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

FORM 10-Q

(Mark One)

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

For the quarterly period ended November 3, 2018
or

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

For the transition period from __________ to __________

Commission File Number: 1-15274

J. C. PENNEY COMPANY, INC.

(Exact name of registrant as specified in its charter)

Delaware	**26-0037077**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
6501 Legacy Drive, Plano, Texas	**75024 - 3698**
(Address of principal executive offices)	(Zip Code)

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒	Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐
Emerging growth company ☐	

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. 315,398,817 shares of Common Stock of 50 cents par value, as of November 23, 2018.

J. C. PENNEY COMPANY, INC.

FORM 10-Q

For the Quarterly Period Ended November 3, 2018

INDEX

Part I. Financial Information

Item 1. Unaudited Interim Consolidated Financial Statements

J. C. PENNEY COMPANY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

(In millions, except per share data)	Three Months Ended November 3, 2018	Three Months Ended October 28, 2017	Nine Months Ended November 3, 2018	Nine Months Ended October 28, 2017
		As Adjusted		As Adjusted
Total net sales	$ 2,653	$ 2,817	$ 7,999	$ 8,503
Credit income and other	80	69	234	235
Total revenues	2,733	2,886	8,233	8,738
Costs and expenses/(income):				
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	1,808	1,859	5,351	5,516
Selling, general and administrative (SG&A)	883	920	2,589	2,793
Depreciation and amortization	138	131	419	420
Real estate and other, net	(7)	2	(13)	(135)
Restructuring and management transition	11	52	20	175
Total costs and expenses	2,833	2,964	8,366	8,769
Operating income/(loss)	(100)	(78)	(133)	(31)
Other components of net periodic pension cost/(income)	(19)	(2)	(57)	90
(Gain)/loss on extinguishment of debt	—	—	23	35
Net interest expense	78	78	235	244
Income/(loss) before income taxes	(159)	(154)	(334)	(400)
Income tax expense/(benefit)	(8)	(29)	(4)	(40)
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Earnings/(loss) per share:				
Basic	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)
Diluted	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)
Weighted average shares – basic	316.3	311.6	315.3	310.6
Weighted average shares – diluted	316.3	311.6	315.3	310.6

See the accompanying notes to the unaudited Interim Consolidated Financial Statements.

J. C. PENNEY COMPANY, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME/(LOSS)
(Unaudited)

($ in millions)	Three Months Ended November 3, 2018	Three Months Ended October 28, 2017	Nine Months Ended November 3, 2018	Nine Months Ended October 28, 2017
		As Adjusted		As Adjusted
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Other comprehensive income/(loss), net of tax:				
Retirement benefit plans				
Net actuarial gain/(loss) arising during the period (1)	—	31	—	36
Reclassification for amortization of prior service (credit)/cost (2)	1	1	3	3
Net curtailment gain (3)	—	—	—	20
Net settlement gain (4)	—	8	—	8
Cash flow hedges				
Gain/(loss) on interest rate swaps (5)	5	4	10	(2)
Reclassification for periodic settlements (6)	—	1	—	5
Foreign currency translation				
Unrealized (gain)/loss	—	(2)	—	—
Total other comprehensive income/(loss), net of tax	6	43	13	70
Total comprehensive income/(loss), net of tax	$ (145)	$ (82)	$ (317)	$ (290)

See the accompanying notes to the unaudited Interim Consolidated Financial Statements.

(1) *Net of $(24) million and $(28) million in tax in the three and nine months ended October 28, 2017, respectively.*
(2) *Net of $(1) million and $(3) million in tax in the three and nine months ended November 3, 2018, respectively. Net of $(2) million in tax in the nine months ended October 28, 2017. Pre-tax amounts of $2 million and $6 million in the three and nine months ended November 3, 2018, respectively, and pre-tax amounts of $1 million and $5 million in the three and nine months ended October 28, 2017, respectively, were recognized in Other components of net periodic pension cost/(income) in the Consolidated Statements of Operations.*
(3) *Net of $(11) million in tax in the nine months ended October 28, 2017. Pre-tax prior service cost of $5 million related to the curtailment is included in Other components of net periodic pension cost/(income) in the Consolidated Statements of Operations in the nine months ended October 28, 2017.*
(4) *Net of $(4) million of tax in the three and nine months ended October 28, 2017. Pre-tax amounts of $12 million in the three and nine months ended October 28, 2017, respectively, were recognized in Other components of net periodic pension cost/(income) in the Consolidated Statements of Operations.*
(5) *Net of $(1) million and $(2) million of tax in the three and nine months ended November 3, 2018, respectively, and net of $(1) million and $2 million of tax in the three and nine months ended October 28, 2017, respectively.*
(6) *Net of $(1) million and $(3) million of tax in the three and nine months ended October 28, 2017, respectively, and $2 million and $8 million in pre-tax amounts for the three and nine months ended October 28, 2017, respectively, were recognized in Net interest expense in the Consolidated Statements of Operations.*

J. C. PENNEY COMPANY, INC.
CONSOLIDATED BALANCE SHEETS

(In millions, except per share data)	November 3, 2018 (Unaudited)	October 28, 2017 (Unaudited)	February 3, 2018
		As Adjusted	
Assets			
Current assets:			
Cash in banks and in transit	$ 157	$ 175	$ 116
Cash short-term investments	11	10	342
Cash and cash equivalents	168	185	458
Merchandise inventory	3,223	3,406	2,803
Prepaid expenses and other	224	243	190
Total current assets	3,615	3,834	3,451
Property and equipment (net of accumulated depreciation of $3,371, $3,463 and $3,500)	4,005	4,316	4,281
Prepaid pension	100	3	61
Other assets	695	632	661
Total Assets	$ 8,415	$ 8,785	$ 8,454
Liabilities and Stockholders' Equity			
Current liabilities:			
Merchandise accounts payable	$ 1,234	$ 1,342	$ 973
Other accounts payable and accrued expenses	960	1,081	1,156
Current portion of capital leases, financing obligation and note payable	8	8	8
Current maturities of long-term debt	92	232	232
Total current liabilities	2,294	2,663	2,369
Long-term capital leases, financing obligation and note payable	206	214	212
Long-term debt	4,161	4,039	3,780
Deferred taxes	138	201	143
Other liabilities	542	574	567
Total Liabilities	7,341	7,691	7,071
Stockholders' Equity			
Common stock[(1)]	158	156	156
Additional paid-in capital	4,711	4,701	4,705
Reinvested earnings/(accumulated deficit)	(3,448)	(3,360)	(3,118)
Accumulated other comprehensive income/(loss)	(347)	(403)	(360)
Total Stockholders' Equity	1,074	1,094	1,383
Total Liabilities and Stockholders' Equity	$ 8,415	$ 8,785	$ 8,454

(1) 1,250 million shares of common stock are authorized with a par value of $0.50 per share. The total shares issued and outstanding were 315.4 million, 311.1 million and 312.0 million as of November 3, 2018, October 28, 2017 and February 3, 2018, respectively.

See the accompanying notes to the unaudited Interim Consolidated Financial Statements.

J. C. PENNEY COMPANY, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)

(In millions)	Number of Common Shares	Common Stock	Additional Paid-in Capital	Reinvested Earnings/(Accumulated Deficit)	Accumulated Other Comprehensive Income/(Loss)	Total Stockholders' Equity
February 3, 2018 - As Adjusted	**312.0**	**$ 156**	**$ 4,705**	**$ (3,118)**	**$ (360)**	**$ 1,383**
Net income/(loss)	—	—	—	(78)	—	(78)
Other comprehensive income/(loss)	—	—	—	—	6	6
Stock-based compensation and other	2.3	1	3	—	—	4
May 5, 2018	**314.3**	**$ 157**	**$ 4,708**	**$ (3,196)**	**$ (354)**	**$ 1,315**
Net income/(loss)	—	—	—	(101)	—	(101)
Other comprehensive income/(loss)	—	—	—	—	1	1
Stock-based compensation and other	0.5	—	1	—	—	1
August 4, 2018	**314.8**	**$ 157**	**$ 4,709**	**$ (3,297)**	**$ (353)**	**$ 1,216**
Net income/(loss)	—	—	—	(151)	—	(151)
Other comprehensive income/(loss)	—	—	—	—	6	6
Stock-based compensation and other	0.6	1	2	—	—	3
November 3, 2018	**315.4**	**$ 158**	**$ 4,711**	**$ (3,448)**	**$ (347)**	**$ 1,074**

(In millions)	Number of Common Shares	Common Stock	Additional Paid-in Capital	Reinvested Earnings/(Accumulated Deficit)	Accumulated Other Comprehensive Income/(Loss)	Total Stockholders' Equity
January 28, 2017 - As Adjusted	**308.3**	**$ 154**	**$ 4,679**	**$ (3,000)**	**$ (473)**	**$ 1,360**
Net income/(loss)	—	—	—	(187)	—	(187)
Other comprehensive income/(loss)	—	—	—	—	25	25
Stock-based compensation and other	1.5	1	5	—	—	6
April 29, 2017 - As Adjusted	**309.8**	**$ 155**	**$ 4,684**	**$ (3,187)**	**$ (448)**	**$ 1,204**
Net income/(loss)	—	—	—	(48)	—	(48)
Other comprehensive income/(loss)	—	—	—	—	2	2
Stock-based compensation and other	0.5	—	10	—	—	10
July 29, 2017 - As Adjusted	**310.3**	**$ 155**	**$ 4,694**	**$ (3,235)**	**$ (446)**	**$ 1,168**
Net income/(loss)	—	—	—	(125)	—	(125)
Other comprehensive income/(loss)	—	—	—	—	43	43
Stock-based compensation and other	0.8	1	7	—	—	8
October 28, 2017 - As Adjusted	**311.1**	**$ 156**	**$ 4,701**	**$ (3,360)**	**$ (403)**	**$ 1,094**

See the accompanying notes to the unaudited Interim Consolidated Financial Statements.

J. C. PENNEY COMPANY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

($ in millions)	Nine Months Ended November 3, 2018	Nine Months Ended October 28, 2017 As Adjusted
Cash flows from operating activities		
Net income/(loss)	$ (330)	$ (360)
Adjustments to reconcile net income/(loss) to net cash provided by/(used in) operating activities:		
Restructuring and management transition	(3)	72
Asset impairments and other charges	53	7
Net gain on sale of operating assets	(58)	(119)
(Gain)/loss on extinguishment of debt	23	35
Depreciation and amortization	419	420
Benefit plans	(56)	95
Stock-based compensation	9	23
Deferred taxes	(9)	(49)
Change in cash from:		
Inventory	(420)	(510)
Prepaid expenses and other	(37)	(66)
Merchandise accounts payable	261	365
Income taxes	(2)	3
Accrued expenses and other	(161)	(99)
Net cash provided by/(used in) operating activities	(311)	(183)
Cash flows from investing activities		
Capital expenditures	(321)	(287)
Net proceeds from sale of operating assets	132	153
Joint venture return of investment	3	9
Insurance proceeds received for damage to property and equipment	1	—
Net cash provided by/(used in) investing activities	(185)	(125)
Cash flows from financing activities		
Proceeds from issuance of long-term debt	400	—
Proceeds from borrowings under the credit facility	3,466	521
Payments of borrowings under the credit facility	(3,029)	(310)
Premium on early retirement of debt	(20)	(30)
Payments of capital leases, financing obligation and note payable	(6)	(14)
Payments of long-term debt	(597)	(552)
Financing costs	(7)	(9)
Proceeds from stock issued under stock plans	2	4
Tax withholding payments for vested restricted stock	(3)	(4)
Net cash provided by/(used in) financing activities	206	(394)
Net increase/(decrease) in cash and cash equivalents	(290)	(702)
Cash and cash equivalents at beginning of period	458	887
Cash and cash equivalents at end of period	$ 168	$ 185

Supplemental cash flow information		
Income taxes received/(paid), net	$ (7)	$ (6)
Interest received/(paid), net	(242)	(247)
Supplemental non-cash investing and financing activity		
Increase/(decrease) in other accounts payable related to purchases of property and equipment and software	(29)	2

See the accompanying notes to the unaudited Interim Consolidated Financial Statements.

J. C. PENNEY COMPANY, INC.

NOTES TO UNAUDITED INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation and Consolidation

Basis of Presentation
J. C. Penney Company, Inc. is a holding company whose principal operating subsidiary is J. C. Penney Corporation, Inc. (JCP). JCP was incorporated in Delaware in 1924, and J. C. Penney Company, Inc. was incorporated in Delaware in 2002, when the holding company structure was implemented. The holding company has no independent assets or operations, and no direct subsidiaries other than JCP. The holding company and its consolidated subsidiaries, including JCP, are collectively referred to in this quarterly report as "we," "us," "our," "ourselves" or the "Company," unless otherwise indicated.

J. C. Penney Company, Inc. is a co-obligor (or guarantor, as appropriate) regarding the payment of principal and interest on JCP's outstanding debt securities. The guarantee of certain of JCP's outstanding debt securities by J. C. Penney Company, Inc. is full and unconditional.

These unaudited Interim Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) and in accordance with the rules and regulations of the Securities and Exchange Commission (SEC). The accompanying unaudited Interim Consolidated Financial Statements, in our opinion, include all material adjustments necessary for a fair presentation and should be read in conjunction with the audited Consolidated Financial Statements and notes thereto in our Annual Report on Form 10-K for the fiscal year ended February 3, 2018 (2017 Form 10-K). We follow substantially the same accounting policies to prepare quarterly financial statements as are followed in preparing annual financial statements. A description of such significant accounting policies is included in the 2017 Form 10-K. The February 3, 2018 financial information was derived from the audited Consolidated Financial Statements, with related footnotes, included in the 2017 Form 10-K. Because of the seasonal nature of the retail business, operating results for interim periods are not necessarily indicative of the results that may be expected for the full year.

Fiscal Year
Our fiscal year ends on the Saturday closest to January 31. As used herein, "three months ended November 3, 2018" and "third quarter of 2018" refers to the 13-week period ended November 3, 2018, and "three months ended October 28, 2017" and "third quarter of 2017" refers to the 13-week period ended October 28, 2017. "Nine months ended November 3, 2018" and "nine months ended October 28, 2017" refer to the 39-week periods ended November 3, 2018 and October 28, 2017, respectively. Fiscal year 2018 contains 52 weeks, and fiscal year 2017 contains 53 weeks.

Basis of Consolidation
All significant inter-company transactions and balances have been eliminated in consolidation. Certain reclassifications were made to prior period amounts to conform to the current period presentation.

2. Changes in Accounting for Revenue Recognition and Retirement-Related Benefits

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Codification (ASC) Topic 606 (ASC 606), *Revenue from Contracts with Customers, a replacement of Revenue Recognition (Topic 605)*. The new revenue recognition standard provides a five-step analysis of transactions to determine when and how revenue is recognized. The core principle of the guidance is that a Company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. We have adopted the new standard using the full retrospective approach on February 4, 2018, and with such adoption our revenue recognition policies related to gift card breakage, customer loyalty programs, credit card income and principal versus agent considerations were changed. Whereas we previously recognized gift card breakage, net of required escheatment, 60 months after the gift card was issued, we now recognize gift card breakage, net of required escheatment, over the redemption pattern of gift cards. Additionally, whereas we utilized the incremental cost method to account for our customer loyalty programs, we now account for our customer loyalty programs as revenue and are required to defer a portion of our sales to loyalty rewards to be earned by reward members for a future discount on a future sale.

