more persons, trusts, estates or other entities, designated in accordance with Article 10, that are entitled to receive benefits under this Plan upon the death of a Participant.
- 1.7 “Beneficiary Designation Form” shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to designate one or more Beneficiaries.
- 1.8 “Benefit Distribution Date” shall mean a date that triggers distribution of a Participant’s vested benefits. A Benefit Distribution Date for a Participant shall be determined upon the occurrence of any one of the following:
  - (a) If the Participant Retires, the Benefit Distribution Date for his or her vested Account Balance shall be (i) the last day of the six-month period immediately following the date on which the Participant Retires if the Participant is a Key Employee, and (ii) for all other Participants, the date on which the Participant Retires; provided, however, in the event the Participant changes the Retirement Benefit election for one or more Annual Accounts in accordance with Section 6.2(b), the Benefit Distribution Date for such Annual Account(s) shall be postponed in accordance with such section 6.2(b); or
  - (b) If the Participant experiences a Termination of Employment, the Benefit Distribution Date for his or her vested Account Balance shall be (i) the last day of the six-month period immediately following the date on which the Participant experiences a Termination of Employment if the Participant is a Key Employee, and (ii) for all other Participants, the date on which the Participant experiences a Termination of Employment; or



- (c) If the Participant dies prior to the complete distribution of his or her vested Account Balance, the Participant's Benefit Distribution Date shall be the date on which the Committee is provided with proof that is satisfactory to the Committee of the Participant's death; or
- (d) If the Participant becomes Disabled, the Participant's Benefit Distribution Date shall be the date on which the Participant becomes Disabled; or
- (e) If (i) a Change in Control occurs prior to the Participant's Termination of Employment, Retirement, death or Disability, and (ii) the Participant has elected to receive a Change in Control Benefit, as set forth in Section 5.1 below, the Participant's Benefit Distribution Date shall be the date on which the Company experiences a Change in Control, as determined by the Committee in its sole discretion.

- 1.9 "Board" shall mean the board of directors of the Company.
- 1.10 "Bonus" shall mean any compensation otherwise payable in cash, in addition to Base Salary and LTIP Amounts, earned by a Participant for services rendered during a Plan Year, under the Guess?, Inc. Annual Incentive Bonus Plan and/or such other annual bonus or cash incentive plan or arrangement designated by the Committee.
- 1.11 "Change in Control" shall mean a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A(a)(2)(A)(v) of the Code and related Treasury guidance.
- 1.12 "Change in Control Benefit" shall have the meaning set forth in Article 5.
- 1.13 "Claimant" shall have the meaning set forth in Section 15.1.
- 1.14 "Code" shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.
- 1.15 "Committee" shall mean the committee described in Article 13.
- 1.16 "Company" shall mean Guess?, Inc., a Delaware corporation, and any successor to all or substantially all of the Company's assets or business.
- 1.17 "Company Contribution Amount" shall mean, for any one Plan Year, the amount determined in accordance with Section 3.5.
- 1.18 "Company Restoration Matching Amount" shall mean, for any one Plan Year, the amount determined in accordance with Section 3.6.
- 1.19 "Death Benefit" shall mean the benefit set forth in Article 9.
- 1.20 "Director" shall mean any member of the board of directors of any Employer.
- 1.21 "Director Fees" shall mean the fees otherwise payable in cash to a Director by any Employer, including retainer fees, committee chair fees and meetings fees, as compensation for serving on the board of directors.
- 1.22 "Disability" or "Disabled" shall mean that a Participant is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) by reason of any medically determinable physical or mental impairment

which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident or health plan covering employees of the Participant's Employer.

- 1.23 "Disability Benefit" shall mean the benefit set forth in Article 8.
- 1.24 "Election Form" shall mean the form, which may be in electronic format, established from time to time by the Committee that a Participant completes, signs and returns to the Committee to make an election under the Plan.
- 1.25 "Employee" shall mean a person who is an employee of any Employer.
- 1.26 "Employer(s)" shall mean the Company and/or any of its subsidiaries (now in existence or hereafter formed or acquired) that have been selected by the Board to participate in the Plan and have adopted the Plan as a sponsor.
- 1.27 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.
- 1.28 "401(k) Plan" shall mean, with respect to an Employer, a plan qualified under Code Section 401(a) that contains a cash or deferral arrangement described in Code Section 401(k), adopted by the Employer, as it may be amended from time to time, or any successor thereto.
- 1.29 "Key Employee" shall mean any Participant who is a "key employee" (as defined in Code Section 416(i) without regard to paragraph (5) thereof) of any Employer which is a corporation whose stock is publicly traded on an established securities market or otherwise, as determined by the Committee in accordance with Code Section 409A and related Treasury guidance and Regulations.
- 1.30 "LTIP Amounts" shall mean the cash portion of the compensation attributable to a Plan Year that is earned by a Participant as an Employee under any Employer's long-term incentive plan or any other long-term incentive arrangement designated by the Committee.
- 1.31 "Participant" shall mean any Employee or Director (i) who is selected to participate in the Plan, (ii) who submits an executed Plan Agreement, Election Form and Beneficiary Designation Form, which are accepted by the Committee, and (iii) whose Plan Agreement has not terminated.
- 1.32 "Plan" shall mean the Guess?, Inc. Nonqualified Deferred Compensation Plan, which shall be evidenced by this instrument and by each Plan Agreement, as they may be amended from time to time.
- 1.33 "Plan Agreement" shall mean a written agreement, as may be amended from time to time, which is entered into by and between an Employer and a Participant. Each Plan Agreement executed by a Participant and the Participant's Employer shall provide for the entire benefit to which such Participant is entitled under the Plan; should there be more than one Plan Agreement, the Plan Agreement bearing the latest date of acceptance by the Employer shall supersede all previous Plan Agreements in their entirety and shall govern such entitlement. The terms of any Plan Agreement may be different for any Participant, and any Plan Agreement may provide additional benefits not set forth in the Plan or limit the benefits otherwise provided under the Plan; provided, however, that any such additional benefits or benefit limitations must be agreed to by both the Employer and the Participant.