We also changed the classification of profit sharing income earned in connection with our private label credit card and co-branded MasterCard® programs owned and serviced by Synchrony Financial (Synchrony). Under our agreement with Synchrony, we receive cash payments from Synchrony based upon the performance of the credit card portfolios. Previously, the income we earned under our agreement with Synchrony was included as an offset to SG&A expenses. In connection with the adoption of the new standard, we changed our presentation to include such income in a separate line item described as Credit income and other. Further, we adjusted our principal versus agent considerations for certain contracts and where we previously considered ourselves to be the agent (report net sales) under these contracts based on the risk and rewards of the arrangement, we now consider ourselves to be the principal (report gross sales) based on our control of the good or service before it is transferred to the customer. Lastly, we changed our balance sheet presentation of our sales return liability and where we previously reflected the balance as a net liability, we now recognize a gross refund liability for the sales amounts expected to be refunded to customers and an asset for the recoverable cost of the merchandise expected to be returned by customers.

In March 2017, the FASB issued Accounting Standards Update (ASU) 2017-07, *Compensation - Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*. ASU 2017-07 requires companies to present the service cost component of net periodic pension cost in the same line items in which they report compensation cost. Companies will present all other components of net periodic pension cost outside of operating income, if this subtotal is presented. As required by the standard, we retrospectively adopted ASU 2017-07 on February 4, 2018, and we changed the presentation of our Consolidated Statement of Operations to exclude the Pension line item and to reflect the service cost component of our pension expense/(income) in SG&A and to reflect all other cost components in a new separate line item below operating income/(loss) described as Other components of net periodic pension cost/(income).

These changes have been reported through retrospective application of the new policies to all periods presented. The impacts of all adjustments made to the financial statements are summarized below:

Consolidated Statements of Operations

	Three Months Ended October 28, 2017			Nine Months Ended October 28, 2017		
($ in millions, except per share data)	**Previously Reported**	**As Adjusted**	**Effect of Change**	**Previously Reported**	**As Adjusted**	**Effect of Change**
Total net sales	$ 2,807	$ 2,817	$ 10	$ 8,475	$ 8,503	$ 28
Credit income and other	—	69	69	—	235	235
Cost of goods sold (exclusive of depreciation and amortization)	1,852	1,859	7	5,498	5,516	18
Selling, general and administrative (SG&A)	840	920	80	2,525	2,793	268
Pension	9	—	(9)	3	—	(3)
Restructuring and management transition	52	52	—	295	175	(120)
Operating income/(loss)	(79)	(78)	1	(131)	(31)	100
Other components of net periodic pension cost/(income)	—	(2)	(2)	—	90	90
Income/(loss) before income taxes	(157)	(154)	3	(410)	(400)	10
Net income/(loss)	$ (128)	$ (125)	$ 3	$ (370)	$ (360)	$ 10
Basic earnings/(loss) per common share	$ (0.41)	$ (0.40)	$ 0.01	$ (1.19)	$ (1.16)	$ 0.03
Diluted earnings/(loss) per common share	$ (0.41)	$ (0.40)	$ 0.01	$ (1.19)	$ (1.16)	$ 0.03

Consolidated Statements of Comprehensive Income/(Loss)

	Three Months Ended October 28, 2017			Nine Months Ended October 28, 2017		
($ in millions)	**Previously Reported**	**As Adjusted**	**Effect of Change**	**Previously Reported**	**As Adjusted**	**Effect of Change**
Net income/(loss)	$ (128)	$ (125)	$ 3	$ (370)	$ (360)	$ 10

Table of Contents

Consolidated Balance Sheets

($ in millions)	October 28, 2017 Previously Reported	October 28, 2017 As Adjusted	October 28, 2017 Effect of Change	February 3, 2018 Previously Reported	February 3, 2018 As Adjusted	February 3, 2018 Effect of Change
Merchandise inventory	$ 3,365	$ 3,406	$ 41	$ 2,762	$ 2,803	$ 41
Other accounts payable and accrued expenses	1,056	1,081	25	1,119	1,156	37
Reinvested earnings/(accumulated deficit)	(3,376)	(3,360)	16	(3,122)	(3,118)	4

Consolidated Statements of Cash Flows

($ in millions)	Nine Months Ended October 28, 2017 Previously Reported	Nine Months Ended October 28, 2017 As Adjusted	Nine Months Ended October 28, 2017 Effect of Change
Cash flows from operating activities:			
Net income/(loss)	$ (370)	$ (360)	$ 10
Inventory	(511)	(510)	1
Accrued expenses and other	(88)	(99)	(11)

3. Effect of New Accounting Standards

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments (a consensus of the FASB Emerging Issues Task Force)* (ASU 2016-15). ASU 2016-15 clarifies how entities should classify certain cash receipts and cash payments on the statement of cash flows. The guidance also clarifies how the predominance principle should be applied when cash receipts and cash payments have aspects of more than one class of cash flows. The guidance is effective for fiscal years beginning after December 15, 2017, and interim periods therein. Entities should apply the guidance retrospectively, but if it is impracticable to do so for an issue, the amendments related to that issue may be applied prospectively. We have adopted ASU 2016-15 on February 4, 2018 and it did not have a significant impact on our accounting and disclosures.

In February 2016, the FASB issued ASC Topic 842, *Leases (Topic 842), a replacement of Leases (Topic 840) and updated by various targeted improvements*, which will require lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets. While many aspects of lessor accounting would remain the same, the new standard would make some changes, such as eliminating today's real estate-specific guidance. As a globally converged standard, lessees and lessors would be required to classify most leases using a principle generally consistent with that of International Accounting Standards. The standard also would change what would be considered the initial direct costs of a lease. The standard would be effective for annual periods beginning after December 15, 2018 and interim periods within that year and must be adopted by a modified retrospective method, with elective reliefs, which requires application of the new guidance for all periods presented, or by an optional transition method, which would allow the application of current legacy guidance, including its disclosure requirements, in the comparative periods presented in the year of adoption. The Company plans to use the optional transition method when adopting the new standard.

We have developed a project team to analyze the impacts of the new standard on our current accounting policies and internal controls and the changes required to be made by our leasing software provider. With almost 70% of our store locations involved in an operating lease, the new standard will have a significant impact on our financial statements due to the recognition of lease liabilities and right-of-use assets that are not required by the current accounting requirements for operating leases. Given the magnitude of the project to implement the new standard, we are still evaluating the effect that the new accounting guidance will have on our financial condition, results of operations and cash flows.

4. Revenue

Our contracts with customers primarily consist of sales of merchandise and services at the point of sale, sales of gift cards to a customer for a future purchase, customer loyalty rewards that provide discount rewards to customers based on purchase activity, and certain licensing and profit sharing arrangements involving the use of our intellectual property by others.

Revenue includes Total net sales and Credit income and other. Net sales are categorized by merchandise and service sale groupings as we believe it best depicts the nature, amount, timing and uncertainty of revenue and cash flow.

The following table provides the components of Net sales for the three and nine months ended November 3, 2018 and October 28, 2017:

	Three Months Ended				Nine Months Ended			
($ in millions)	November 3, 2018		October 28, 2017 As Adjusted		November 3, 2018		October 28, 2017 As Adjusted	
Women's apparel	$ 597	23%	$ 610	22%	$ 1,905	24%	$ 2,036	24%
Men's apparel and accessories	552	21%	571	20%	1,615	20%	1,718	20%
Home	357	13%	414	15%	1,073	13%	1,204	14%
Women's accessories, including Sephora	329	12%	364	13%	1,029	13%	1,086	13%
Children's, including toys	280	11%	307	11%	728	9%	780	9%
Footwear and handbags	236	9%	258	9%	676	8%	741	9%
Jewelry	139	5%	129	4%	451	6%	437	5%
Services and other	163	6%	164	6%	522	7%	501	6%
Total net sales	$ 2,653	100%	$ 2,817	100%	$ 7,999	100%	$ 8,503	100%

Credit income and other encompasses the revenue earned from the agreement with Synchrony associated with our private label credit card and co-branded MasterCard® programs.

Merchandise and Service Sales
Total net sales, which exclude sales taxes and are net of estimated returns, are generally recorded when payment is received and the customer takes control of the merchandise. Service revenue is recorded at the time the customer receives the benefit of the service, such as salon, portrait, optical or custom decorating. Shipping and handling fees charged to customers are also included in total net sales with corresponding costs recorded as cost of goods sold. Net sales are not recognized for estimated future returns which are estimated based primarily on historical return rates and sales levels.

Gift Card Revenue
At the time gift cards are sold a performance obligation is created and no revenue is recognized; rather, a contract liability is established for our obligation to provide a merchandise or service sale to the customer for the face value of the card. The contract liability is relieved and a net sale is recognized when gift cards are redeemed for merchandise or services. We recognize gift card breakage, net of required escheatment, over the redemption pattern of gift cards. Breakage is estimated based on historical redemption patterns and the estimates can vary based on changes in the usage patterns of our customers.

Customer Loyalty Rewards
Customers who spend a certain amount with us using our private label card or registered loyalty card receive points that can accumulate towards earning JCPenney Rewards certificates which are redeemable for a discount on future purchases. Points earned by a loyalty customer do not expire but any certificates earned expire two months from the date of issuance. We account for our customer loyalty rewards by deferring a portion of our sales to loyalty points expected to be earned towards a reward certificate, and then recognize the reward certificate as a net sale when used by the customer in connection with a merchandise or service sale. The points earned toward a future reward are valued at their relative standalone selling price by applying fair value based on historical redemption patterns.

The liabilities related to our gift cards and our customer loyalty program are included in Other accounts payable and accrued expenses in the unaudited Interim Consolidated Balance Sheets and constitute our contract liability. The balance of these liabilities were as follows:

(in millions)	November 3, 2018	October 28, 2017	February 3, 2018
Gift cards	$ 111	$ 110	$ 144
Loyalty rewards	60	73	73
Total contract liability	$ 171	$ 183	$ 217

Contract liability includes consideration received for gift card and loyalty related performance obligations which have not been satisfied as of a given date.

A rollforward of the amounts included in contract liability for the first nine months of 2018 and 2017 are as follows:

(in millions)	2018	2017
Beginning balance	$ 217	$ 228
Current period gift cards sold and loyalty reward points earned	232	289
Net sales from amounts included in contract liability opening balances	(75)	(89)
Net sales from current period usage	(203)	(245)
Ending balance	$ 171	$ 183

Licensing Agreements
Our private label credit card and co-branded MasterCard® programs are owned and serviced by Synchrony. Under our agreement with Synchrony, we receive periodic cash payments from Synchrony based upon the consumer's usage of co-branded card and the performance of the credit card portfolio. We participate in the programs by providing marketing promotions designed to increase the use of each card, including enhanced marketing offers for cardholders. Additionally, we accept payments in our stores from cardholders who prefer to pay in person when they are shopping in our locations. Revenue related to this agreement is recognized over the time we have fulfilled our deliverables and is reflected in Credit income and other.

Principal Versus Agent
We assess principal versus agent considerations depending on our control of the good or service before it is transferred to the customer. When we are the principal and have control of the specified good or service, we include as a net sale the gross amount of consideration to which we expect to be entitled for that specified good or service in revenue. In contrast, when we are the agent and do not have control of the specified good or service, we include as a net sale the fee or commission to which we expect to be entitled for the agency service. In certain instances, the fee or commission might be the net amount retained after paying the supplier.

5. Earnings/(Loss) per Share

Net income/(loss) and shares used to compute basic and diluted earnings/(loss) per share (EPS) are reconciled below:

	Three Months Ended		Nine Months Ended	
(in millions, except per share data)	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
Earnings/(loss)				
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Shares				
Weighted average common shares outstanding (basic shares)	316.3	311.6	315.3	310.6
Adjustment for assumed dilution:				
Stock options, restricted stock awards and warrant	—	—	—	—
Weighted average shares assuming dilution (diluted shares)	316.3	311.6	315.3	310.6
EPS				
Basic	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)
Diluted	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)

The following average potential shares of common stock were excluded from the diluted EPS calculation because their effect would have been anti-dilutive:

	Three Months Ended		Nine Months Ended	
(Shares in millions)	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
Stock options, restricted stock awards and warrant	22.9	32.1	25.8	32.9

6. Long-Term Debt

($ in millions)	November 3, 2018	October 28, 2017	February 3, 2018
Issue:			
5.75% Senior Notes Due 2018 [1]	$ —	$ 190	$ 190
8.125% Senior Notes Due 2019 [1]	50	175	175
5.65% Senior Notes Due 2020 [1]	110	400	360
2017 Credit Facility (Matures in 2022)	437	211	—
2016 Term Loan Facility (Matures in 2023)	1,593	1,635	1,625
5.875% Senior Secured Notes Due 2023 [1]	500	500	500
7.125% Debentures Due 2023	10	10	10
8.625% Senior Secured Second Priority Notes Due 2025 [1]	400	—	—
6.9% Notes Due 2026	2	2	2
6.375% Senior Notes Due 2036 [1]	388	388	388
7.4% Debentures Due 2037	313	313	313
7.625% Notes Due 2097	500	500	500
Total debt	4,303	4,324	4,063
Unamortized debt issuance costs	(50)	(53)	(51)
Less: current maturities	(92)	(232)	(232)
Total long-term debt	$ 4,161	$ 4,039	$ 3,780

(1) These debt issuances contain a change of control provision that would obligate us, at the holders' option, to repurchase the debt at a price of 101%.

On March 12, 2018, JCP issued $400 million aggregate principal amount of senior secured second priority notes with a 8.625% interest rate (the "Notes"). The Notes are due in 2025 and are guaranteed, jointly and severally, by the Company and certain domestic subsidiaries of JCP that guarantee the Company's senior secured term loan facility and existing senior secured notes. The net proceeds from the Notes were used for the tender consideration for JCP's contemporaneous cash tender offers for $125 million aggregate principal amount of its 8.125% Senior Notes Due 2019 and $250 million aggregate principal amount of its 5.65% Senior Notes Due 2020 (collectively, the Securities). In doing so, we recognized a loss on extinguishment of debt of $23 million which includes the premium paid over the face value of the accepted Securities of $20 million, reacquisition costs of $1 million and the write off of unamortized debt issuance costs of $2 million.

As of November 3, 2018, outstanding borrowings under our $2.35 billion senior secured asset-based revolving credit facility (2017 Credit Facility) were $437 million. All borrowings under the 2017 Credit Facility accrue interest at a rate equal to, at the Company's option, a base rate or an adjusted LIBOR rate plus a spread.

7. Derivative Financial Instruments

We use derivative financial instruments for hedging and non-trading purposes to manage our exposure to changes in interest rates. Use of derivative financial instruments in hedging programs subjects us to certain risks, such as market and credit risks. Market risk represents the possibility that the value of the derivative instrument will change. In a hedging relationship, the change in the value of the derivative is offset to a great extent by the change in the value of the underlying hedged item. Credit risk related to derivatives represents the possibility that the counterparty will not fulfill the terms of the contract. The notional, or contractual, amount of our derivative financial instruments is used to measure interest to be paid or received and does not represent our exposure due to credit risk. Credit risk is monitored through established approval procedures, including setting concentration limits by counterparty, reviewing credit ratings and requiring collateral (generally cash) from the counterparty when appropriate.

When we use derivative financial instruments for the purpose of hedging our exposure to interest rates, the contract terms of a hedged instrument closely mirror those of the hedged item, providing a high degree of risk reduction and correlation. Contracts that are effective at meeting the risk reduction and correlation criteria are recorded using hedge accounting. If a derivative instrument is a hedge, depending on the nature of the hedge, changes in the fair value of the instrument will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or be recognized in Accumulated other comprehensive income/(loss) until the hedged item is recognized in earnings. The ineffective portion of an instrument's change in fair value will be immediately recognized in earnings during the period. Instruments that do not meet the criteria for hedge accounting, or contracts for which we have not elected to apply hedge accounting, are valued at fair value with unrealized gains or losses reported in earnings during the period of change.

We have entered into interest rate swap agreements with notional amounts totaling $1,250 million to fix a portion of our variable LIBOR-based interest payments. The interest rate swap agreements have a weighted-average fixed rate of 2.04%, mature on May 7, 2020 and have been designated as cash flow hedges. On September 4, 2018 we entered into additional interest rate swap agreements with notional amounts totaling $750 million to fix a portion of our variable LIBOR-based interest payments. The interest rate swap agreements have a weighted-average fixed rate of 3.135%, have an effective date from May 7, 2020 to May 7, 2025 and have been designated as cash flow hedges.

The fair value of our interest rate swaps are recorded on the unaudited Interim Consolidated Balance Sheets as an asset or a liability (see Note 9). The effective portion of the interest rate swaps' changes in fair values is reported in Accumulated other comprehensive income/(loss) (see Note 10), and the ineffective portion is reported in Net income/(loss). Amounts in Accumulated other comprehensive income/(loss) are reclassified into Net income/(loss) when the related interest payments affect earnings. For the periods presented, all of the interest rate swaps were 100% effective.

Information regarding the gross amounts of our derivative instruments in the unaudited Interim Consolidated Balance Sheets is as follows:

	Asset Derivatives at Fair Value				**Liability Derivatives at Fair Value**			
($ in millions)	**Balance Sheet Location**	**November 3, 2018**	**October 28, 2017**	**February 3, 2018**	**Balance Sheet Location**	**November 3, 2018**	**October 28, 2017**	**February 3, 2018**
Derivatives designated as hedging instruments:								
Interest rate swaps	Prepaid expenses and other	$ 1	$ —	$ —	Other accounts payable and accrued expenses	$ —	$ 2	$ 1
Interest rate swaps	Other assets	23	—	9	Other liabilities	—	5	—
Total derivatives designated as hedging instruments		$ 24	$ —	$ 9		$ —	$ 7	$ 1

8. Restructuring and Management Transition

In the first quarter of 2017, the Company finalized plans to close 138 stores to help align the Company's brick-and-mortar presence with its omnichannel network, thereby redirecting capital resources to invest in locations and initiatives that offer the greatest revenue potential. The store closures resulted in a $77 million asset impairment charge for store assets with limited future use and a $14 million severance charge for the expected displacement of store associates. During the three months ended October 28, 2017, $52 million in store related closing and other costs such as certain lease obligations were recorded as a result of each respective store ceasing operations.

The components of Restructuring and management transition include:

- **Home office and stores** — charges for actions to reduce our store and home office expenses including employee termination benefits, store lease termination and impairment charges;

- **Management transition** — charges related to implementing changes within our management leadership team for both incoming and outgoing members of management; and

- **Other** — charges related primarily to contract termination costs and costs related to the closure of certain supply chain locations.

The composition of Restructuring and management transition charges was as follows:

	Three Months Ended		Nine Months Ended		Cumulative Amount From Program Inception Through November 3, 2018
($ in millions)	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017	
Home office and stores	$ 2	$ 52	$ 11	$ 173	$ 484
Management transition	9	—	9	—	9
Other	—	—	—	2	185
Total	$ 11	$ 52	$ 20	$ 175	$ 678

Activity for the Restructuring and management transition liability for the nine months ended November 3, 2018 was as follows:

($ in millions)	Home Office and Stores	Management Transition	Other	Total
February 3, 2018	$ 34	$ —	$ 7	$ 41
Charges	14	9	—	23
Cash payments	(30)	(2)	(4)	(36)
November 3, 2018	$ 18	$ 7	$ 3	$ 28

9. Fair Value Disclosures

In determining fair value, the accounting standards establish a three level hierarchy for inputs used in measuring fair value, as follows:

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Significant observable inputs other than quoted prices in active markets for similar assets and liabilities, such as quoted prices for identical or similar assets or liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — Significant unobservable inputs reflecting our own assumptions, consistent with reasonably available assumptions made by other market participants.

Cash Flow Hedges Measured on a Recurring Basis
As of November 3, 2018, October 28, 2017 and February 3, 2018, the $23 million, $(5) million and $9 million fair value of our cash flow hedges, respectively, are valued in the market using discounted cash flow techniques which use quoted market interest rates in discounted cash flow calculations which consider the instrument's term, notional amount, discount rate and credit risk. Significant inputs to the derivative valuation for interest rate swaps are observable in the active markets and are classified as Level 2 in the fair value measurement hierarchy.

Other Non-Financial Assets Measured on a Non-Recurring Basis
In connection with the Company announcing its plan to close underperforming department stores in 2017, long-lived assets held and used with a carrying value of $86 million were written down to their fair value of $9 million, resulting in asset

impairment charges of $77 million in the nine months ended October 28, 2017. The fair value was determined based on comparable market values of similar properties or on a rental income approach and the significant inputs related to valuing the store related assets are classified as Level 2 in the fair value measurement hierarchy.

In connection with the Company's decision to sell its three airplanes, long-lived assets held and used with a carrying value of $72 million were written down to their fair value of $20 million, resulting in asset impairment charges of $52 million in the nine months ended November 3, 2018. The fair value was determined based on dealer quotes using a market approach and the significant inputs related to valuing the airplanes are classified as Level 2 in the fair value measurement hierarchy.

Other Financial Instruments
Carrying values and fair values of financial instruments that are not carried at fair value in the unaudited Interim Consolidated Balance Sheets are as follows:

	November 3, 2018		**October 28, 2017**		**February 3, 2018**	
($ in millions)	**Carrying Amount**	**Fair Value**	**Carrying Amount**	**Fair Value**	**Carrying Amount**	**Fair Value**
Total debt, excluding unamortized debt issuance costs, capital leases, financing obligation and note payable	$ 4,303	$ 3,157	$ 4,324	$ 3,683	$ 4,063	$ 3,607

The fair value of long-term debt was estimated by obtaining quotes from brokers or was based on current rates offered for similar debt. As of November 3, 2018, October 28, 2017 and February 3, 2018, the fair values of cash and cash equivalents and accounts payable approximated their carrying values due to the short-term nature of these instruments.

Concentrations of Credit Risk
We have no significant concentrations of credit risk.

10. Accumulated Other Comprehensive Income/(Loss)

The following tables show the changes in accumulated other comprehensive income/(loss) balances for the nine months ended November 3, 2018 and the nine months ended October 28, 2017:

($ in millions)	**Net Actuarial Gain/(Loss)**	**Prior Service Credit/(Cost)**	**Foreign Currency Translation**	**Gain/(Loss) on Cash Flow Hedges**	**Accumulated Other Comprehensive Income/(Loss)**
February 3, 2018	$ (330)	$ (26)	$ —	$ (4)	$ (360)
Other comprehensive income/(loss) before reclassifications	—	—	—	10	10
Amounts reclassified from accumulated other comprehensive income	—	3	—	—	3
November 3, 2018	$ (330)	$ (23)	$ —	$ 6	$ (347)

($ in millions)	**Net Actuarial Gain/(Loss)**	**Prior Service Credit/(Cost)**	**Foreign Currency Translation**	**Gain/(Loss) on Cash Flow Hedges**	**Accumulated Other Comprehensive Income/(Loss)**
January 28, 2017	$ (421)	$ (33)	$ (2)	$ (17)	$ (473)
Other comprehensive income/(loss) before reclassifications	53	—	—	(2)	51
Amounts reclassified from accumulated other comprehensive income	8	6	—	5	19
October 28, 2017	$ (360)	$ (27)	$ (2)	$ (14)	$ (403)

11. Retirement Benefit Plans

The components of net periodic pension expense/(income) for our non-contributory qualified defined benefit pension plan and supplemental pension plans were as follows:

	Three Months Ended		Nine Months Ended	
($ in millions)	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
Service cost	$ 9	$ 11	$ 28	$ 32
Other components of net periodic pension cost/(income):				
Interest cost	34	38	104	114
Expected return on plan assets	(55)	(53)	(167)	(160)
Amortization of prior service cost/(credit)	2	1	6	5
Settlement expense	—	12	—	12
Curtailment (gain)/loss recognized	—	—	—	7
Special termination benefit recognized	—	—	—	112
	(19)	(2)	(57)	90
Net periodic pension expense/(income)	$ (10)	$ 9	$ (29)	$ 122

Service cost is included in SG&A in the unaudited Interim Consolidated Statements of Operations.

In the first quarter of 2017, the Company initiated a Voluntary Early Retirement Program (VERP) for approximately 6,000 eligible associates. Eligibility for the VERP included home office, stores and supply chain personnel who met certain criteria related to age and years of service as of January 31, 2017. Based on the approximately 2,800 associates who elected to accept the VERP, we incurred a total charge of $112 million for special retirement benefits. The special retirement benefits increased the projected benefit obligation (PBO) of the qualified defined benefit pension plan (Primary Pension Plan) and the supplemental pension plans by $88 million and $24 million, respectively. In addition, we incurred curtailment charges of $7 million related to our pension plans as a result of the reduction in the expected years of future service related to these plans. As a result of these curtailments, the assets and the liabilities for our Primary Pension Plan and the liabilities of certain supplemental pension plans were remeasured as of March 31, 2017. The discount rate used for the March 31 remeasurements was 4.34% compared to the year-end 2016 discount rate of 4.40%. These events resulted in the PBO of our Primary Pension Plan decreasing by $3 million and the related assets increasing by $34 million and the PBO of our supplemental pension plans increasing by $3 million. The funded status of the Primary Pension Plan was 98% as of the remeasurement date.

During the third quarter of 2017, we recognized settlement expense of $12 million due to higher lump-sum payment activity to retirees primarily as a result of the VERP executed earlier in the year. The lump-sum payments reduced our pension obligation by $195 million. Following these payments and the completion of a remeasurement of plan assets and liabilities, the plan's funded status was 100% as of October 28, 2017. The discount rate used for the remeasurement as of October 28, 2017 was 3.94% compared to the year-end 2016 discount rate of 4.40%.

12. Real Estate and Other, Net

Real estate and other consists of ongoing operating income from our real estate subsidiaries. Real estate and other also includes net gains from the sale of facilities and equipment that are no longer used in operations, asset impairments, accruals for certain litigation and other non-operating charges and credits. In addition, we entered into a joint venture in 2014 in which we contributed approximately 220 acres of excess property adjacent to our home office facility in Plano, Texas (Home Office Land Joint Venture). The joint venture was formed to develop the contributed property and our proportional share of the joint venture's activities is recorded in Real estate and other, net. During the three months ended November 3, 2018, we sold our interest to the other partner and are no longer a member of the joint venture.

The composition of Real estate and other, net was as follows:

	Three Months Ended		Nine Months Ended	
($ in millions)	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
Investment income from Home Office Land Joint Venture	$ (3)	$ (3)	$ (4)	$ (23)
Net gain from sale of operating assets	(1)	(1)	(58)	(119)
Impairments	—	—	52	—
Other	(3)	6	(3)	7
Total expense/(income)	$ (7)	$ 2	$ (13)	$ (135)

Investment Income from Joint Ventures
During the three and nine months ended November 3, 2018, the Company had income of $3 million and $4 million, respectively, related to its proportional share of the net income in the Home Office Land Joint Venture and received aggregate cash distributions of $3 million and $4 million, respectively. During the three and nine months ended October 28, 2017, the Company had income of $3 million and $23 million, respectively, related to its proportional share of the net income in the Home Office Land Joint Venture and received aggregate cash distributions of $3 million and $31 million, respectively. Additionally, during the three months ended November 3, 2018, we received $3 million in proceeds from the partner to buy out our remaining interest in the joint venture.

Net Gain from Sale of Operating Assets
During the first quarter of 2018, we completed the sale-leaseback of our Milwaukee, Wisconsin distribution facility for a net sale price of $30 million and recognized a net gain of $12 million. During the second quarter of 2018, we completed the sale of our Manchester, Connecticut distribution facility for a net sale price of $68 million and recognized a net gain of $38 million. During the first quarter of 2017, we completed the sale of our Buena Park, California distribution facility for a net sale price of $131 million and recorded a net gain of $111 million.

Impairments
During the second quarter of 2018, we recorded an impairment charge of $52 million related to the expected sale of three airplanes. Two of the airplanes were sold during the second quarter of 2018 at their fair value of $12 million. During the third quarter of 2018, the third airplane was sold at its fair value of $8 million.

13. Income Taxes

The net tax benefit of $8 million for the three months ended November 3, 2018 consisted of federal, state and foreign tax benefits of $2 million, a $2 million benefit relating to other comprehensive income and a $5 million benefit due to the release of valuation allowance, offset by $1 million of expense related to the deferred tax asset change arising from the tax amortization of indefinite-lived intangible assets.

The net tax benefit of $4 million for the nine months ended November 3, 2018 consisted of federal, state and foreign tax expenses of $3 million, $3 million of expense related to the deferred tax asset change arising from the tax amortization of indefinite-lived intangible assets and $1 million of net tax expense resulting from enacted state law changes, offset by a $5 million benefit relating to other comprehensive income, a $5 million benefit due to the release of valuation allowance and a net tax benefit of $1 million resulting from state audit settlements.

As of November 3, 2018, we have approximately $2.4 billion of net operating losses (NOLs) available for U.S. federal income tax purposes, which largely expire in 2032 through 2034 and $60 million of tax credit carryforwards that expire at various dates through 2037. A valuation allowance of $578 million (restated for the tax effects of revenue recognition) fully offsets the federal deferred tax assets resulting from the NOL and tax credit carryforwards that expire at various dates through 2037. A valuation allowance of $257 million fully offsets the deferred tax assets resulting from the state NOL carryforwards that expire at various dates through 2037. In assessing the need for the valuation allowance, we considered both positive and negative evidence related to the likelihood of realization of the deferred tax assets. As a result of our periodic assessment, our estimate of the realization of deferred tax assets is solely based on the future reversals of existing taxable temporary differences and tax planning strategies that we would make use of to accelerate taxable income to utilize expiring NOL and tax credit carryforwards. Accordingly, in the three and nine months ended November 3, 2018, the valuation allowance was increased by

$35 million and $69 million, respectively, to offset the net deferred tax assets created in the quarter relating primarily to the increase in NOL carryforwards.

14. Litigation and Other Contingencies

Litigation

Shareholder Derivative Litigation

Weitzman/Lipsius. In October 2013, two purported shareholder derivative actions were filed against certain present and former members of the Company's Board of Directors and executives by the following parties in the U.S. District Court, Eastern District of Texas, Sherman Division: Weitzman (filed October 2, 2013) and Zauderer (filed October 3, 2013). The Company was named as a nominal defendant in both suits. The lawsuits asserted claims for breaches of fiduciary duties and unjust enrichment based upon alleged false and misleading statements and/or omissions regarding the Company's financial condition. The lawsuits sought unspecified compensatory damages, restitution, disgorgement by the defendants of all profits, benefits and other compensation, equitable relief to reform the Company's corporate governance and internal procedures, reasonable costs and expenses, and other relief as the court may deem just and proper. On October 28, 2013, the Court consolidated the two cases into the Weitzman lawsuit. Also, in March 2016, plaintiff Frank Lipsius filed a purported shareholder derivative action against certain present and former members of the Company's Board of Directors and executives in the District Court of Collin County in the State of Texas. The Company was named as a nominal defendant in the suit. The suit generally mirrored the allegations contained in the Weitzman and Zauderer suits and sought similar relief. On May 18, 2017, plaintiff in the Lipsius suit voluntarily dismissed the Collin County action, and on May 19, 2017, refiled the action in the District Court of Dallas County, Texas. The parties have settled the Weitzman and Lipsius derivative litigation and the federal court granted final approval of the settlement on September 12, 2018. The state court litigation was dismissed pursuant to the terms of the settlement shortly thereafter.