- 1.34 “Plan Year” shall mean a period beginning on January 1 of each calendar year and continuing through December 31 of such calendar year.
- 1.35 “Retirement”, “Retire(s)” or “Retired” shall mean separation from service with all Employers for any reason other than a leave of absence, death or Disability, as determined in accordance with Code Section 409A and related Treasury guidance and Regulations, on or after the date on which such Participant’s age plus Years of Service equals at least sixty-five (65). If a Participant is both an Employee and a Director, Retirement shall not occur until he or she separates from service with all Employers as both an Employee and a Director.
- 1.36 “Retirement Benefit” shall mean the benefit set forth in Article 6.
- 1.37 “Scheduled Distribution” shall mean the distribution set forth in Section 4.1.
- 1.38 “Terminate the Plan”, “Termination of the Plan” shall mean a determination by an Employer’s board of directors that (i) all of its Participants shall no longer be eligible to participate in the Plan, (ii) all deferral elections for such Participants shall terminate, and (iii) such Participants shall no longer be eligible to receive company contributions under this Plan.
- 1.39 “Termination Benefit” shall mean the benefit set forth in Article 7.
- 1.40 “Termination of Employment” shall mean the separation from service with all Employers, voluntarily or involuntarily, for any reason other than Retirement, Disability, death or an authorized leave of absence, as determined in accordance with Code Section 409A and related Treasury guidance and Regulations. If a Participant is both an Employee and a Director, a Termination of Employment shall not occur until he or she separates from service with all Employers as both an Employee and a Director.
- 1.41 “Trust” shall mean one or more trusts established by the Company in accordance with Article 16.
- 1.42 “Unforeseeable Financial Emergency” shall mean an unforeseeable emergency that is caused by an event beyond the control of the Participant that would result in severe financial hardship to the Participant resulting from (i) a sudden and unexpected illness or accident of the Participant, the Participant’s spouse, or a dependent (as defined in Code Section 152(a)) of the Participant, (ii) a loss of the Participant’s property due to casualty, or (iii) such other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, all as determined in the sole discretion of the Committee.
- 1.43 “Years of Service” shall mean the total number of full years in which a Participant has been employed by one or more Employers. For purposes of this definition, a year of employment shall be a 365 day period (or 366 day period in the case of a leap year) that, for the first year of employment, commences on the Employee’s date of hiring and that, for any subsequent year, commences on an anniversary of that hiring date. The Committee shall make a determination as to whether any partial year of employment shall be counted as a Year of Service.

## **ARTICLE 2**

### **Selection, Enrollment, Eligibility**

- 2.1 **Selection by Committee.** Participation in the Plan shall be limited to Directors and, as determined by the Committee in its sole discretion, a select group of management or highly

compensated Employees. From that group, the Committee shall select, in its sole discretion, those individuals who may actually participate in this Plan.

2.2 **Enrollment and Eligibility Requirements; Commencement of Participation.**

- (a) As a condition to participation, each Director or selected Employee who is eligible to participate in the Plan effective as of the first day of a Plan Year shall complete, execute and return to the Committee a Plan Agreement, an Election Form and a Beneficiary Designation Form, prior to the first day of such Plan Year, or such other earlier deadline as may be established by the Committee in its sole discretion. In addition, the Committee shall establish from time to time such other enrollment requirements as it determines, in its sole discretion, are necessary.
- (b) A Director or selected Employee who first becomes eligible to participate in this Plan after the first day of a Plan Year must complete these requirements within thirty (30) days after he or she first becomes eligible to participate in the Plan, or within such other earlier deadline as may be established by the Committee, in its sole discretion, in order to participate for that Plan Year. In such event, such person's participation in this Plan shall not commence earlier than the date determined by the Committee pursuant to Section 2.2(c) and such person shall not be permitted to defer under this Plan any portion of his or her Base Salary, Bonus, LTIP Amounts and/or Director Fees that are paid with respect to services performed prior to his or her participation commencement date, except to the extent permissible under Code Section 409A and related Treasury guidance or Regulations.
- (c) Each Director or selected Employee who is eligible to participate in the Plan shall commence participation in the Plan on the date that the Committee determines, in its sole discretion, that the Director or Employee has met all enrollment requirements set forth in this Plan and required by the Committee, including returning all required documents to the Committee within the specified time period. Notwithstanding the foregoing, the Committee shall process such Participant's deferral election as soon as administratively practicable after such deferral election is submitted to and accepted by the Committee.
- (d) If a Director or an Employee fails to meet all requirements contained in this Section 2.2 within the period required, that Director or Employee shall not be eligible to participate in the Plan during such Plan Year.

2.3 **Termination of a Participant's Eligibility.** If the Committee determines that an Employee Participant no longer qualifies as a member of a select group of management or highly compensated employees, as membership in such group is determined in accordance with Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, or that the inclusion of Directors in this Plan could jeopardize the status of this Plan as a plan intended to be "unfunded" and "maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of ERISA Sections 201(2), 301(a)(3) and 401(a)(1), the Committee shall have the right, in its sole discretion, to (i) terminate any deferral election the Participant has made for the remainder of the Plan Year in which the Committee makes such determination, (ii) prevent the Participant from making future deferral elections, and/or (iii) take further action that the Committee deems appropriate. Notwithstanding

the foregoing, in the event of a Termination of the Plan in accordance with Section 1.38, the termination of the affected Participants' eligibility for participation in the Plan shall not be governed by this Section 2.3, but rather shall be governed by Section 12.1. In the event that a Participant is no longer eligible to defer compensation under this Plan, the Participant's Account Balance shall continue to be governed by the terms of this Plan until such time as the Participant's Account Balance is paid in accordance with the terms of this Plan.

**ARTICLE 3**  
**Deferral Commitments/Company Contribution Amounts/**  
**Company Restoration Matching Amounts/ Vesting/Crediting/Taxes**

**3.1 Minimum Deferrals.**

- (a) **Annual Deferral Amount.** For each Plan Year, a Participant may elect to defer, as his or her Annual Deferral Amount, Base Salary, Bonus, LTIP Amounts and/or Director Fees in the following minimum amounts for each deferral elected:

<b>Deferral</b>	<b>Minimum Amount</b>
Base Salary, Bonus, and/or LTIP Amounts	\$5,000 aggregate
Director Fees	\$0

If the Committee determines, in its sole discretion, prior to the beginning of a Plan Year that a Participant has made an election for less than the stated minimum amounts, or if no election is made, the amount deferred shall be zero. If the Committee determines, in its sole discretion, at any time after the beginning of a Plan Year that a Participant has deferred less than the stated minimum amounts for that Plan Year, any amount credited to the Participant's applicable Annual Account as the Annual Deferral Amount for that Plan Year shall be distributed to the Participant no later than two and one-half months after the last day of such Plan Year.

- (b) **Short Plan Year.** Notwithstanding the foregoing, if a Participant first becomes a Participant after the first day of a Plan Year, the minimum Annual Deferral Amount shall be an amount equal to the minimum set forth above, multiplied by a fraction, the numerator of which is the number of complete months remaining in the Plan Year and the denominator of which is 12.