Rojas. On October 19, 2018, a shareholder of the Company, Juan Rojas, filed a shareholder derivative action against certain present and former members of the Company's Board of Directors in the Delaware Court of Chancery. The Company is named as a nominal defendant. The lawsuit asserts claims for breaches of fiduciary duties based on alleged failures to prevent the Company from engaging in allegedly unlawful promotional pricing practices. While no assurance can be given as to the ultimate outcome of this matter, we believe that the final resolution of this action will not have a material adverse effect on our results of operations, financial position, liquidity or capital resources.

Other Legal Proceedings

The District Attorney's office for the County of San Joaquin, California, joined by District Attorneys for other counties in California, recently concluded an investigation regarding the handling and disposal at JCP's California stores and distribution centers of certain materials that may be deemed hazardous or universal waste under California law. On February 21, 2018, the District Attorneys provided a settlement demand to JCP that included a proposed civil penalty, reimbursement of investigation costs, enhancements to JCP's compliance program and certain injunctive relief. JCP and the District Attorneys have reached an agreement to fully resolve this matter by entering into a stipulation for entry of final judgment and permanent injunction, which was approved by a California court on October 16, 2018. JCP did not admit to any issue of law or fact, but agreed to pay a civil penalty and to reimburse the government's enforcement costs. JCP also agreed to invest in enhancements to its compliance program over the next five years. We do not believe the cost of the settlement and compliance with the final judgment will have a material adverse effect on our results of operations, financial position, liquidity or capital resources.

We are subject to various other legal and governmental proceedings involving routine litigation incidental to our business. Accruals have been established based on our best estimates of our potential liability in certain of these matters, including certain matters discussed above, all of which we believe aggregate to an amount that is not material to the Consolidated Financial Statements. These estimates were developed in consultation with in-house and outside counsel. While no assurance can be given as to the ultimate outcome of these matters, we currently believe that the final resolution of these actions, individually or in the aggregate, will not have a material adverse effect on our results of operations, financial position, liquidity or capital resources.

Contingencies

As of November 3, 2018, we have an estimated accrual of $20 million related to potential environmental liabilities that is recorded in Other accounts payable and accrued expenses and Other liabilities in the unaudited Interim Consolidated Balance Sheet. This estimate covered potential liabilities primarily related to underground storage tanks, remediation of environmental conditions involving our former drugstore locations and asbestos removal in connection with approved plans to renovate or dispose of our facilities. We continue to assess required remediation and the adequacy of environmental reserves as new information becomes available and known conditions are further delineated. If we were to incur losses at the estimated amount, we do not believe that such losses would have a material effect on our financial condition, results of operations or liquidity.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

General

J. C. Penney Company, Inc. is a holding company whose principal operating subsidiary is J. C. Penney Corporation, Inc. (JCP). JCP was incorporated in Delaware in 1924, and J. C. Penney Company, Inc. was incorporated in Delaware in 2002, when the holding company structure was implemented. The holding company has no independent assets or operations and no direct subsidiaries other than JCP. The holding company and its consolidated subsidiaries, including JCP, are collectively referred to in this quarterly report as "we," "us," "our," "ourselves" or the "Company," unless otherwise indicated.

The holding company is a co-obligor (or guarantor, as appropriate) regarding the payment of principal and interest on JCP's outstanding debt securities. The guarantee of certain of JCP's outstanding debt securities by the holding company is full and unconditional.

This discussion is intended to provide information that will assist the reader in understanding our financial statements, the changes in certain key items in those financial statements from period to period, and the primary factors that accounted for those changes, how operating results affect the financial condition and results of operations of our Company as a whole, as well as how certain accounting principles affect the financial statements. It should be read in conjunction with our consolidated financial statements as of February 3, 2018, and for the year then ended, and related Notes, and Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A), all contained in the Annual Report on Form 10-K for the fiscal year ended February 3, 2018 (2017 Form 10-K). Unless otherwise indicated, all references to earnings/(loss) per share (EPS) are on a diluted basis and all references to years relate to fiscal years rather than to calendar years.

Current Initiatives

While current management reassesses our business strategies, we will continue our focus on the following four initiatives:

- Beauty;
- Women's apparel business;
- Omnichannel; and
- Home refresh.

First, we will continue to focus on our beauty categories of Sephora, The Salon by InStyle and Fine Jewelry. In 2017, we opened 70 additional Sephora locations, bringing our total number of locations to 642. We added approximately 27 new Sephora locations and intend to continue to roll out and launch new brands in 2018. We are also continuing to rebrand our salons to The Salon by InStyle and plan to modernize and rebrand another 100 salons in 2018. Finally, we intend to continue to enhance our Fine Jewelry offerings to better provide the customer with a total beauty solution. Magnifying the importance of physical stores, we see Sephora, Salon and Fine Jewelry as differentiators to help drive traffic and increase the frequency of visits to our stores.

Second, we will continue to focus on improving our women's apparel offering by strategically adjusting our assortment to better align with customer preferences. Our focus will be in categories that offer the greatest opportunity for growth, particularly special sizes, active wear, dresses, contemporary and casual sportswear. In addition, we are taking steps in women's apparel to simplify the floor, better balance our career and casual offerings and create a stronger value statement with pricing.

Third, we remain committed to becoming a world-class omnichannel retailer. We plan to continue to enhance our site functionality and ship-from-store capabilities and develop additional enhancements to our improved mobile app.

Lastly, we will continue to focus on our home refresh initiative. We have established appliance showrooms in over 600 stores and have increased our mattress offering to approximately 500 in-store showrooms. We see our home refresh initiative as an opportunity for us to increase our revenue per customer.

Third Quarter Overview

- Total net sales were $2,653 million with a total net sales decrease of 5.8% compared to the third quarter of 2017 and a comparable store sales decrease of 5.4%.

- Credit income and other was $80 million compared to $69 million in last year's third quarter. The increase was due to increased gain share resulting from improved performance of the credit portfolio.

- Cost of goods sold, which excludes depreciation and amortization, as a percentage of Total net sales increased to 68.1% compared to 66.0% in the same period last year. The increase as a rate of sales was primarily attributable to the clearance markdowns related to our decision to liquidate slower-moving, excess inventory, during the period.

- Selling, general and administrative (SG&A) expenses as a percentage of Total net sales increased to 33.3% for the third quarter of 2018 as compared to 32.7% for the same period last year. The net increase in SG&A expenses as a percentage of Total net sales for the quarter was primarily driven by the decrease in net sales and by higher store controllable costs and marketing spend relative to our sales volume, offset by a reduction in lease expense associated with the amortization of gains on the sales of leasehold interests.

- Our net loss was $151 million, or ($0.48) per share, compared to a net loss of $125 million, or ($0.40) per share, for the corresponding prior year quarter. Results for this quarter included the following amounts that are not directly related to our ongoing core business operations:

  - $11 million, or ($0.03) per share, of restructuring and management transition charges;
  - $19 million, or $0.06 per share, for other components of net periodic pension income;
  - $3 million, or $0.01 per share, for our proportional share of net income from our joint venture formed to develop the excess property adjacent to our home office facility in Plano, Texas (Home Office Land Joint Venture); and
  - $2 million, or $0.01 per share, for the tax benefit resulting from other comprehensive income allocation related to pension and interest rate swap activity.

- Adjusted net loss was $164 million, or ($0.52) per share, compared to an adjusted net loss of $108 million, or ($0.35) per share, in last year's third quarter. See the reconciliation of net income/(loss) and diluted EPS, the most directly comparable generally accepted accounting principles (GAAP) financial measures, to adjusted net income/(loss) and adjusted diluted EPS on page 27.

- Adjusted earnings before interest expense, income tax (benefit)/expense and depreciation and amortization (Adjusted EBITDA) (non-GAAP) was $46 million, a $56 million decline from the same period last year. See the reconciliation of net income/(loss), the most directly comparable GAAP financial measure, to Adjusted EBITDA on page 26.

- We completed a multi-year extension of our private-label and co-branded credit card agreement with Synchrony Bank. The amended and restated agreement provides for improved alignment with respect to the marketing and servicing alliance of the program.

- Effective October 15, 2018, the Board of Directors elected Jill Soltau as Chief Executive Officer of the Company.

Results of Operations

($ in millions, except EPS)	Three Months Ended November 3, 2018	Three Months Ended October 28, 2017 [(1)]	Nine Months Ended November 3, 2018	Nine Months Ended October 28, 2017 [(1)]
Total net sales	$ 2,653	$ 2,817	$ 7,999	$ 8,503
Credit income and other	80	69	234	235
Total revenues	2,733	2,886	8,233	8,738
Total net sales increase/(decrease) from prior year	(5.8)%	(1.8)%	(5.9)%	(1.3)%
Comparable store sales increase/(decrease) [(2)]	(5.4)%	1.7 %	(1.7)%	(1.0)%
Costs and expenses/(income):				
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	1,808	1,859	5,351	5,516
Selling, general and administrative	883	920	2,589	2,793
Depreciation and amortization	138	131	419	420
Real estate and other, net	(7)	2	(13)	(135)
Restructuring and management transition	11	52	20	175
Total costs and expenses	2,833	2,964	8,366	8,769
Operating income/(loss)	(100)	(78)	(133)	(31)
Other components of net periodic pension cost/(income)	(19)	(2)	(57)	90
(Gain)/loss on extinguishment of debt	—	—	23	35
Net interest expense	78	78	235	244
Income/(loss) before income taxes	(159)	(154)	(334)	(400)
Income tax expense/(benefit)	(8)	(29)	(4)	(40)
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Adjusted EBITDA (non-GAAP) [(3)]	$ 46	$ 102	$ 302	$ 541
Adjusted net income/(loss) (non-GAAP) [(3)]	$ (164)	$ (108)	$ (353)	$ (129)
Diluted EPS	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)
Adjusted diluted EPS (non-GAAP) [(3)]	$ (0.52)	$ (0.35)	$ (1.12)	$ (0.42)
Ratios as a percent of total net sales:				
Cost of goods sold	68.1 %	66.0 %	66.9 %	64.9 %
SG&A	33.3 %	32.7 %	32.4 %	32.8 %
Operating income/(loss)	(3.8)%	(2.8)%	(1.7)%	(0.4)%

(1) Reflects the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits. See Note 2 of Notes to unaudited Interim Consolidated Financial Statements for a discussion of the changes and related impacts.

(2) Comparable store sales are presented on a 52-week basis and include sales from all stores, including sales from services, that have been open for 12 consecutive full fiscal months and Internet sales. Stores closed for an extended period are not included in comparable store sales calculations, while stores remodeled and minor expansions not requiring store closure remain in the calculations. Certain items, such as sales return estimates and store liquidation sales, are excluded from the Company's calculation. Our definition and calculation of comparable store sales may differ from other companies in the retail industry.

(3) See "Non-GAAP Financial Measures" for a discussion of this non-GAAP measure and reconciliation to its most directly comparable GAAP financial measure and further information on its uses and limitations.

Total Net Sales

($ in millions)	Three Months Ended November 3, 2018	Three Months Ended October 28, 2017	Nine Months Ended November 3, 2018	Nine Months Ended October 28, 2017
Total net sales	$ 2,653	$ 2,817	$ 7,999	$ 8,503
Sales percent increase/(decrease):				
Total net sales	(5.8)%	(1.8)%	(5.9)%	(1.3)%
Comparable store sales	(5.4)%	1.7 %	(1.7)%	(1.0)%

Total net sales decreased $164 million in the third quarter of 2018 compared to the third quarter of 2017. For the first nine months of 2017, total net sales decreased $504 million from the same period last year.

The following table provides the components of the net sales increase/(decrease):

($ in millions)	Three Months Ended November 3, 2018	Nine Months Ended November 3, 2018
Comparable store sales increase/(decrease)	$ (147)	$ (134)
Closed stores and other	(17)	(370)
Total net sales increase/(decrease)	$ (164)	$ (504)

As our omnichannel strategy continues to mature, it is increasingly difficult to distinguish between a store sale and an Internet sale. Because we no longer have a clear distinction between store sales and Internet sales, we do not separately report Internet sales. Below is a list of some of our omnichannel activities:

- Stores increase Internet sales by providing customers opportunities to view, touch and/or try on physical merchandise before ordering online.
- Our website increases store sales as in-store customers have often pre-shopped online before shopping in the store, including verification of which stores have online merchandise in stock.
- Most Internet purchases are easily returned in our stores.
- JCPenney Rewards can be earned and redeemed online or in stores.
- In-store customers can order from our website with the assistance of associates in our stores or they can shop our website from the JCPenney app while inside the store.
- Customers who utilize our mobile application can receive mobile coupons to use when they check out both online or in our stores.
- Internet orders can be shipped from a dedicated jcpenney.com fulfillment center, a store, a store merchandise distribution center, a regional warehouse, directly from vendors or any combination of the above.
- Certain categories of store inventory can be accessed and purchased by jcpenney.com customers and shipped directly to the customer's home from the store.
- Internet orders can be shipped to stores for customer pick up.
- "Buy online and pick up in store" is now available in all of our stores.

For the third quarter of 2018, units per transaction increased, while average unit retail and transaction counts decreased as compared to last year. For the first nine months of 2018, average unit retail and units per transaction increased, while transaction counts decreased as compared to the prior year.

For the third quarter of 2018, our top-performing merchandise divisions were Jewelry, Women's Apparel and Men's on a comparable store basis. For the first nine months of 2018, our top-performing merchandise divisions were Jewelry, Men's, Women's Apparel and Sephora on a comparable store basis. Geographically, the Northeast and Midwest were the best performing regions of the country during the third quarter. The Southeast, Gulf Coast and Northwest were the best performing regions of the country during the first nine months of 2018.

During each of the third quarters of 2018 and 2017, private and exclusive brand merchandise comprised 45% and 7% of total merchandise sales, respectively. For the first nine months of 2018 and 2017, private brand merchandise comprised 45% and 47% of total merchandise sales, respectively, and exclusive brand merchandise comprised 7% and 8% of total merchandise sales, respectively.

Store Count

The following table compares the number of stores for the three and nine months ended November 3, 2018 and October 28, 2017:

	Three Months Ended		Nine Months Ended	
	November 3, 2018	October 28, 2017	November 3, 2018	October 28, 2017
JCPenney department stores				
Beginning of period	865	1,011	872	1,013
Stores opened	—	—	1	—
Closed stores	(1)	(137)	(9)	(139)
End of period (1)	864	874	864	874

(1) Gross selling space, including selling space allocated to services and licensed departments, was 95 million square feet as of November 3, 2018 and 96 million square feet as of October 28, 2017.

Credit Income and Other

Our private label credit card and co-branded MasterCard® programs are owned and serviced by Synchrony Financial (Synchrony). Under our agreement with Synchrony, we receive cash payments from Synchrony based upon the performance of the credit card portfolios. We participate in the programs by providing marketing promotions designed to increase the use of each card, including enhanced marketing offers for cardholders. Additionally, we accept payments in our stores from cardholders who prefer to pay in person when they are shopping in our locations. For the third quarters of 2018 and 2017,

we recognized income of $80 million and $69 million, respectively, pursuant to our agreement with Synchrony. Through the first nine months of 2018 and 2017, we recognized income of $234 million and $235 million, respectively. The increase for the three month period is due to increased income share resulting from the improved performance of the credit card portfolio.

Cost of Goods Sold

Cost of goods sold, exclusive of depreciation and amortization, for the three months ended November 3, 2018 was $1,808 million, a decrease of $51 million compared to $1,859 million for the three months ended October 28, 2017. Cost of goods sold as a percentage of Total net sales was 68.1% for the three months ended November 3, 2018 compared to 66.0% for the three months ended October 28, 2017, an increase of 210 basis points. Cost of goods sold, exclusive of depreciation and amortization, for the nine months ended November 3, 2018 was $5,351 million, a decrease of $165 million compared to $5,516 million for the nine months ended October 28, 2017. Cost of goods sold as a percentage of Total net sales was 66.9% for the nine months ended November 3, 2018 compared to 64.9% for the nine months ended October 28, 2017, an increase of 200 basis points. The increase as a rate of sales for the three month period was primarily attributable to the clearance markdowns to liquidate slower-moving, excess inventory, during the period. The increase as a rate of sales for the nine month period was primarily driven by increased Internet clearance selling and continued growth in the mix of the Company's Internet category, and markdown and pricing actions taken in the period to clear slow-moving seasonal inventory.