**3.2 Maximum Deferral.**

- (a) **Annual Deferral Amount.** For each Plan Year, a Participant may elect to defer, as his or her Annual Deferral Amount, Base Salary, Bonus, LTIP Amounts and/or Director Fees up to the following maximum percentages for each deferral elected:

<b>Deferral</b>	<b>Maximum Percentage</b>
Base Salary	75%
Bonus	100%
LTIP Amounts	100%
Director Fees	100%

- (b) **Short Plan Year.** Notwithstanding the foregoing, if a Participant first becomes a Participant after the first day of a Plan Year, the maximum Annual Deferral Amount shall be limited to the amount of compensation not yet earned by the Participant as of the date the Participant submits a Plan Agreement and Election Form to the Committee for acceptance, except to the extent permissible under Code Section 409A and related Treasury guidance or Regulations.

### 3.3 **Election to Defer; Effect of Election Form.**

- (a) **First Plan Year.** In connection with a Participant's commencement of participation in the Plan, the Participant shall make an irrevocable deferral election for the Plan Year in which the Participant commences participation in the Plan, along with such other elections as the Committee deems necessary or desirable under the Plan. For these elections to be valid, the Election Form must be completed and signed by the Participant, timely delivered to the Committee (in accordance with Section 2.2 above) and accepted by the Committee.
- (b) **Subsequent Plan Years.** For each succeeding Plan Year, an irrevocable deferral election for that Plan Year, and such other elections as the Committee deems necessary or desirable under the Plan, shall be made by timely delivering a new Election Form to the Committee, in accordance with its rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made. If no such Election Form is timely delivered for a Plan Year, the Annual Deferral Amount shall be zero for that Plan Year.
- (c) **Performance-Based Compensation.** Notwithstanding the foregoing, the Committee may, in its sole discretion, determine that an irrevocable deferral election pertaining to performance-based compensation may be made by timely delivering an Election Form to the Committee, in accordance with its rules and procedures, no later than six (6) months before the end of the performance service period. "Performance-based compensation" shall be compensation based on services performed over a period of at least twelve (12) months, in accordance with Code Section 409A and related Treasury guidance or Regulations. Until such time as Treasury guidance provides the requirements for an amount to qualify as "performance-based compensation" under Code Section 409A, the Committee may utilize the definition of "bonus compensation" provided in Treasury Notice 2005-1 in determining which amounts may be deferred by delivering an Election Form to the Committee, in accordance with its rules and procedures, no later than six (6) months before the end of the performance service period.

- 3.4 **Withholding and Crediting of Annual Deferral Amounts.** For each Plan Year, the Base Salary portion of the Annual Deferral Amount shall be withheld from each regularly scheduled Base Salary payroll in equal amounts, as adjusted from time to time for increases and decreases in Base Salary. The Bonus, LTIP Amounts and/or Director Fees portion of the Annual Deferral Amount shall be withheld at the time the Bonus, LTIP Amounts or Director Fees are or otherwise would be paid to the Participant, whether or not this occurs during the Plan Year itself. Annual

Deferral Amounts shall be credited to the Participant's Annual Account for such Plan Year at the time such amounts would otherwise have been paid to the Participant.

3.5 **Company Contribution Amount.**

- (a) For each Plan Year, an Employer may be required to credit amounts to a Participant's Annual Account in accordance with employment or other agreements entered into between the Participant and the Employer, which amounts shall be part of the Participant's Company Contribution Amount for that Plan Year. Subject to compliance with Code Section 409A and related Treasury guidance, such amounts shall be credited to the Participant's Annual Account for the applicable Plan Year on the date or dates prescribed by such agreements.
- (b) For each Plan Year, an Employer, in its sole discretion, may, but is not required to, credit any amount it desires to any Participant's Annual Account under this Plan, which amount shall be part of the Participant's Company Contribution Amount for that Plan Year. The amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive a Company Contribution Amount for that Plan Year. The Company Contribution Amount described in this Section 3.5(b), if any, shall be credited to the Participant's Annual Account for the applicable Plan Year on a date or dates to be determined by the Committee, in its sole discretion.

3.6 **Company Restoration Matching Amount.** A Participant's Company Restoration Matching Amount, if any, for a Plan Year shall be equal to the "match" the Company would have otherwise credited to the Participant's account in the 401(k) Plan, assuming that the amount of Base Salary deferred into this Plan for such Plan Year had instead been contributed to the 401(k) Plan (taking into account (i) the amount of the "match" the Company makes to the Participant's account in the 401(k) Plan during such Plan Year, and (ii) limitations applicable to the 401(k) Plan imposed by the Code, including but not limited to Code Sections 401(a)(17) and 402(g)). The Participant's Company Restoration Matching Amount, if any, shall be credited to the Participant's Annual Account on or around April 1<sup>st</sup> of the Plan Year following the Plan Year to which the Company Restoration Matching Amount relates.

3.7 **Crediting of Amounts after Benefit Distribution.** Notwithstanding any provision in this Plan to the contrary, should the complete distribution of a Participant's vested Account Balance occur prior to the date on which any portion of (i) the Annual Deferral Amount that a Participant has elected to defer in accordance with Section 3.3, (ii) the Company Contribution Amount, or (iii) the Company Restoration Matching Amount, would otherwise be credited to the Participant's Account Balance, such amounts shall not be credited to the Participant's Account Balance, but shall be paid to the Participant in a manner determined by the Committee, in its sole discretion.

3.8 **Vesting.**

- (a) A Participant shall at all times be 100% vested in his or her deferrals of Base Salary, Bonus, LTIP Amounts and Director's Fees.

- (b) A Participant shall be vested in the portion of his or her Account Balance attributable to any Company Contribution Amounts, plus amounts credited or debited on such amounts (pursuant to Section 3.9), in accordance with the vesting schedule(s) set forth in his or her Plan Agreement, employment agreement or any other agreement entered into between the Participant and his or her Employer. If not addressed in such agreements, a Participant shall vest in the portion of his or her Account Balance attributable to any Company Contribution Amounts, plus amounts credited or debited on such amounts (pursuant to Section 3.9), in accordance with the vesting schedule declared by the Committee in its sole discretion.
- (c) A Participant shall be vested in the portion of his or her Account Balance attributable to any Company Restoration Matching Amounts, plus amounts credited or debited on such amounts (pursuant to Section 3.9), only to the extent that the Participant would be vested in such amounts under the provisions of the 401(k) Plan, as determined by the Committee in its sole discretion.
- (d) Notwithstanding anything to the contrary contained in this Section 3.8, in the event of a Change in Control, or upon a Participant's Retirement, death while employed by an Employer, or Disability, any amounts that are not vested in accordance with Sections 3.8(b) or 3.8(c) above, shall immediately become 100% vested (if it is not already vested in accordance with the above vesting schedules).
- (e) Notwithstanding subsection 3.8(d) above, the vesting schedules described in Sections 3.8(b) and 3.8(c) shall not be accelerated upon a Change in Control to the extent that the Committee determines that such acceleration would cause the deduction limitations of Section 280G of the Code to apply. In the event of such a determination, the Participant may request independent verification of the Committee's calculations with respect to the application of Section 280G. In such case, the Committee must provide to the Participant within ninety (90) days of such a request an opinion from a nationally recognized accounting firm selected by the Participant (the "Accounting Firm"). The opinion shall state the Accounting Firm's opinion that any limitation in the vested percentage hereunder is necessary to avoid the limits of Section 280G and contain supporting calculations. The cost of such opinion shall be paid for by the Company.
- (f) Section 3.8(e) shall not prevent the acceleration of the vesting schedules described in Sections 3.8(b) and 3.8(c) if such Participant is entitled to a "gross-up" payment to eliminate the effect of the Code section 4999 excise tax pursuant to his or her employment agreement or other agreement entered into between such Participant and the Employer.

3.9 **Crediting/Debiting of Account Balances.** In accordance with, and subject to, the rules and procedures that are established from time to time by the Committee, in its sole discretion, amounts shall be credited or debited to a Participant's Account Balance in accordance with the following rules:

- (a) **Measurement Funds.** Subject to the restrictions found in Section 3.9(c) below, a Participant may elect one or more of the measurement funds selected by the Committee,



in its sole discretion, which are based on certain mutual funds (the "Measurement Funds"), for the purpose of crediting or debiting additional amounts to his or her Account Balance. As necessary, the Committee may, in its sole discretion, discontinue, substitute or add a Measurement Fund. Each such action will take effect as of the first day of the first calendar quarter that begins at least thirty (30) days after the day on which the Committee gives Participants advance written notice of such change.

- (b) **Election of Measurement Funds**. Subject to the restrictions found in Section 3.9(c) below, a Participant, in connection with his or her initial deferral election in accordance with Section 3.3(a) above, shall elect, on the Election Form, one or more Measurement Fund(s) (as described in Section 3.9(a) above) to be used to determine the amounts to be credited or debited to his or her Account Balance. If a Participant does not elect any of the Measurement Funds as described in the previous sentence, the Participant's Account Balance shall automatically be allocated into the lowest-risk Measurement Fund, as determined by the Committee, in its sole discretion. Subject to the restrictions found in Section 3.9(c) below, a Participant may (but is not required to) elect, by submitting an Election Form to the Committee that is accepted by the Committee, to add or delete one or more Measurement Fund(s) to be used to determine the amounts to be credited or debited to his or her Account Balance, or to change the portion of his or her Account Balance allocated to each previously or newly elected Measurement Fund. If an election is made in accordance with the previous sentence, it shall apply as of the first business day deemed reasonably practicable by the Committee, in its sole discretion, and shall continue thereafter for each subsequent day in which the Participant participates in the Plan, unless changed in accordance with the previous sentence. Notwithstanding the foregoing, the Committee, in its sole discretion, may impose limitations on the frequency with which one or more of the Measurement Funds elected in accordance with this Section 3.9(b) may be added or deleted by such Participant; furthermore, the Committee, in its sole discretion, may impose limitations on the frequency with which the Participant may change the portion of his or her Account Balance allocated to each previously or newly elected Measurement Fund.
- (c) **Fixed Rate Fund**. If the Committee, in its sole discretion, adds a fixed rate fund Measurement Fund to this Plan, the provisions of this Section 3.9(c) shall apply. Prior to each Plan Year, the Committee shall, in its sole discretion, determine whether it will (i) allow allocations to and/or from the fixed rate fund Measurement Fund and whether such allocations, if any, may only be made upon advance written notification of a Participant's intended allocation, and (ii) impose limits on the portion of a Participant's Account Balance that may be invested in the fixed rate fund Measurement Fund at any given time. In the event that the Committee imposes a limit on the portion of a Participant's Account Balance that may be invested in the fixed rate fund Measurement Fund, the Committee may request that a Participant re-allocate his or her Account Balance among the other Measurement Funds; provided, however, if a Participant fails or refuses to re-allocate his or her Account Balance in accordance with the Committee's request, the Committee may re-allocate that portion of the Participant's Account Balance which is in excess of the limits imposed on the fixed rate fund Measurement Fund, on a pro-rata basis, among the other Measurement Funds to which the Participant's Account Balance is allocated.

- (d) **Proportionate Allocation.** In making any election described in Section 3.9(b) above, the Participant shall specify on the Election Form, in increments of one percent (1%), the percentage of his or her Account Balance or Measurement Fund, as applicable, to be allocated/reallocated.
- (e) **Crediting or Debiting Method.** The performance of each Measurement Fund (either positive or negative) will be determined on a daily basis based on the manner in which such Participant's Account Balance has been hypothetically allocated among the Measurement Funds by the Participant.
- (f) **No Actual Investment.** Notwithstanding any other provision of this Plan that may be interpreted to the contrary, the Measurement Funds are to be used for measurement purposes only, and a Participant's election of any such Measurement Fund, the allocation of his or her Account Balance thereto, the calculation of additional amounts and the crediting or debiting of such amounts to a Participant's Account Balance shall not be considered or construed in any manner as an actual investment of his or her Account Balance in any such Measurement Fund. In the event that the Company or the Trustee (as that term is defined in the Trust), in its own discretion, decides to invest funds in any or all of the investments on which the Measurement Funds are based, no Participant shall have any rights in or to such investments themselves. Without limiting the foregoing, a Participant's Account Balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his or her behalf by the Company or the Trust; the Participant shall at all times remain an unsecured creditor of the Company.

### 3.10 **FICA and Other Taxes.**

- (a) **Annual Deferral Amounts.** For each Plan Year in which an Annual Deferral Amount is being withheld from a Participant, the Participant's Employer(s) shall withhold from that portion of the Participant's Base Salary, Bonus and/or LTIP Amounts that is not being deferred, in a manner determined by the Employer(s), the Participant's share of FICA and other employment taxes on such Annual Deferral Amount. If necessary, the Committee may reduce the Annual Deferral Amount in order to comply with this Section 3.10.
- (b) **Company Restoration Matching Amounts and Company Contribution Amounts.** When a Participant becomes vested in a portion of his or her Account Balance attributable to any Company Restoration Matching Amounts and/or Company Contribution Amounts, the Participant's Employer(s) shall withhold from that portion of the Participant's Base Salary, Bonus and/or LTIP Amounts that is not deferred, in a manner determined by the Employer(s), the Participant's share of FICA and other employment taxes on such amounts. If necessary, the Committee may reduce the vested portion of the Participant's Company Restoration Matching Amount or Company Contribution Amount, as applicable, in order to comply with this Section 3.10.
- (c) **Distributions.** The Participant's Employer(s), or the trustee of the Trust, shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld by the Employer(s), or the trustee of the Trust, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Employer(s) and the trustee of the Trust.