SG&A Expenses

For the three months ended November 3, 2018, SG&A expenses were $37 million lower than the corresponding period of 2017. SG&A expenses as a percent of Total net sales for the third quarter of 2018 increased to 33.3% compared to 32.7% in the third quarter of 2017. For the nine months ended November 3, 2018, SG&A expenses were $204 million lower than the corresponding period of 2017. For the first nine months of 2018, SG&A expenses as a percent of Total net sales decreased to 32.4% compared to 32.8% in the corresponding period of 2017. The net increase in SG&A expenses as a percentage of Total net sales for the three month period was primarily driven by the decrease in net sales and by higher store controllable costs and marketing spend relative to our sales volume, offset by a reduction in lease expense associated with the amortization of gains on the sales of leasehold interests. The net decrease in SG&A expenses as a percentage of Total net sales for the nine month period was primarily driven by leveraging of our controllable costs and a reduction in lease expense associated with the amortization of gains on the sales of leasehold interests offset by higher marketing spend relative to our sales volume.

Depreciation and Amortization Expense
Depreciation and amortization expense was $138 million and $131 million for the three months ended November 3, 2018 and October 28, 2017, respectively, and $419 million and $420 million for the nine months ended November 3, 2018 and October 28, 2017, respectively.

Restructuring and Management Transition
The composition of Restructuring and management transition charges was as follows:

	Three Months Ended		Nine Months Ended	
($ in millions)	**November 3, 2018**	**October 28, 2017**	**November 3, 2018**	**October 28, 2017**
Home office and stores	$ 2	$ 52	$ 11	$ 173
Management transition	9	—	9	—
Other	—	—	—	2
Total	$ 11	$ 52	$ 20	$ 175

During the nine months ended November 3, 2018 and October 28, 2017, we recorded $11 million and $173 million, respectively, of costs to reduce our store and home office expenses. Costs during the first nine months of 2018 include employee termination benefits of $9 million, store related closing costs of $5 million and a $3 million gain on the sale of a closed store. Management transition charges were $9 million for the first nine months of 2018. Costs during the first nine months of 2017 include store closing asset impairments of $77 million, employee termination benefits of $21 million and store related closing costs of $75 million.

Real Estate and Other, Net
Real estate and other consists of ongoing operating income from our real estate subsidiaries. Real estate and other also includes net gains from the sale of facilities and equipment that are no longer used in operations, asset impairments, accruals for certain litigation and other non-operating charges and credits. In addition, we entered into the Home Office Land Joint Venture in 2014 in which we contributed approximately 220 acres of excess property adjacent to our home office facility in Plano, Texas. The joint venture was formed to develop the contributed property and our proportional share of the joint venture's activities is recorded in Real estate and other, net. During the three months ended November 3, 2018, we sold our interest to the other partner and are no longer a member of the joint venture.

The composition of Real estate and other, net was as follows:

	Three Months Ended		Nine Months Ended	
($ in millions)	**November 3, 2018**	**October 28, 2017**	**November 3, 2018**	**October 28, 2017**
Investment income from Home Office Land Joint Venture	$ (3)	$ (3)	$ (4)	$ (23)
Net gain from sale of operating assets	(1)	(1)	(58)	(119)
Impairments	—	—	52	—
Other	(3)	6	(3)	7
Total expense/(income)	$ (7)	$ 2	$ (13)	$ (135)

Investment income from the Home Office Land Joint Venture represents our proportional share of net income from the joint venture.

During the first quarter of 2018, we completed the sale of our Milwaukee, Wisconsin distribution facility for a net sale price of $30 million and recognized a net gain of $12 million. During the second quarter of 2018, we completed the sale of our Manchester, Connecticut distribution facility for a net sale price of $68 million and recognized a net gain of $38 million. During the first nine months of 2017, the net gain from the sale of operating assets includes a $111 million net gain on the sale of our Buena Park, California distribution facility and $8 million in net gains on the sale of excess land.

During the second quarter of 2018, we recorded an impairment charge of $52 million related to the expected sale of three airplanes. Two of the airplanes were sold during the second quarter of 2018 at their fair value of $12 million. During the third quarter of 2018, the third airplane was sold at its fair value of $8 million.

Operating Income/(Loss)
For the third quarter of 2018, we reported an operating loss of $100 million compared to an operating loss of $78 million in the third quarter of 2017. For the first nine months of 2018, we reported an operating loss of $133 million compared to an operating loss of $31 million in the first nine months of 2017.

Other Components of Net Periodic Pension Cost/(Income)
Other components of net periodic pension cost/(income) was $(19) million and $(2) million for the three months ended November 3, 2018 and October 28, 2017, respectively, and $(57) million and $90 million for the nine months ended November 3, 2018 and October 28, 2017, respectively.

In February 2017, we announced a Voluntary Early Retirement Program (VERP), which was offered to approximately 6,000 eligible associates. In the first quarter of 2017, we recorded a total charge of approximately $120 million related to the VERP. Charges included $112 million related to special retirement benefits for the approximately 2,800 associates who accepted the VERP and $7 million related to curtailment charges for our pension plans as a result of the reduction in the expected years of future service related to these plans.

(Gain)/Loss on Extinguishment of Debt
During the first quarter of 2018, we settled cash tender offers with respect to portions of our outstanding 8.125% Senior Notes Due 2019 (2019 Notes) and 5.65% Senior Notes Due 2020 (2020 Notes), resulting in a loss on extinguishment of debt of $23 million. During the second quarter of 2017, we settled cash tender offers with respect to portions of our outstanding 5.75% Senior Notes Due 2018 (2018 Notes) and 2019 Notes, resulting in a loss on extinguishment of debt of $34 million, and amended our Revolving Credit Facility, which resulted in a loss on extinguishment of debt of $1 million.

Net Interest Expense
Net interest expense for each of the third quarters of 2018 and 2017 was $78 million. For the first nine months of 2018, net interest expense was $235 million, a decrease of $9 million, or 3.7%, from $244 million in 2017. The reduction in net interest expense is due to lower debt levels in 2018 compared to 2017.

Income Taxes
The net tax benefit of $8 million for the three months ended November 3, 2018 consisted of federal, state and foreign tax benefits of $2 million, a $2 million benefit relating to other comprehensive income and a $5 million benefit due to the release of valuation allowance, offset by $1 million of expense related to the deferred tax asset change arising from the tax amortization of indefinite-lived intangible assets.

The net tax benefit of $4 million for the nine months ended November 3, 2018 consisted of federal, state and foreign tax expenses of $3 million, $3 million of expense related to the deferred tax asset change arising from the tax amortization of indefinite-lived intangible assets and $1 million of net tax expense resulting from enacted state law changes, offset by a $5 million benefit relating to other comprehensive income, a $5 million benefit due to the release of valuation allowance and a net tax benefit of $1 million resulting from state audit settlements.

As of November 3, 2018, we have approximately $2.4 billion of net operating losses (NOLs) available for U.S. federal income tax purposes, which largely expire in 2032 through 2034 and $60 million of tax credit carryforwards that expire at various dates through 2036. A valuation allowance of $578 million (restated for the tax effects of revenue recognition) fully offsets the federal deferred tax assets resulting from the NOL and tax credit carryforwards that expire at various dates through 2036. A valuation allowance of $257 million fully offsets the deferred tax assets resulting from the state NOL carryforwards that expire at various dates through 2036. In assessing the need for the valuation allowance, we considered both positive and negative evidence related to the likelihood of realization of the deferred tax assets. As a result of our periodic assessment, our estimate of the realization of deferred tax assets is solely based on the future reversals of existing taxable temporary differences and tax planning strategies that we would make use of to accelerate taxable income to utilize expiring NOL and tax credit carryforwards. Accordingly, in the three and nine months ended November 3, 2018, the valuation allowance was increased by $35 million and $69 million, respectively, to offset the net deferred tax assets created in the quarter relating primarily to the increase in NOL carryforwards.

Non-GAAP Financial Measures
We report our financial information in accordance with GAAP. However, we present certain financial measures identified as non-GAAP under the rules of the Securities and Exchange Commission (SEC) to assess our results. We believe the presentation of these non-GAAP financial measures is useful in order to better understand our financial performance as well as to facilitate the comparison of our results to the results of our peer companies. In addition, management uses these non-GAAP financial measures to assess the results of our operations. It is important to view non-GAAP financial measures in addition to,

rather than as a substitute for, those measures prepared in accordance with GAAP. We have provided reconciliations of the most directly comparable GAAP measures to our non-GAAP financial measures presented.

The following non-GAAP financial measures are adjusted to exclude restructuring and management transition charges, other components of net periodic pension cost/(income), the (gain)/loss on extinguishment of debt, the proportional share of net income from our Home Office Land Joint Venture and the tax impact for the allocation of income taxes to other comprehensive income items related to our pension plans and interest rate swaps. Unlike other operating expenses, restructuring and management transition charges, other components of net periodic pension cost/(income), the (gain)/loss on extinguishment of debt, the proportional share of net income from our Home Office Land Joint Venture and the tax impact for the allocation of income taxes to other comprehensive income items related to our pension plans and interest rate swaps are not directly related to our ongoing core business operations, which consist of selling merchandise and services to consumers through our department stores and our website at jcpenney.com. Further, our non-GAAP adjustments are for non-operating associated activities such as closed store impairments included in restructuring and management transition charges and such as joint venture earnings from the sale of excess land included in the proportional share of net income from our Home Office Land Joint Venture. Additionally, other components of net periodic pension cost/(income) which is determined using numerous complex assumptions about changes in pension assets and liabilities that are subject to factors beyond our control, such as market volatility. We believe it is useful for investors to understand the impact of restructuring and management transition charges, other components of net periodic pension cost/(income), the (gain)/loss on extinguishment of debt, the proportional share of net income from the Home Office Land Joint Venture and the tax impact for the allocation of income taxes to other comprehensive income items related to our pension plans and interest rate swaps on our financial results and therefore are presenting the following non-GAAP financial measures: (1) adjusted EBITDA; (2) adjusted net income/(loss); and (3) adjusted earnings/(loss) per share-diluted.

Adjusted EBITDA. The following table reconciles net income/(loss), the most directly comparable GAAP measure, to adjusted EBITDA, which is a non-GAAP financial measure:

	Three Months Ended		Nine Months Ended	
($ in millions)	**November 3, 2018**	**October 28, 2017** [(1)]	**November 3, 2018**	**October 28, 2017** [(1)]
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Add: Net interest expense	78	78	235	244
Add: (Gain)/loss on extinguishment of debt	—	—	23	35
Add: Income tax expense/(benefit)	(8)	(29)	(4)	(40)
Add: Depreciation and amortization	138	131	419	420
Add: Restructuring and management transition charges	11	52	20	175
Add: Other components of net periodic pension cost/(income)	(19)	(2)	(57)	90
Less: Proportional share of net income from joint venture	(3)	(3)	(4)	(23)
Adjusted EBITDA (non-GAAP)	$ 46	$ 102	$ 302	$ 541

(1) Reflects the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits. See Note 2 of Notes to unaudited Interim Consolidated Financial Statements for a discussion of the changes and related impacts. For the three months ended October 28, 2017, the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits decreased Adjusted EBITDA (non-GAAP) by $6 million. For the nine months ended October 28, 2017, the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits decreased Adjusted EBITDA (non-GAAP) by $18 million.

Adjusted Net Income/(Loss) and Adjusted Diluted EPS. The following table reconciles net income/(loss) and diluted EPS, the most directly comparable GAAP financial measures, to adjusted net income/(loss) and adjusted diluted EPS, which are non-GAAP financial measures:

	Three Months Ended		Nine Months Ended	
($ in millions, except per share data)	**November 3, 2018**	**October 28, 2017** [(1)]	**November 3, 2018**	**October 28, 2017** [(1)]
Net income/(loss)	$ (151)	$ (125)	$ (330)	$ (360)
Diluted EPS	$ (0.48)	$ (0.40)	$ (1.05)	$ (1.16)
Add: Restructuring and management transition charges [(2)]	11	52	20	175
Add: Other components of net periodic pension cost/(income) [(2)]	(19)	(2)	(57)	90
Add: (Gain)/loss on extinguishment of debt [(2)]	—	—	23	35
Less: Proportional share of net income from joint venture [(2)]	(3)	(3)	(4)	(23)
Less: Tax impact resulting from other comprehensive income allocation [(3)]	(2)	(30)	(5)	(46)
Adjusted net income/(loss) (non-GAAP)	$ (164)	$ (108)	$ (353)	$ (129)
Adjusted diluted EPS (non-GAAP)	$ (0.52)	$ (0.35)	$ (1.12)	$ (0.42)

(1) *Reflects the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits. See Note 2 of Notes to unaudited Interim Consolidated Financial Statements for a discussion of the changes and related impacts. For the three months ended October 28, 2017, the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits decreased Adjusted net income/(loss) (non-GAAP) by $6 million. For the nine months ended October 28, 2017, the retrospective application of the changes in accounting for revenue recognition and retirement-related benefits decreased Adjusted net income/(loss) (non-GAAP) by $18 million.*

(2) *Adjustments reflect no tax effect due to the impact of the Company's tax valuation allowance.*

(3) *Represents the net tax benefit that resulted from our other comprehensive income allocation between our Operating loss and Accumulated other comprehensive income.*

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are cash generated from operations, available cash and cash equivalents and access to our revolving credit facility. Our cash flows may be impacted by many factors including the economic environment, consumer confidence, competitive conditions in the retail industry and the success of our strategies. We ended the third quarter of 2018 with $168 million of cash and cash equivalents. As of the end of the third quarter of 2018, based on our borrowing base, our current borrowings and amounts reserved for outstanding letters of credit, we had $1,771 million available for future borrowings under our revolving credit facility, providing total available liquidity of $1,939 million.

The following table provides a summary of our key components and ratios of financial condition and liquidity:

	Nine Months Ended	
($ in millions)	**November 3, 2018**	**October 28, 2017**
Cash and cash equivalents	$ 168	$ 185
Merchandise inventory	3,223	3,406
Property and equipment, net	4,005	4,316
Total debt and other financing obligations (1)	4,467	4,493
Stockholders' equity	1,074	1,094
Total capital	5,541	5,587
Maximum capacity under our Revolving Credit Facility	2,350	2,350
Cash flow from operating activities	(311)	(183)
Free cash flow (non-GAAP) (2)	(500)	(317)
Capital expenditures (3)	321	287
Ratios:		
Total debt-to-total capital (4)	81%	80%
Cash-to-total debt (5)	4%	4%

(1) Includes long-term debt, net of unamortized debt issuance costs, including current maturities, capital leases, financing obligation, note payable and any borrowings under our revolving credit facility.
(2) See "Free Cash Flow" below for a reconciliation of this non-GAAP financial measure to its most directly comparable GAAP financial measure and further information on its uses and limitations.
(3) As of the end of the third quarters of 2018 and 2017, we had accrued capital expenditures of $29 million and $35 million, respectively.
(4) Total debt and other financing obligations divided by total capital.
(5) Cash and cash equivalents divided by total debt and other financing obligations.