**ARTICLE 4**  
**Scheduled Distribution; Unforeseeable Financial Emergencies**

- 4.1 **Scheduled Distribution.** In connection with each election to defer an Annual Deferral Amount, a Participant may irrevocably elect to receive a Scheduled Distribution, in the form of a lump sum payment, from the Plan with respect to all or a portion of the Annual Deferral Amount. The Scheduled Distribution shall be a lump sum payment in an amount that is equal to the portion of the Annual Deferral Amount the Participant elected to have distributed as a Scheduled Distribution, plus amounts credited or debited in the manner provided in Section 3.9 above on that amount, calculated as of the close of business on or around the date on which the Scheduled Distribution becomes payable, as determined by the Committee in its sole discretion. Subject to the other terms and conditions of this Plan, each Scheduled Distribution elected shall be paid out within the sixty (60) day period commencing immediately after the first day of any Plan Year designated by the Participant (the "Scheduled Distribution Date"). The Plan Year designated by the Participant must be at least three (3) Plan Years after the end of the Plan Year to which the Participant's deferral election described in Section 3.3 relates. By way of example, if a Scheduled Distribution is elected for Annual Deferral Amounts that are earned in the Plan Year commencing January 1, 2006, the earliest Scheduled Distribution Date that may be designated by a Participant would be January 1, 2010, and the Scheduled Distribution would become payable during the sixty (60) day period commencing immediately after such Scheduled Distribution Date.
- 4.2 **Postponing Scheduled Distributions.** A Participant may elect to postpone a Scheduled Distribution described in Section 4.1 above, and have such amount paid out within the sixty (60) day period commencing immediately after an allowable alternative distribution date designated by the Participant in accordance with this Section 4.2. In order to make this election, the Participant must submit a new Scheduled Distribution Election Form to the Committee in accordance with the following criteria:
- (a) Such Scheduled Distribution Election Form must be submitted to and accepted by the Committee in its sole discretion at least twelve (12) months prior to the Participant's previously designated Scheduled Distribution Date;
  - (b) The new Scheduled Distribution Date selected by the Participant must be the first day of a Plan Year, and must be at least five years after the previously designated Scheduled Distribution Date; and
  - (c) The election of the new Scheduled Distribution Date shall have no effect until at least twelve (12) months after the date on which the election is made.
- 4.3 **Other Benefits Take Precedence Over Scheduled Distributions.** Should a Benefit Distribution Date occur that triggers a benefit under Articles 5, 6, 7, 8, or 9, any Annual Deferral Amount that is subject to a Scheduled Distribution election under Section 4.1 shall not be paid in accordance with Section 4.1, but shall be paid in accordance with the other applicable Article. Notwithstanding the foregoing, the Committee shall interpret this Section 4.3 in a manner that is consistent with Code Section 409A and other applicable tax law, including but not limited to Treasury guidance and Regulations issued after the effective date of this Plan.

#### 4.4 **Unforeseeable Financial Emergencies.**

- (a) If a Participant experiences an Unforeseeable Financial Emergency, the Participant may petition the Committee to receive a partial or full payout from the Plan, subject to the provisions set forth below. The payout, if any, from the Plan shall not exceed the lesser of (i) the Participant's vested Account Balance, calculated as of the close of business on or around the date on which the amount becomes payable, as determined by the Committee in its sole discretion, or (ii) the amount necessary to satisfy the Unforeseeable Financial Emergency, plus amounts necessary to pay Federal, state, or local income taxes or penalties reasonably anticipated as a result of the distribution. Notwithstanding the foregoing, a Participant may not receive a payout from the Plan to the extent that the Unforeseeable Financial Emergency is or may be relieved (A) through reimbursement or compensation by insurance or otherwise, (B) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship or (C) by cessation of deferrals under this Plan.
- (b) If the Committee, in its sole discretion, approves a Participant's petition for payout from the Plan, the Participant shall receive a payout from the Plan within sixty (60) days of the date of such approval, and the Participant's deferrals under the Plan for the remainder of the Plan Year shall be terminated.
- (c) Notwithstanding the foregoing, the Committee shall interpret all provisions relating to payout and/or termination of deferrals under this Section 4.4 in a manner that is consistent with Code Section 409A and related Treasury guidance or Regulations.

### **ARTICLE 5**

#### **Change in Control Benefit**

- 5.1 **Change in Control Benefit.** A Participant, in connection with his or her commencement of participation in the Plan, shall irrevocably elect on an Election Form whether to (i) receive a Change in Control Benefit upon the occurrence of a Change in Control, which shall be equal to the Participant's vested Account Balance, calculated as of the close of business on or around the Participant's Benefit Distribution Date, as determined by the Committee in its sole discretion, or (ii) to have his or her Account Balance remain in the Plan upon the occurrence of a Change in Control and to have his or her Account Balance remain subject to the terms and conditions of the Plan. If a Participant does not make any election with respect to the payment of the Change in Control Benefit, then such Participant's Account Balance shall remain in the Plan upon a Change in Control and shall be subject to the terms and conditions of the Plan.
- 5.2 **Payment of Change in Control Benefit.** The Change in Control Benefit, if any, shall be paid to the Participant in a lump sum no later than sixty (60) days after the Participant's Benefit Distribution Date. Notwithstanding the foregoing, the Committee shall interpret all provisions in this Plan relating to a Change in Control Benefit in a manner that is consistent with Code Section 409A and other applicable tax law, including but not limited to guidance issued after the effective date of this Plan.

**ARTICLE 6**  
**Retirement Benefit**

6.1 **Retirement Benefit.** A Participant who Retires shall receive, as a Retirement Benefit, his or her vested Account Balance, calculated as of the close of business on or around the Participant's Benefit Distribution Date, as determined by the Committee in its sole discretion.

6.2 **Payment of Retirement Benefit.**

- (a) In connection with a Participant's election to defer an Annual Deferral Amount, the Participant shall elect the form in which his or her Annual Account for such Plan Year will be paid. The Participant may elect to receive each Annual Account in the form of a lump sum or pursuant to an Annual Installment Method of up to fifteen (15) years. If a Participant does not make any election with respect to the payment of an Annual Account, then the Participant shall be deemed to have elected to receive such Annual Account as a lump sum.
- (b) A Participant may change the form of payment for an Annual Account from a lump sum to an Annual Installment Method (but not vice versa) or by modifying an existing elected Annual Installment Method by extending (but not decreasing) the number of installments subject to the Annual Installment Method by submitting an Election Form to the Committee in accordance with the following criteria:
  - (i) The election to modify the form of payment for such Annual Account shall have no effect until at least twelve (12) months after the date on which the election is made; and
  - (ii) The first payment related to such Annual Account shall be delayed at least five (5) years from the originally scheduled Benefit Distribution Date for such Annual Account described in Section 1.8(a).

Notwithstanding the foregoing, the Committee shall interpret all provisions relating to an election described in this Section 6.2 in a manner that is consistent with Code Section 409A and other applicable tax law, including but not limited to Treasury guidance or Regulations issued after the effective date of this Plan.

The Election Form most recently accepted by the Plan committee in accordance with the criteria set forth above shall govern the payout of the applicable Annual Account.

- (c) The lump sum payment shall be made, or installment payments shall commence, no later than sixty (60) days after the Benefit Distribution Date. Remaining installments, if any, shall be paid no later than sixty (60) days after the first day of each Plan Year following the Plan Year in which the Participant's Benefit Distribution Date occurs.

**ARTICLE 7**  
**Termination Benefit**

- 7.1 **Termination Benefit.** A Participant who experiences a Termination of Employment shall receive, as a Termination Benefit, his or her vested Account Balance, calculated as of the close of business on or around the Participant's Benefit Distribution Date, as determined by the Committee in its sole discretion.
- 7.2 **Payment of Termination Benefit.** The Termination Benefit shall be paid to the Participant in a lump sum payment no later than sixty (60) days after the Participant's Benefit Distribution Date.

**ARTICLE 8**  
**Disability Benefit**

- 8.1 **Disability Benefit.** Upon a Participant's Disability, the Participant shall receive a Disability Benefit, which shall be equal to the Participant's vested Account Balance, calculated as of the close of business on or around the Participant's Benefit Distribution Date, as selected by the Committee in its sole discretion.
- 8.2 **Payment of Disability Benefit.** The Disability Benefit shall be paid to the Participant in a lump sum payment no later than sixty (60) days after the Participant's Benefit Distribution Date.

**ARTICLE 9**  
**Death Benefit**

- 9.1 **Death Benefit.** The Participant's Beneficiary(ies) shall receive a Death Benefit upon the Participant's death which will be equal to the Participant's vested Account Balance, calculated as of the close of business on or around the Participant's Benefit Distribution Date, as selected by the Committee in its sole discretion.
- 9.2 **Payment of Death Benefit.** The Death Benefit shall be paid to the Participant's Beneficiary(ies) in a lump sum payment no later than sixty (60) days after the Participant's Benefit Distribution Date.

**ARTICLE 10**  
**Beneficiary Designation**

- 10.1 **Beneficiary.** Each Participant shall have the right, at any time, to designate his or her Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of an Employer in which the Participant participates.

- 10.2 **Beneficiary Designation; Change; Spousal Consent.** A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time. If the Participant names someone other than his or her spouse as a Beneficiary, the Committee may, in its sole discretion, determine that spousal consent is required to be provided in a form designated by the Committee, executed by such Participant's spouse and returned to the Committee. Upon the acceptance by the Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee prior to his or her death.
- 10.3 **Acknowledgment.** No designation or change in designation of a Beneficiary shall be effective until received and acknowledged in writing by the Committee or its designated agent.
- 10.4 **No Beneficiary Designation.** If a Participant fails to designate a Beneficiary as provided in Sections 10.1, 10.2 and 10.3 above or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the executor or personal representative of the Participant's estate.
- 10.5 **Doubt as to Beneficiary.** If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its discretion, to cause the Participant's Employer to withhold such payments until this matter is resolved to the Committee's satisfaction.
- 10.6 **Discharge of Obligations.** The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and that Participant's Plan Agreement shall terminate upon such full payment of benefits.

## **ARTICLE 11**

### **Leave of Absence**

- 11.1 **Paid Leave of Absence.** If a Participant is authorized by the Participant's Employer to take a paid leave of absence from the employment of the Employer, (i) the Participant shall continue to be considered eligible for the benefits provided in Articles 4, 5, 6, 7, 8, or 9 in accordance with the provisions of those Articles, and (ii) the Annual Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.3.
- 11.2 **Unpaid Leave of Absence.** If a Participant is authorized by the Participant's Employer to take an unpaid leave of absence from the employment of the Employer for any reason, such Participant shall continue to be eligible for the benefits provided in Articles 4, 5, 6, 7, 8, or 9 in accordance with the provisions of those Articles. However, the Participant shall be excused from fulfilling his or her Annual Deferral Amount commitment that would otherwise have been withheld during the remainder of the Plan Year in which the unpaid leave of absence is taken.

During the unpaid leave of absence, the Participant shall not be allowed to make any additional deferral elections. However, if the Participant returns to employment, the Participant may elect to defer an Annual Deferral Amount for the Plan Year following his or her return to employment and for every Plan Year thereafter while a Participant in the Plan, provided such deferral elections are otherwise allowed and an Election Form is delivered to and accepted by the Committee for each such election in accordance with Section 3.3 above.

## **ARTICLE 12**

### **Termination of Plan, Amendment or Modification**

12.1 **Termination of Plan.** Although each Employer anticipates that it will continue the Plan for an indefinite period of time, there is no guarantee that any Employer will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, each Employer reserves the right to Terminate the Plan. In the event of a Termination of the Plan, the Measurement Funds available to Participants following the Termination of the Plan shall be comparable in number and type to those Measurement Funds available to Participants in the Plan Year preceding the Plan Year in which the Termination of the Plan is effective. Following a Termination of the Plan, Participant Account Balances shall remain in the Plan until the Participant becomes eligible for the benefits provided in Articles 4, 5, 6, 7, 8 or 9 in accordance with the provisions of those Articles. The Termination of the Plan shall not adversely affect any Participant or Beneficiary who has become entitled to the payment of any benefits under the Plan as of the date of termination. Notwithstanding the foregoing, to the extent permissible under Code Section 409A and other applicable tax law, including but not limited to Notice 2005-1 and such other Treasury guidance or Regulations issued after the effective date of this Plan, following a Change in Control the Employer shall be permitted to (i) terminate the Plan by action of its board of directors, and (ii) distribute the vested Account Balances to Participants in a lump sum no later than six (6) months after the Change in Control.

### 12.2 **Amendment.**

- (a) Any Employer may, at any time, amend or modify the Plan in whole or in part with respect to that Employer. Notwithstanding the foregoing, (i) no amendment or modification shall be effective to decrease the value of a Participant's vested Account Balance in existence at the time the amendment or modification is made, and (ii) no amendment or modification of this Section 12.2 or Section 13.2 of the Plan shall be effective.
- (b) If a Participant's Plan Agreement contains benefits or limitations that are not in this Plan document, the Employer may amend or terminate such provisions with the written consent of the Participant.
- (c) Notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any provision of the Plan or any Plan Agreement may cause amounts deferred under the Plan to become immediately taxable to any Participant under Code Section 409A and related Treasury guidance or Regulations, each Employer may (i) adopt such amendments to the Plan, Plan Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Employer



determines necessary or appropriate to preserve the intended tax treatment of the Plan benefits provided by the Plan and/or (ii) take such other actions as the Employer determines necessary or appropriate to comply with the requirements of Code Section 409A and related Treasury guidance or Regulations.