Free Cash Flow (Non-GAAP)

Free cash flow is a key financial measure of our ability to generate additional cash from operating our business and in evaluating our financial performance. We define free cash flow as cash flow from operating activities, less capital expenditures plus the proceeds from the sale of operating assets. Free cash flow is a relevant indicator of our ability to repay maturing debt, revise our dividend policy or fund other uses of capital that we believe will enhance stockholder value. Free cash flow is considered a non-GAAP financial measure under the rules of the SEC. Free cash flow is limited and does not represent remaining cash flow available for discretionary expenditures due to the fact that the measure does not deduct payments required for debt maturities, payments made for business acquisitions or required pension contributions, if any. Therefore, it is important to view free cash flow in addition to, rather than as a substitute for, our entire statement of cash flows and those measures prepared in accordance with GAAP.

The following table sets forth a reconciliation of net cash provided by/(used in) operating activities, the most directly comparable GAAP financial measure, to free cash flow, a non-GAAP financial measure, as well as information regarding net cash provided by/(used in) investing activities and net cash provided by/(used in) financing activities:

	Nine Months Ended	
($ in millions)	**November 3, 2018**	**October 28, 2017**
Net cash provided by/(used in) operating activities (GAAP)	$ (311)	$ (183)
Add:		
Proceeds from sale of operating assets	132	153
Less:		
Capital expenditures (1)	(321)	(287)
Free cash flow (non-GAAP)	$ (500)	$ (317)
Net cash provided by/(used in) investing activities (2)	$ (185)	$ (125)
Net cash provided by/(used in) financing activities	$ 206	$ (394)

(1) *As of the end of the third quarters of 2018 and 2017, we had accrued capital expenditures of $29 million and $35 million, respectively.*
(2) *Net cash provided by investing activities includes capital expenditures and proceeds from sale of operating assets, which are also included in our computation of free cash flow.*

Operating Activities
While a significant portion of our sales, profit and operating cash flows have historically been realized in the fourth quarter, our quarterly results of operations may fluctuate significantly as a result of many factors, including seasonal fluctuations in customer demand, product offerings, inventory levels and promotional activity.

Cash flows from operating activities for the nine months ended November 3, 2018 declined $128 million to an outflow of $311 million compared to an outflow of $183 million for the same period in 2017. Our net loss of $330 million for the nine months ended November 3, 2018 includes significant income and expense items that do not impact operating cash flow including depreciation and amortization, the gain on the sale of assets, restructuring and management transition, (gain)/loss on extinguishment of debt, asset impairments, benefit plans, stock-based compensation and deferred taxes.

Cash flows from operating activities for the first nine months of 2018 and 2017 also included construction allowances from landlords of $12 million and $16 million, respectively, which funded a portion of our capital expenditures in investing activities.

Merchandise inventory decreased $183 million to $3,223 million, or 5.4%, as of the end of the third quarter of 2018 compared to $3,406 million as of the end of the third quarter last year and increased $420 million from year-end 2017. Based on the identical stores open at November 3, 2018 and October 28, 2017, inventory had decreased by 5.0% primarily due to lower purchasing levels and increased clearance markdowns to liquidate slow-moving inventory. Merchandise accounts payable decreased $108 million as of the end of the third quarter of 2018 compared to the corresponding prior year period and increased $261 million from year end.

Investing Activities
Investing activities for the nine months ended November 3, 2018 resulted in cash outflows of $185 million compared to outflows of $125 million for the same nine month period of 2017.

Cash capital expenditures were $321 million for the nine months ended November 3, 2018 and were $287 million for the nine months ended October 28, 2017. In addition, as of the end of the third quarters of 2018 and 2017, we had $29 million and $35 million, respectively, of accrued capital expenditures. Through the first nine months of 2018, capital expenditures related primarily to investments in our store environment and store facility improvements, including investments in 27 new Sephora inside JCPenney stores and investments in information technology in both our home office and stores. We received construction allowances from landlords of $12 million in the first nine months of 2018 to fund a portion of the capital expenditures related to store leasehold improvements. These funds are classified as operating activities and have been recorded as deferred rent credits in the Consolidated Balance Sheets and are amortized as an offset to rent expense.

For the nine months ended October 28, 2017, capital expenditures related primarily to investments in our store environment and store facility improvements, including investments in 70 new and 32 expanded Sephora inside JCPenney stores, the roll out of 100 new appliance showrooms and and investments in information technology in both our home office and stores. We received construction allowances from landlords of $16 million in the first nine months of 2017.

Full year 2018 capital expenditures are expected to be approximately $375 million net of construction allowances from landlords. Capital expenditures for the remainder of 2018 include accrued expenditures of $29 million at the end of the third quarter.

Financing Activities
Financing activities for the nine months ended November 3, 2018 resulted in an inflow of $206 million compared to an outflow of $394 million for the same period last year. During the first nine months of 2018, we issued $400 million aggregate principal amount of senior secured second priority notes due 2025 and incurred $7 million in related issuance costs, paid $395 million to settle cash tender offers with respect to portions of our outstanding 2019 Notes and 2020 Notes and had net credit facility borrowings of $437 million. Additionally, we paid $190 million to retire outstanding debt at maturity and we paid $32 million in required principal payments on outstanding debt and $6 million in required payments on our capital leases, financing obligation and note payable.

Free Cash Flow
Free cash flow for the nine months ended November 3, 2018 decreased $183 million to an outflow of $500 million compared to an outflow of $317 million in the same period last year. The year-over-year decrease was primarily due to lower operating performance and higher capital expenditures.

Cash Flow Outlook
For the remainder of 2018, we believe that our existing liquidity will be adequate to fund our capital expenditures and working capital needs; however, in accordance with our long-term financing strategy, we may access the capital markets opportunistically. We believe that our current financial position will provide us the financial flexibility to support our growth initiatives.

Credit Ratings

Our credit ratings and outlook as of November 23, 2018 from various credit rating agencies were as follows:

	Corporate	Outlook
Fitch Ratings	B	Stable
Moody’s Investors Service, Inc.	B3	Stable
Standard & Poor’s Ratings Services	B-	Negative

Credit rating agencies periodically review our capital structure and the quality and stability of our earnings. Rating agencies consider, among other things, changes in operating performance, comparable store sales, the economic environment, conditions in the retail industry, financial leverage and changes in our business strategy in their rating decisions. Downgrades to our long-term credit ratings could result in reduced access to the credit and capital markets and higher interest costs on future financings.

Contractual Obligations and Commitments
Aggregate information about our obligations and commitments to make future payments under contractual or contingent arrangements was disclosed in the 2017 Form 10-K.

Impact of Inflation, Deflation and Changing Prices
We have experienced inflation and deflation related to our purchase of certain commodity products. We do not believe that changing prices for commodities have had a material effect on our Net Sales or results of operations. Although we cannot precisely determine the overall effect of inflation and deflation on operations, we do not believe inflation and deflation have had a material effect on our financial condition or results of operations.

Critical Accounting Policies

Management’s discussion and analysis of our financial condition and results of operations is based upon our unaudited Interim Consolidated Financial Statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and use judgments that affect reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. We base our estimates on historical experience and on other assumptions that are believed to be reasonable under the circumstances. On an ongoing basis, we evaluate estimates used, including those related to inventory valuation under the retail method, valuation of long-lived assets, estimation of reserves and valuation allowances specifically related to closed stores, insurance, income taxes, litigation and environmental contingencies and pension accounting. While actual results could differ from these estimates, we do not expect the differences, if any, to have a material effect on the unaudited Interim Consolidated Financial Statements.

Except for the changes in revenue recognition and pension accounting as discussed in Note 2 to the Unaudited Interim Consolidated Financial Statements, there were no changes to our critical accounting policies during the nine months ended November 3, 2018. For a further discussion of the judgments we make in applying our accounting policies, see Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, in our 2017 Form 10-K.

Recently Issued Accounting Pronouncements

Recently issued accounting pronouncements are discussed in Note 3 to the Unaudited Interim Consolidated Financial Statements.

Seasonality

While a significant portion of our sales, profit and operating cash flows have historically been realized in the fiscal fourth quarter, our quarterly results of operations may fluctuate significantly as a result of many factors, including seasonal fluctuations in customer demand, product offerings, inventory levels and our promotional activity. The results of operations and cash flows for the nine months ended November 3, 2018 are not necessarily indicative of the results for future quarters or the entire year.

Cautionary Statement Regarding Forward-Looking Statements

This report may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, which reflect our current view of future events and financial performance. Words such as "expect" and similar expressions identify forward-looking statements, which include, but are not limited to, statements regarding sales, cost of goods sold, selling, general and administrative expenses, earnings, cash flows and liquidity. Forward-looking statements are based only on the Company's current assumptions and views of future events and financial performance. They are subject to known and unknown risks and uncertainties, many of which are outside of the Company's control, that may cause the Company's actual results to be materially different from planned or expected results. Those risks and uncertainties include, but are not limited to, general economic conditions, including inflation, recession, unemployment levels, consumer confidence and spending patterns, credit availability and debt levels, changes in store traffic trends, the cost of goods, more stringent or costly payment terms and/or the decision by a significant number of vendors not to sell us merchandise on a timely basis or at all, trade restrictions, the ability to monetize non-core assets on acceptable terms, the ability to implement our strategic plan including our omnichannel initiatives, customer acceptance of our strategies, our ability to attract, motivate and retain key executives and other associates, the impact of cost reduction initiatives, our ability to generate or maintain liquidity, implementation of new systems and platforms, changes in tariff, freight and shipping rates, changes in the cost of fuel and other energy and transportation costs, disruptions and congestion at ports through which we import goods, increases in wage and benefit costs, competition and retail industry consolidations, interest rate fluctuations, dollar and other currency valuations, the impact of weather conditions, risks associated with war, an act of terrorism or pandemic, the ability of the federal government to fund and conduct its operations, a systems failure and/or security breach that results in the theft, transfer or unauthorized disclosure of customer, employee or Company information, legal and regulatory proceedings and the Company's ability to access the debt or equity markets on favorable terms or at all. There can be no assurances that the Company will achieve expected results, and actual results may be materially less than expectations. While we believe that our assumptions are reasonable, we caution that it is impossible to predict the degree to which any such factors could cause actual results to differ materially from predicted results. We intend the forward-looking statements in this Quarterly Report on Form 10-Q to speak only as of the date of this report and do not undertake to update or revise projections as more information becomes available.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks in the normal course of business due to changes in interest rates. Our market risks related to interest rates at November 3, 2018 are similar to those disclosed in the 2017 Form 10-K.

Item 4. Controls and Procedures

Based on their evaluation of our disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934 (the Exchange Act)) as of the end of the period covered by this Quarterly Report on Form 10-Q, our principal executive officer and principal financial officer concluded our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms and is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. There were no changes in our internal control over financial reporting during the third quarter ended November 3, 2018, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings

The matters under the caption "Litigation" in Note 14 of the Notes to Unaudited Interim Consolidated Financial Statements in Part I, Item 1 of this Form 10-Q are incorporated herein by reference.

Item 1A. Risk Factors

The risk factors listed below update and supersede the risk factors associated with our business previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended February 3, 2018.

Our ability to achieve profitable growth is subject to both the risks affecting our business generally and the inherent difficulties associated with implementing our strategic plan.

As we position the Company for long-term growth, it may take longer than expected to achieve our objectives, and actual results may be materially less than planned. Our ability to improve our operating results depends upon a significant number of factors, some of which are beyond our control, including:

- customer response to our marketing and merchandise strategies;
- our ability to achieve profitable sales and to make adjustments in response to changing conditions;
- our ability to respond to competitive pressures in our industry;
- our ability to effectively manage inventory;
- the success of our omnichannel strategy;
- our ability to gather accurate and relevant data and effectively utilize that data in our strategic planning and decision making;
- our ability to benefit from investments in our stores;
- our ability to respond to any unanticipated changes in expected cash flows, liquidity and cash needs, including our ability to obtain any additional financing or other liquidity enhancing transactions, if and when needed;
- our ability to achieve positive cash flow;
- our ability to access an adequate and uninterrupted supply of merchandise from suppliers at expected levels and on acceptable terms;

- changes to the regulatory environment in which our business operates; and
- general economic conditions.

There is no assurance that our marketing, merchandising and omnichannel strategies, or any future adjustments to our strategies, will improve our operating results.

We operate in a highly competitive industry, which could adversely impact our sales and profitability.

The retail industry is highly competitive, with few barriers to entry. We compete with many other local, regional and national retailers for customers, employees, locations, merchandise, services and other important aspects of our business. Those competitors include other department stores, discounters, home furnishing stores, large appliance retailers, specialty retailers, wholesale clubs, direct-to-consumer businesses, including those on the Internet, providers of home improvement services and other forms of retail commerce. Some competitors are larger than JCPenney, and/or have greater financial resources available to them, and, as a result, may be able to devote greater resources to sourcing, promoting, selling their products, updating their store environment and updating their technology. Competition is characterized by many factors, including merchandise assortment, advertising, price, quality, service, location, reputation, shipping times and cost, online and mobile user experience, credit availability, customer loyalty, availability of in-store services, such as styling salon, optical, portrait photography and custom decorating, and the ability to offer personalized customer experiences. We have experienced, and anticipate that we will continue to experience for at least the foreseeable future, significant competition from our competitors. The performance of competitors as well as changes in their pricing and promotional policies, marketing activities, customer loyalty programs, availability of in-store services, new store openings, store renovations, launches of Internet websites or mobile platforms, brand launches and other merchandise and operational strategies could cause us to have lower sales, lower merchandise margin and/or higher operating expenses such as marketing costs and other selling, general and administrative expenses, which in turn could have an adverse impact on our profitability.

Our sales and operating results depend on our ability to develop merchandise offerings that resonate with our existing customers and help to attract new customers.

Our sales and operating results depend in part on our ability to predict and respond to changes in fashion trends and customer preferences in a timely manner by consistently offering stylish, quality merchandise assortments at competitive prices. We continuously assess emerging styles and trends and focus on developing a merchandise assortment to meet customer preferences. There is no assurance that these efforts will be successful or that we will be able to satisfy constantly changing customer demands. To the extent our decisions regarding our merchandise differ from our customers' preferences, we may be faced with reduced sales and excess inventories for some products and/or missed opportunities for others. Any sustained failure to identify and respond to emerging trends in lifestyle and customer preferences and buying trends could have an adverse impact on our business. In addition, merchandise misjudgments may adversely impact the perception or reputation of our Company, which could result in declines in customer loyalty and vendor relationship issues, and ultimately have a material adverse effect on our business, financial condition and results of operations.

We may also seek to expand into new lines of business from time to time, such as offering large appliances for sale and offering home improvement products and installation services through third-parties. There is no assurance that these efforts will be successful. As we devote time and resources to new lines of business, management's attention and resources may be diverted from existing business activities. Further, if new lines of business are not as successful as we planned, then we risk damaging our overall business results. In addition, we may seek to expand our merchandise offerings into new product categories. Moving into new lines of business and expanding our merchandise offerings may carry new or additional risks beyond those typically associated with our traditional apparel and home furnishings businesses, including potential reputational harm resulting from actions by unaffiliated third-parties that we may use to assist us in providing goods or services. We may not be able to develop new lines of business in a manner that improves our operating results or address or mitigate the risks associated with new product categories and new lines of business, and may therefore be forced to close the new lines of business or reduce our expanded merchandise offerings, which may damage our reputation and negatively impact our operating results.

Our results may be negatively impacted if customers do not maintain their favorable perception of our Company and our private brand merchandise.

Maintaining and continually enhancing the value of our Company and our private brand merchandise is important to the success of our business. The value of our private brands is based in large part on the degree to which customers perceive and react to them. The value of our private brands could diminish significantly due to a number of factors, including customer perception that we have acted in an irresponsible manner in sourcing our private brand merchandise, adverse publicity about our private brand merchandise, our failure to maintain the quality of our private brand products, the failure of our private brand merchandise to deliver consistently good value to the customer, or the failure to protect the image associated with our private brands. The growing use of social and digital media by customers, us, and third parties increases the speed and extent that information or misinformation and opinions can be shared. Negative posts or comments about us, our private brands, or any of our merchandise on social or digital media could seriously damage our reputation. If we do not maintain the favorable perception of our Company and our private brand merchandise or we experience a reduction in the level of private brand sales, our business results could be negatively impacted.