- 12.3 **Effect of Payment.** The full payment of the Participant's vested Account Balance under Articles 4, 5, 6, 7, 8, or 9 of the Plan shall completely discharge all obligations to a Participant and his or her designated Beneficiaries under this Plan, and the Participant's Plan Agreement shall terminate.

### **ARTICLE 13**

#### **Administration**

- 13.1 **Committee Duties.** Except as otherwise provided in this Article 13, this Plan shall be administered by a Committee, which shall consist of the Board, or such committee of management and/or Board members as the Board shall appoint. Members of the Committee may be Participants under this Plan. The Committee shall also have the discretion and authority to (i) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan, and (ii) decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan. Any individual serving on the Committee who is a Participant shall not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Committee shall be entitled to rely on information furnished by a Participant or the Company. The Committee may, in its sole discretion and from time to time, delegate any administrative or ministerial duties related to the Plan to any officers or staff of the Company.
- 13.2 **Administration Upon Change In Control.** For purposes of this Plan, the Committee shall be the "Administrator" at all times prior to the occurrence of a Change in Control. Within one hundred and twenty (120) days following a Change in Control, an independent third party "Administrator" may be selected by the individual or individuals who, immediately prior to the Change in Control, held a position as Chief Executive Officer of the Company or, if not so identified, held a position as the Company's highest ranking officer(s) (the "Ex-CEO"), and approved by the Trustee. The Committee, as constituted prior to the Change in Control, shall continue to be the Administrator until the earlier of (i) the date on which such independent third party is selected and approved, or (ii) the expiration of the one hundred and twenty (120) day period following the Change in Control. If an independent third party is not selected within one hundred and twenty (120) days of such Change in Control, the Committee, as described in Section 13.1 above, shall be the Administrator. The Administrator shall have the discretionary power to determine all questions arising in connection with the administration of the Plan and the interpretation of the Plan and Trust including, but not limited to benefit entitlement determinations; provided, however, upon and after the occurrence of a Change in Control, the Administrator shall have no power to direct the investment of Plan or Trust assets or select any investment manager or custodial firm for the Plan or Trust. Upon and after the occurrence of a Change in Control, the Company must: (1) pay all reasonable administrative expenses and fees of the Administrator; (2) indemnify the Administrator against any costs, expenses and liabilities

including, without limitation, attorney's fees and expenses arising in connection with the performance of the Administrator hereunder, except with respect to matters resulting from the gross negligence or willful misconduct of the Administrator or its employees or agents; and (3) supply full and timely information to the Administrator on all matters relating to the Plan, the Trust, the Participants and their Beneficiaries, the Account Balances of the Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of the Participants, and such other pertinent information as the Administrator may reasonably require. Upon and after a Change in Control, the Administrator may be terminated (and a replacement appointed) by the Trustee only with the approval of the Ex-CEO. Upon and after a Change in Control, the Administrator may not be terminated by the Company.

- 13.3 **Agents.** In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel who may be counsel to any Employer.
- 13.4 **Binding Effect of Decisions.** The decision or action of the Administrator with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.
- 13.5 **Indemnity of Committee.** All Employers shall indemnify and hold harmless the members of the Committee, any Employee to whom duties of the Committee may be delegated in accordance with Section 13.1, and the Administrator against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct by any such member of the Committee, any such Employee, or the Administrator seeking indemnification hereunder.
- 13.6 **Employer Information.** To enable the Committee and/or Administrator to perform its functions, the Company and each Employer shall supply full and timely information to the Committee and/or Administrator, as the case may be, on all matters relating to the Plan, the Trust, the Participants and their Beneficiaries, the Account Balances of the Participants, the compensation of its Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Committee or Administrator may reasonably require.

#### **ARTICLE 14** **Other Benefits and Agreements**

- 14.1 **Coordination with Other Benefits.** The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Participant's Employer. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

**ARTICLE 15**  
**Claims Procedures**

- 15.1 **Presentation of Claim.** Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within sixty (60) days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.
- 15.2 **Notification of Decision.** The Committee shall consider a Claimant's claim within a reasonable time, but no later than ninety (90) days after receiving the claim. If the Committee determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination. The Committee shall notify the Claimant in writing:
- (a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or
  - (b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:
    - (i) the specific reason(s) for the denial of the claim, or any part of it;
    - (ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;
    - (iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;
    - (iv) an explanation of the claim review procedure set forth in Section 15.3 below; and
    - (v) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review.
- 15.3 **Review of a Denied Claim.** On or before sixty (60) days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. The Claimant (or the Claimant's duly authorized representative):
- (a) may, upon request and free of charge, have reasonable access to, and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the claim for benefits;

- (b) may submit written comments or other documents; and/or
- (c) may request a hearing, which the Committee, in its sole discretion, may grant.

15.4 **Decision on Review.** The Committee shall render its decision on review promptly, and no later than sixty (60) days after the Committee receives the Claimant's written request for a review of the denial of the claim. If the Committee determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial sixty (60) day period. In no event shall such extension exceed a period of sixty (60) days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination. In rendering its decision, the Committee 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 benefit determination. The decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

- (a) specific reasons for the decision;
- (b) specific reference(s) to the pertinent Plan provisions upon which the decision was based;
- (c) 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 (as defined in applicable ERISA regulations) to the Claimant's claim for benefits; and
- (d) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

15.5 **Legal Action.** A Claimant's compliance with the foregoing provisions of this Article 15 is a mandatory prerequisite to a Claimant's right to commence any legal action with respect to any claim for benefits under this Plan.

## **ARTICLE 16**

### **Trust**

16.1 **Establishment of the Trust.** In order to provide assets from which to fulfill the obligations of the Participants and their Beneficiaries under the Plan, the Company shall establish a trust by a trust agreement with a third party, the trustee (the "Trust"), and each Employer shall at least annually transfer over to the Trust such assets as the Employer determines, in its sole discretion, are necessary to provide, on a present value basis, for its respective future liabilities created with respect to the Annual Accounts for such Employer's Participants (or such Participants' Beneficiaries) for all periods prior to the transfer, as well as any debits and credits to such Participants' Annual Accounts for all periods prior to the transfer, taking into consideration the value of the assets in the Trust at the time of the transfer.

16.2 **Interrelationship of the Plan and the Trust.** The provisions of the Plan and the Plan Agreement shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Employers, Participants and the creditors of the Employers to the assets transferred to the Trust. Each Employer shall at all times remain liable to carry out its obligations under the Plan.

- 16.3 **Distributions From the Trust.** Each Employer's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Employer's obligations under this Plan.