Our ability to increase sales and store productivity is largely dependent upon our ability to increase customer traffic and conversion.

Customer traffic depends upon our ability to successfully market compelling merchandise assortments, present an appealing shopping environment and experience to customers, and attract customers to our stores through omnichannel initiatives such as pickup-in-store programs. Our strategies focus on increasing customer traffic and improving conversion in our stores and online; however, there can be no assurance that our efforts will be successful or will result in increased sales or margins. Further, costs to drive online traffic may be higher than anticipated, which could result in lower margins, and actions to drive online traffic may not deliver anticipated results. In addition, external events outside of our control, including store closings by our competitors, pandemics, terrorist threats, domestic conflicts and civil unrest, may influence customers' decisions to visit malls or might otherwise cause customers to avoid public places. There is no assurance that we will be able to reverse any decline in traffic or that increases in Internet sales will offset any decline in store traffic. We may need to respond to any declines in customer traffic or conversion rates by increasing markdowns or promotions to attract customers, which could adversely impact our operating results and cash flows from operating activities. In addition, the challenge of declining store traffic along with the growth of digital shopping channels and its diversion of sales from brick-and-mortar stores could lead to store closures and/or asset impairment charges, which could adversely impact our operating results, financial position and cash flows.

If we are unable to manage our inventory effectively, our merchandise margins could be adversely affected.

Our profitability depends upon our ability to manage appropriate inventory levels and respond quickly to shifts in consumer demand patterns. We must properly execute our inventory management strategies by appropriately allocating merchandise among our stores and online, timely and efficiently distributing inventory to stores, maintaining an appropriate mix and level of inventory in stores and online, adjusting our merchandise mix between our private and exclusive brands and national brands, appropriately changing the allocation of floor space of stores among product categories to respond to customer demand and effectively managing pricing and markdowns. If we overestimate customer demand for our merchandise, we will likely need to record inventory markdowns and sell the excess inventory at clearance prices which would negatively impact our merchandise margins and operating results. If we underestimate customer demand for our merchandise, we may experience inventory shortages which may result in missed sales opportunities and have a negative impact on customer loyalty. In addition, although we have various processes and systems to help protect against loss or theft of our inventory, higher than expected levels of lost or stolen inventory (called “shrinkage”) could result in write-offs and lost sales, which could adversely impact our profitability.

We must protect against security breaches or other unauthorized disclosures of confidential data about our customers as well as about our employees and other third parties.

As part of our normal operations, we and third-party service providers with whom we contract receive and maintain information about our customers (including credit/debit card information), our employees and other third parties. Confidential data must at all times be protected against security breaches or other unauthorized disclosure. We have, and require our third-party service providers to have, administrative, physical and technical safeguards and procedures in place to protect the security, confidentiality, integrity and availability of such information and to protect such information against unauthorized access, disclosure or acquisition. Despite our safeguards and security processes and procedures, there is no assurance that all of our systems and processes, or those of our third-party service providers, are free from vulnerability to security breaches, inadvertent data disclosure or acquisition by third parties. Further, because the methods used to obtain unauthorized access change frequently and may not be immediately detected, we may be unable to anticipate these methods or promptly implement safeguards. Any failure to protect confidential data about our business or our customers, employees or other third parties could materially damage our brand and reputation as well as result in significant expenses and disruptions to our operations, and loss of customer confidence, any of which could have a material adverse impact on our business and results of operations. We could also be subject to government enforcement actions and private litigation as a result of any such failure.

The failure to retain, attract and motivate our employees, including employees in key positions, could have an adverse impact on our results of operations.

Our results depend on the contributions of our employees, including our senior management team and other key employees. This depends to a great extent on our ability to retain, attract and motivate talented employees throughout the organization, many of whom, particularly in the stores, are in entry level or part-time positions, which have historically had high rates of turnover. We currently operate with significantly fewer individuals than we have in the past who have assumed additional duties and responsibilities, which could have an adverse impact on our operating performance and efficiency. Negative media reports regarding the Company or the retail industry in general, as well as uncertainty due to store closings, could also have an adverse impact on our ability to attract, retain and motivate our employees. If we are unable to retain, attract and motivate talented employees with the appropriate skill sets, we may not achieve our objectives and our results of operations could be adversely impacted. Our ability to meet our changing labor needs while controlling our costs is also subject to external factors such as unemployment levels, competing wages, potential union organizing efforts and government regulation. An inability to provide wages and/or benefits that are competitive within the markets in which we operate could adversely affect our ability to retain and attract employees. In addition, the loss of one or more of our key personnel or the inability to effectively identify a suitable successor to a key role in our senior management could have a material adverse effect on our business.

If we are unable to successfully develop and maintain a relevant and reliable omnichannel experience for our customers, our sales, results of operations and reputation could be adversely affected.

One of the pillars of our strategic framework is to deliver a superior omnichannel shopping experience for our customers through the integration of our store and digital shopping channels. Omnichannel retailing is rapidly evolving and we must anticipate and meet changing customer expectations. Our omnichannel strategies include our ship-from-store and pickup-in-store programs. In addition, we continue to explore ways to enhance our customers' omnichannel shopping experience, including through investments in IT systems, operational changes and developing a more customer-friendly user experience. Our competitors are also investing in omnichannel initiatives, some of which may be more successful than our initiatives. For example, online and other competitors have placed an emphasis on delivery services, with customers increasingly seeking faster, guaranteed delivery times and low-price or free shipping. There is no assurance that we will be able to maintain an ability to be competitive on delivery times and delivery costs, which is dependent on many factors. If the implementation of our omnichannel strategies is not successful or does not meet customer expectations, or we do not realize a return on our omnichannel investments, our reputation and operating results may be adversely affected.

Disruptions in our Internet website or mobile applications, or our inability to successfully execute our online strategies, could have an adverse impact on our sales and results of operations.

We sell merchandise over the Internet through our website, www.jcpenney.com, and through mobile applications for smart phones and tablets. Our Internet operations are subject to numerous risks, including rapid technological change and the implementation of new systems and platforms; liability for online and mobile content; violations of state or federal laws, including those relating to online and mobile privacy and intellectual property rights; credit card fraud; problems associated with the operation, security and availability of our website, mobile applications and related support systems; computer malware; telecommunications failures; electronic break-ins and similar disruptions; and the allocation of inventory between our online operations and department stores. The failure of our website or mobile applications to perform as expected could result in disruptions and costs to our operations and make it more difficult for customers to purchase merchandise online. In addition, our inability to successfully develop and maintain the necessary technological interfaces for our customers to purchase merchandise through our website and mobile applications, including user friendly software applications for smart phones and tablets, could result in the loss of Internet sales and have an adverse impact on our results of operations.

Our operations are dependent on information technology systems; disruptions in those systems or increased costs relating to their implementation could have an adverse impact on our results of operations.

Our operations are dependent upon the integrity, security and consistent operation of various systems and data centers, including the point-of-sale systems in the stores, our Internet website and mobile applications, data centers that process transactions, communication systems and various software applications used throughout our Company to track inventory flow, process transactions, generate performance and financial reports and administer payroll and benefit plans.

We have implemented several applications and systems from third party vendors, providers and licensors to simplify our processes and reduce our use of customized existing legacy systems and expect to place additional applications and systems into operation in the future. Any continued reliance on existing legacy systems may result in extended system outages due to the difficulty in recovering those systems as well as inefficiencies in our business workflow due to the complexity and high levels of customization inherent in such systems. Implementing new applications and systems carries substantial risk, including implementation delays, cost overruns, disruption of operations, potential loss of data or information, lower customer satisfaction resulting in lost customers or sales, inability to deliver merchandise to our stores or our customers, the potential inability to meet reporting requirements and unintentional security vulnerabilities. There can be no assurances that we will successfully launch the new applications and systems as planned, that the new applications and systems will perform as expected or that the new applications and systems will be implemented without disruptions to our operations, any of which may cause critical information upon which we rely to be delayed, unreliable, corrupted, insufficient or inaccessible.

We also outsource various information technology functions to third party service providers and may outsource other functions in the future. We rely on those third party service providers to provide services on a timely and effective basis and their failure to perform as expected or as required by contract could result in disruptions and costs to our operations.

Our vendors are also highly dependent on the use of information technology systems. Major disruptions in their information technology systems could result in their inability to communicate with us or otherwise to process our transactions or information, their inability to perform required functions, or in the loss or corruption of our information, any and all of which could result in disruptions to our operations. Our vendors are responsible for having safeguards and procedures in place to protect the confidentiality, integrity and security of our information, and to protect our information and systems against unauthorized access, disclosure or acquisition. Any failure in their systems to operate or in their ability to protect our information or systems could have a material adverse impact on our business and results of operations.

We have insourced, and may continue to insource, certain business functions from third party vendors and may seek to relocate certain business functions to international locations in an attempt to achieve additional efficiencies, both of which subject us to risks, including disruptions in our business.

We have recently insourced certain business functions and may also need to continue to insource other aspects of our business in the future in order to effectively manage our costs and stay competitive. We may also seek from time to time to relocate certain business functions to countries other than the United States to access highly skilled labor markets and further control costs. There is no assurance that these efforts will be successful. In addition, future regulatory developments could hinder our ability to fully realize the anticipated benefits of these actions. These actions may also cause disruptions that negatively impact our business. If we are ultimately unable to perform insourced functions better than, or at least as well as, third party providers, or otherwise fully realize the anticipated benefits of these actions, our operating results could be adversely impacted.

Changes in our credit ratings may limit our access to capital markets and adversely affect our liquidity.

The credit rating agencies periodically review our capital structure and the quality and stability of our earnings. Any downgrades to our long-term credit ratings could result in reduced access to the credit and capital markets and higher interest costs on future financings. The future availability of financing will depend on a variety of factors such as economic and market conditions, the availability of credit and our credit ratings, as well as the possibility that lenders could develop a negative perception of us. There is no assurance that we will be able to obtain additional financing on favorable terms or at all.

Our profitability depends on our ability to source merchandise and deliver it to our customers in a timely and cost-effective manner.

Our merchandise is sourced from a wide variety of suppliers, and our business depends on being able to find qualified suppliers and access products in a timely and efficient manner. Inflationary pressures on commodity prices and other input costs could increase our cost of goods, and an inability to pass such cost increases on to our customers or a change in our merchandise mix as a result of such cost increases could have an adverse impact on our profitability. Additionally, the impact of economic conditions on our suppliers cannot be predicted and our suppliers may be unable to access financing or become insolvent and thus become unable to supply us with products. Developments in tax policy, such as the disallowance of tax deductions for imported merchandise, or the imposition of tariffs on imported merchandise, could further have a material adverse effect on our results of operations and liquidity.

Our arrangements with our suppliers and vendors may be impacted by our financial results or financial position.

Substantially all of our merchandise suppliers and vendors sell to us on open account purchase terms. There is a risk that our key suppliers and vendors could respond to any actual or apparent decrease in or any concern with our financial results or liquidity by requiring or conditioning their sale of merchandise to us on more stringent or more costly payment terms, such as by requiring standby letters of credit, earlier or advance payment of invoices, payment upon delivery or other assurances or credit support or by choosing not to sell merchandise to us on a timely basis or at all. Our arrangements with our suppliers and vendors may also be impacted by media reports regarding our financial position. Our need for additional liquidity could significantly increase and our supply of merchandise could be materially disrupted if a significant portion of our key suppliers and vendors took one or more of the actions described above, which could have a material adverse effect on our sales, customer satisfaction, cash flows, liquidity and financial position.

Our senior secured real estate term loan credit facility and senior secured notes are secured by certain of our real property and, together with our senior secured second priority notes, substantially all of our personal property, and such property may be subject to foreclosure or other remedies in the event of our default. In addition, the real estate term loan credit facility and the indentures governing the senior secured notes and senior secured second priority notes contain provisions that could restrict our operations and our ability to obtain additional financing.

We are (i) party to a $1.688 billion senior secured term loan credit facility and (ii) the issuer of $500 million aggregate principal amount of senior secured notes. We have also issued $400 million aggregate principal amount of senior secured second priority notes. The senior secured term loan credit facility and the senior secured notes are secured by mortgages on certain real property of the Company and, together with the senior secured second priority notes, liens on substantially all personal property of the Company, subject to certain exclusions set forth in the security documents relating to the term loan credit facility, the senior secured notes and the senior secured second priority notes. The real property subject to mortgages under the term loan credit facility and the indenture governing the senior secured notes includes our distribution centers and certain of our stores.

The credit and guaranty agreement governing the term loan credit facility and the indentures governing the senior secured notes and the senior secured second-priority notes contain operating restrictions which may impact our future alternatives by limiting, without lender consent, our ability to borrow additional funds, execute certain equity financings or enter into dispositions or other liquidity enhancing or strategic transactions regarding certain of our assets, including our real property. Our ability to obtain additional or other financing or to dispose of certain assets could also be negatively impacted because a substantial portion of our assets have been restricted or pledged as collateral for repayment of our indebtedness under the term loan credit facility, the senior secured notes and the senior secured second-priority notes.

If an event of default occurs and is continuing, our outstanding obligations under the term loan credit facility, the senior secured notes and the senior secured second-priority notes could be declared immediately due and payable or the lenders could foreclose on or exercise other remedies with respect to the assets securing the term loan credit facility, the senior secured notes and the senior secured second-priority notes, including, with respect to the term loan credit facility and senior secured notes, our distribution centers and certain of our stores. If an event of default occurs, there is no assurance that we would have the cash resources available to repay such accelerated obligations or refinance such indebtedness on commercially reasonable terms, or at all. The occurrence of any one of these events could have a material adverse effect on our business, financial condition, results of operations and liquidity.

Our senior secured asset-based revolving credit facility limits our borrowing capacity to the value of certain of our assets. In addition, our senior secured asset-based revolving credit facility is secured by certain of our personal property, and lenders may exercise remedies against the collateral in the event of our default.

We are party to a $2.35 billion senior secured asset-based revolving credit facility. Our borrowing capacity under our revolving credit facility varies according to the Company’s inventory levels, accounts receivable and credit card receivables, net of certain reserves. In the event of any material decrease in the amount of or appraised value of these assets, our borrowing capacity would similarly decrease, which could adversely impact our business and liquidity.

Our revolving credit facility contains customary affirmative and negative covenants and certain restrictions on operations become applicable if our availability falls below certain thresholds. These covenants could impose significant operating and financial limitations and restrictions on us, including restrictions on our ability to enter into particular transactions and to engage in other actions that we may believe are advisable or necessary for our business.

Our obligations under the revolving credit facility are secured by liens with respect to inventory, accounts receivable, deposit accounts and certain related collateral. In the event of a default that is not cured or waived within any applicable cure periods, the lenders’ commitment to extend further credit under our revolving credit facility could be terminated, our outstanding obligations could become immediately due and payable, outstanding letters of credit may be required to be cash collateralized and remedies may be exercised against the collateral, which generally consists of the Company’s inventory, accounts receivable and deposit accounts and cash credited thereto. If we are unable to borrow under our revolving credit facility, we may not have the necessary cash resources for our operations and, if any event of default occurs, there is no assurance that we would have the cash resources available to repay such accelerated obligations, refinance such indebtedness on commercially reasonable terms, or at all, or cash collateralize our letters of credit, which would have a material adverse effect on our business, financial condition, results of operations and liquidity.

Our level of indebtedness may adversely affect our business and results of operations and may require the use of our available cash resources to meet repayment obligations, which could reduce the cash available for other purposes.