**ARTICLE 17**  
**Miscellaneous**

- 17.1 **Status of Plan.** The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of ERISA Sections 201(2), 301(a)(3) and 401(a)(1). The Plan shall be administered and interpreted (i) to the extent possible in a manner consistent with the intent described in the preceding sentence, and (ii) in accordance with Code Section 409A and related Treasury guidance and Regulations.
- 17.2 **Unsecured General Creditor.** Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of an Employer. For purposes of the payment of benefits under this Plan, any and all of an Employer's assets shall be, and remain, the general, unpledged unrestricted assets of the Employer. An Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.
- 17.3 **Employer's Liability.** An Employer's liability for the payment of benefits shall be defined only by the Plan and the Plan Agreement, as entered into between the Employer and a Participant. An Employer shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his or her Plan Agreement.
- 17.4 **Nonassignability.** Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency or be transferable to a spouse as a result of a property settlement or otherwise.
- 17.5 **Not a Contract of Employment.** The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be retained in the service of any Employer, either as an Employee or a Director, or to interfere with the right of any Employer to discipline or discharge the Participant at any time.
- 17.6 **Furnishing Information.** A Participant or his or her Beneficiary will cooperate with the Committee by furnishing any and all information requested by the Committee and take such

other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

- 17.7 **Terms.** Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.
- 17.8 **Captions.** The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
- 17.9 **Governing Law.** Subject to ERISA, the provisions of this Plan shall be construed and interpreted according to the internal laws of the State of Delaware without regard to its conflicts of laws principles.
- 17.10 **Notice.** Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:
- Guess?, Inc.  
Attn: Director of Human Resources  
1444 South Alameda Street  
Los Angeles, CA 90021
- Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.
- Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.
- 17.11 **Successors.** The provisions of this Plan shall bind and inure to the benefit of the Participant's Employer and its successors and assigns and the Participant and the Participant's designated Beneficiaries.
- 17.12 **Spouse's Interest.** The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.
- 17.13 **Validity.** In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.
- 17.14 **Incompetent.** If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetence, incapacity or

guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

- 17.15 **Court Order.** The Committee is authorized to comply with any court order in any action in which the Plan or the Committee has been named as a party, including any action involving a determination of the rights or interests in a Participant's benefits under the Plan. Notwithstanding the foregoing, the Committee shall interpret this provision in a manner that is consistent with Code Section 409A and other applicable tax law, including but not limited to guidance issued after the effective date of this Plan.
- 17.16 **Insurance.** The Employers, on their own behalf or on behalf of the trustee of the Trust, and, in their sole discretion, may apply for and procure insurance on the life of the Participant, in such amounts and in such forms as the Employers or the trustee of the Trust may choose. The Employers or the trustee of the Trust, as the case may be, shall be the sole owner and beneficiary of any such insurance. The Participant shall have no interest whatsoever in any such policy or policies, and at the request of the Employers shall submit to medical examinations and supply such information and execute such documents as may be required by the insurance company or companies to whom the Employers have applied for insurance.
- 17.17 **Legal Fees To Enforce Rights After Change in Control.** The Company and each Employer is aware that upon the occurrence of a Change in Control, the Board or the board of directors of a Participant's Employer (which might then be composed of new members) or a shareholder of the Company or the Participant's Employer, or of any successor corporation might then cause or attempt to cause the Company, the Participant's Employer or such successor to refuse to comply with its obligations under the Plan and might cause or attempt to cause the Company or the Participant's Employer to institute, or may institute, litigation seeking to deny Participants the benefits intended under the Plan. In these circumstances, the purpose of the Plan could be frustrated. Accordingly, if, following a Change in Control, (i) a Participant or Beneficiary institutes any litigation or other legal action which seeks to recover benefits under the Plan or which otherwise asserts that the Committee, the Company, the Employer or any successor entity to the Company or the Employer has failed to comply with any of its obligations under this Plan or any agreement thereunder with respect to such Participant or Beneficiary, or if the Committee, the Company, the Employer or any other person takes any action to declare this Plan void or unenforceable or institutes any litigation or other legal action designed to deny, diminish or to recover from any Participant or Beneficiary the benefits intended to be provided under the Plan, and (ii) the Participant or Beneficiary retains counsel in connection with such litigation or legal action, then, if the final decision of a court of competent jurisdiction determines that the Participant or Beneficiary has prevailed with respect to all or part of such litigation or legal action the Company and such Employer (who shall be jointly and severally liable) shall be required to pay the reasonable attorneys fees and expenses of the Participant or Beneficiary in connection with the initiation or defense of such litigation or legal action with respect to such matters, whether by or against the Committee, the Company, the Employer or any director, officer, shareholder or other person affiliated with the Company, the Employer or any successor thereto in any jurisdiction.

IN WITNESS WHEREOF, the Company has signed this Plan document as of October 31, 2005.

“Company”  
Guess?, Inc., a Delaware corporation

/s/ Carlos Alberini

By: Carlos Alberini  
Title: President and Chief Operating Officer





CENTURY CITY  
IRVINE SPECTRUM  
MENLO PARK  
NEWPORT BEACH  
NEW YORK  
SAN FRANCISCO

400 South Hope Street  
Los Angeles, California 90071-2899

TELEPHONE (213) 430-6000  
FACSIMILE (213) 430-6407  
INTERNET: [www.omm.com](http://www.omm.com)

TYSONS CORNER  
WASHINGTON, D.C.  
HONG KONG  
LONDON  
SHANGHAI  
TOKYO

November 1, 2005

OUR FILE NUMBER  
**340,980-999**

**VIA EDGAR**

WRITER'S DIRECT DIAL  
WRITER'S E-MAIL ADDRESS

Guess?, Inc.  
1444 South Alameda Street,  
Los Angeles, CA 90021

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as special counsel to Guess?, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing by the Company with the Securities and Exchange Commission of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, with respect to an aggregate of \$25,000,000 of Deferred Compensation Obligations of the Company (the "Obligations") to be issued pursuant to the Guess?, Inc. Nonqualified Deferred Compensation Plan (the "Plan").

In our capacity as such counsel, we have examined originals or copies of those corporate and other records and documents we considered appropriate. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies.

On the basis of such examination, our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that the Obligations have been duly authorized by all necessary corporate action on the part of the Company and, upon payment for and delivery of the Obligations in accordance with the Plan will be legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws), and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

---

We consent to your filing of this opinion as an exhibit to the Registration Statement.

This opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters. We assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion and come to our attention, or any future changes in law.

Respectfully submitted,

/s/ O'Melveny & Myers LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors  
Guess?, Inc.:

We consent to the use of our reports dated March 8, 2005, with respect to the consolidated financial statements (and related financial statement schedule), management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting incorporated by reference herein.

/s/ KPMG LLP

---

Los Angeles, California  
October 28, 2005

---