As of November 3, 2018, we have $4.467 billion in total indebtedness and we are highly leveraged. Our level of indebtedness may limit our ability to obtain additional financing, if needed, to fund additional projects, working capital requirements, capital expenditures, debt service, and other general corporate or other obligations, as well as increase the risks to our business associated with general adverse economic and industry conditions. Our level of indebtedness may also place us at a competitive disadvantage to our competitors that are not as highly leveraged. In addition, any future limitations on tax deductions for interest paid on outstanding indebtedness as a result of the Tax Cuts and Jobs Act enacted in December 2017 (the “Tax Act”) could have a material adverse effect on our results of operations and liquidity.

We are required to make quarterly repayments in a principal amount equal to $10.55 million during the seven-year term of the real estate term loan credit facility, subject to certain reductions for mandatory and optional prepayments. In addition, we are required to make prepayments of the real estate term loan credit facility with the proceeds of certain asset sales, insurance proceeds and excess cash flow, which could reduce the cash available for other purposes, including capital expenditures for store improvements, and could impact our ability to reinvest in other areas of our business.

There is no assurance that our internal and external sources of liquidity will at all times be sufficient for our cash requirements.

We must have sufficient sources of liquidity to fund our working capital requirements, capital improvement plans, service our outstanding indebtedness and finance investment opportunities. The principal sources of our liquidity are funds generated from operating activities, available cash and cash equivalents, borrowings under our credit facilities, other debt financings, equity financings and sales of non-operating assets. We expect our ability to generate cash through the sale of non-operating assets to diminish as our portfolio of non-operating assets decreases. In addition, our recent operating losses have limited our capital resources. Our ability to achieve our business and cash flow plans is based on a number of assumptions which involve significant judgments and estimates of future performance, borrowing capacity and credit availability, which cannot at all times be assured. Accordingly, there is no assurance that cash flows from operations and other internal and external sources of liquidity will at all times be sufficient for our cash requirements. If necessary, we may need to consider actions and steps to improve our cash position and mitigate any potential liquidity shortfall, such as modifying our business plan, pursuing additional financing to the extent available, reducing capital expenditures, pursuing and evaluating other alternatives and opportunities to obtain additional sources of liquidity and other potential actions to reduce costs. There can be no assurance that any of these actions would be successful, sufficient or available on favorable terms. Any inability to generate or obtain sufficient levels of liquidity to meet our cash requirements at the level and times needed could have a material adverse impact on our business and financial position.

Our ability to obtain any additional financing or any refinancing of our debt, if needed at any time, depends upon many factors, including our existing level of indebtedness and restrictions in our debt facilities, historical business performance, financial projections, the value and sufficiency of collateral, prospects and creditworthiness and external economic conditions and general liquidity in the credit and capital markets. Any additional debt, equity or equity-linked financing may require modification of our existing debt agreements, which there is no assurance would be obtainable. Any additional financing or refinancing could also be extended only at higher costs and require us to satisfy more restrictive covenants, which could further limit or restrict our business and results of operations, or be dilutive to our stockholders.

Our use of interest rate hedging transactions could expose us to risks and financial losses that may adversely affect our financial condition, liquidity and results of operations.

To reduce our exposure to interest rate fluctuations, we have entered into, and in the future may enter into, interest rate swaps with various financial counterparties. The interest rate swap agreements effectively convert a portion of our variable rate interest payments to a fixed price. There can be no assurances, however, that our hedging activity will be effective in insulating us from the risks associated with changes in interest rates. In addition, our hedging transactions may expose us to certain risks and financial losses, including, among other things:

- counterparty credit risk;
- the risk that the duration or amount of the hedge may not match the duration or amount of the related liability;

- the hedging transactions may be adjusted from time to time in accordance with accounting rules to reflect changes in fair values, downward adjustments or "mark-to-market losses," which would affect our stockholders' equity; and
- the risk that we may not be able to meet the terms and conditions of the hedging instruments, in which case we may be required to settle the instruments prior to maturity with cash payments that could significantly affect our liquidity.

Further, we have designated the swaps as cash flow hedges in accordance with Accounting Standards Codification Topic 815, Derivatives and Hedging. However, in the future, we may fail to qualify for hedge accounting treatment under these standards for a number of reasons, including if we fail to satisfy hedge documentation and hedge effectiveness assessment requirements or if the swaps are not highly effective. If we fail to qualify for hedge accounting treatment, losses on the swaps caused by the change in their fair value will be recognized as part of net income, rather than being recognized as part of other comprehensive income.

Operating results and cash flows may cause us to incur asset impairment charges.

Long-lived assets, primarily property and equipment, are reviewed at the store level at least annually for impairment, or whenever changes in circumstances indicate that a full recovery of net asset values through future cash flows is in question. We also assess the recoverability of indefinite-lived intangible assets at least annually or whenever events or changes in circumstances indicate that the carrying amount may not be fully recoverable. Our impairment review requires us to make estimates and projections regarding, but not limited to, sales, operating profit and future cash flows. If our operating performance reflects a sustained decline, we may be exposed to significant asset impairment charges in future periods, which could be material to our results of operations.

Reductions in income and cash flow from our marketing and servicing arrangement related to our private label and co-branded credit cards could adversely affect our operating results and cash flows.

Synchrony Financial ("Synchrony") owns and services our private label credit card and co-branded MasterCard® programs. Our agreement with Synchrony provides for certain payments to be made by Synchrony to the Company, including a share of income from the performance of the credit card portfolios. The income and cash flow that the Company receives from Synchrony is dependent upon a number of factors including the level of sales on private label and co-branded accounts, the percentage of sales on private label and co-branded accounts relative to the Company's total sales, the level of balances carried on the accounts, payment rates on the accounts, finance charge rates and other fees on the accounts, the level of credit losses for the accounts, Synchrony's ability to extend credit to our customers as well as the cost of customer rewards programs. All of these factors can vary based on changes in federal and state credit card, banking and consumer protection laws, which could also materially limit the availability of credit to consumers or increase the cost of credit to our cardholders. The factors affecting the income and cash flow that the Company receives from Synchrony can also vary based on a variety of economic, legal, social and other factors that we cannot control. If the income or cash flow that the Company receives from our consumer credit card program agreement with Synchrony decreases, our operating results and cash flows could be adversely affected.

We are subject to risks associated with importing merchandise from foreign countries.

A substantial portion of our merchandise is sourced by our vendors and by us outside of the United States. All of our vendors must comply with our supplier legal compliance program and applicable laws, including consumer and product safety laws. Although we diversify our sourcing and production by country and supplier, the failure of a supplier to produce and deliver our goods on time, to meet our quality standards and adhere to our product safety requirements or to meet the requirements of our supplier compliance program or applicable laws, or our inability to flow merchandise to our stores or through the Internet channel in the right quantities at the right time, could adversely affect our profitability and could result in damage to our reputation.

Although we have implemented policies and procedures designed to facilitate compliance with laws and regulations relating to doing business in foreign markets and importing merchandise from abroad, there can be no assurance that suppliers and other third parties with whom we do business will not violate such laws and regulations or our policies, which could subject us to liability and could adversely affect our results of operations.

We are subject to the various risks of importing merchandise from abroad and purchasing product made in foreign countries, such as:

- potential disruptions in manufacturing, logistics and supply;

- changes in duties, tariffs, quotas and voluntary export restrictions on imported merchandise;
- strikes and other events affecting delivery;
- consumer perceptions of the safety of imported merchandise;
- product compliance with laws and regulations of the destination country;
- product liability claims from customers or penalties from government agencies relating to products that are recalled, defective or otherwise noncompliant or alleged to be harmful;
- concerns about human rights, working conditions and other labor rights and conditions and environmental impact in foreign countries where merchandise is produced and raw materials or components are sourced, and changing labor, environmental and other laws in these countries;
- local business practice and political issues that may result in adverse publicity or threatened or actual adverse consumer actions, including boycotts;
- compliance with laws and regulations concerning ethical business practices, such as the U.S. Foreign Corrupt Practices Act; and
- economic, political or other problems in countries from or through which merchandise is imported.

Political or financial instability, trade restrictions, tariffs, currency exchange rates, labor conditions, congestion and labor issues at major ports, transport capacity and costs, systems issues, problems in third party distribution and warehousing and other interruptions of the supply chain, compliance with U.S. and foreign laws and regulations and other factors relating to international trade and imported merchandise beyond our control could affect the availability and the price of our inventory. These risks and other factors relating to foreign trade could subject us to liability or hinder our ability to access suitable merchandise on acceptable terms, which could adversely impact our results of operations. In addition, developments in tax policy, such as the disallowance of tax deductions for imported merchandise, or the imposition of tariffs on imported merchandise, could have a material adverse effect on our results of operations and liquidity.

Disruptions and congestion at ports through which we import merchandise may increase our costs and/or delay the receipt of goods in our stores, which could adversely impact our profitability, financial position and cash flows.

We ship the majority of our private brand merchandise by ocean to ports in the United States. Our national brand suppliers also ship merchandise by ocean. Disruptions in the operations of ports through which we import our merchandise, including but not limited to labor disputes involving work slowdowns, lockouts or strikes, could require us and/or our vendors to ship merchandise by air freight or to alternative ports in the United States. Shipping by air is significantly more expensive than shipping by ocean which could adversely affect our profitability. Similarly, shipping to alternative ports in the United States could result in increased lead times and transportation costs. Disruptions at ports through which we import our goods could also result in unanticipated inventory shortages, which could adversely impact our reputation and our results of operations.

Our Company’s growth and profitability depend on the levels of consumer confidence and spending.

Our results of operations are sensitive to changes in overall economic and political conditions that impact consumer spending, including discretionary spending. Many economic factors outside of our control, including the housing market, interest rates, recession, inflation and deflation, energy costs and availability, consumer credit availability and terms, consumer debt levels, tax rates and policy, and unemployment trends influence consumer confidence and spending. The domestic and international political situation and actions also affect consumer confidence and spending. Additional events that could impact our performance include pandemics, terrorist threats and activities, worldwide military and domestic disturbances and conflicts, political instability and civil unrest. Declines in the level of consumer spending could adversely affect our growth and profitability.

Our business is seasonal, which impacts our results of operations.

Our annual earnings and cash flows depend to a great extent on the results of operations for the last quarter of our fiscal year, which includes the holiday season. Our fiscal fourth-quarter results may fluctuate significantly, based on many factors, including holiday spending patterns and weather conditions. This seasonality causes our operating results to vary considerably from quarter to quarter.

Our profitability may be impacted by weather conditions.

Our merchandise assortments reflect assumptions regarding expected weather patterns and our profitability depends on our ability to timely deliver seasonally appropriate inventory. Unseasonable or unexpected weather conditions such as warm temperatures during the winter season or prolonged or extreme periods of warm or cold temperatures could render a portion of our inventory incompatible with consumer needs. Extreme weather or natural disasters could also severely hinder our ability to timely deliver seasonally appropriate merchandise, preclude customers from traveling to our stores, delay capital improvements or cause us to close stores. A reduction in the demand for or supply of our seasonal merchandise could have an adverse effect on our inventory levels and results of operations.

Changes in federal, state or local laws and regulations could increase our expenses and adversely affect our results of operations.

Our business is subject to a wide array of laws and regulations. Government intervention and activism and/or regulatory reform may result in substantial new regulations and disclosure obligations and/or changes in the interpretation of existing laws and regulations, which may lead to additional compliance costs as well as the diversion of our management's time and attention from strategic initiatives. If we fail to comply with applicable laws and regulations we could be subject to legal risk, including government enforcement action and class action civil litigation that could disrupt our operations and increase our costs of doing business. Changes in the regulatory environment regarding topics such as privacy and information security, tax policy, product safety, environmental protection, including regulations in response to concerns regarding climate change, collective bargaining activities, minimum wage, wage and hour, and health care mandates, among others, as well as changes to applicable accounting rules and regulations, such as changes to lease accounting standards, could also cause our compliance costs to increase and adversely affect our business, financial condition and results of operations.

Legal and regulatory proceedings could have an adverse impact on our results of operations.

Our Company is subject to various legal and regulatory proceedings relating to our business, certain of which may involve jurisdictions with reputations for aggressive application of laws and procedures against corporate defendants. We are impacted by trends in litigation, including class action litigation brought under various consumer protection, employment, and privacy and information security laws. In addition, litigation risks related to claims that technologies we use infringe intellectual property rights of third parties have been amplified by the increase in third parties whose primary business is to assert such claims. Reserves are established based on our best estimates of our potential liability. However, we cannot accurately predict the ultimate outcome of any such proceedings due to the inherent uncertainties of litigation. Regardless of the outcome or whether the claims are meritorious, legal and regulatory proceedings may require that we devote substantial time and expense to defend our Company. Unfavorable rulings could result in a material adverse impact on our business, financial condition or results of operations.

Significant changes in discount rates, actual investment return on pension assets, and other factors could affect our earnings, equity, and pension contributions in future periods.

Our earnings may be positively or negatively impacted by the amount of income or expense recorded for our qualified pension plan. Generally accepted accounting principles in the United States of America (GAAP) require that income or expense for the plan be calculated at the annual measurement date using actuarial assumptions and calculations. The most significant assumptions relate to the capital markets, interest rates and other economic conditions. Changes in key economic indicators can change the assumptions. Two critical assumptions used to estimate pension income or expense for the year are the expected long-term rate of return on plan assets and the discount rate. In addition, at the measurement date, we must also reflect the funded status of the plan (assets and liabilities) on the balance sheet, which may result in a significant change to equity through a reduction or increase to other comprehensive income. We may also experience volatility in the amount of the annual actuarial gains or losses recognized as income or expense because we have elected to recognize pension expense using mark-to-market accounting. Although GAAP expense and pension contributions are not directly related, the key economic factors that affect GAAP expense would also likely affect the amount of cash we could be required to contribute to the pension plan. Potential pension contributions include both mandatory amounts required under federal law and discretionary contributions to improve a plan's funded status.

Our stock price has been and may continue to be volatile.

The market price of our common stock has fluctuated substantially and may continue to fluctuate significantly. Future announcements or disclosures concerning us or any of our competitors, our strategic initiatives, our sales and profitability, our financial condition, any quarterly variations in actual or anticipated operating results or comparable sales, any failure to meet analysts' expectations and sales of large blocks of our common stock, among other factors, could cause the market price of our common stock to fluctuate substantially. In addition, the stock market has experienced price and volume fluctuations that have affected the market price of many retail and other stocks that have often been unrelated or disproportionate to the operating performance of these companies. This volatility could affect the price at which you could sell shares of our common stock.

Securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company's securities. Such litigation could result in substantial costs, divert our management's attention and resources and have an adverse effect on our business, results of operations and financial condition.

The Company's ability to use net operating loss carryforwards to offset future taxable income for U.S. federal income tax purposes may be limited.

The Company has a federal net operating loss (NOL) of $2.4 billion as of November 3, 2018. Nearly all of these NOL carryforwards (expiring in 2032 through 2034) arose prior to December 31, 2017 and are available to offset future taxable income in full. NOLs recognized after December 31, 2017 are not subject to expiration but are only available to offset up to 80% of the Company's future taxable income.

Section 382 of the Internal Revenue Code of 1986, as amended (the Code), imposes an annual limitation on the amount of taxable income that may be offset by a corporation's NOLs if the corporation experiences an "ownership change" as defined in Section 382 of the Code. An ownership change occurs when the Company's "five-percent shareholders" (as defined in Section 382 of the Code) collectively increase their ownership in the Company by more than 50 percentage points (by value) over a rolling three-year period. Additionally, various states have similar limitations on the use of state NOLs following an ownership change.

If an ownership change occurs, the amount of the taxable income for any post-change year that may be offset by a pre-change loss is subject to an annual limitation that is cumulative to the extent it is not all utilized in a year. This limitation is derived by multiplying the fair market value of the Company stock as of the ownership change by the applicable federal long-term tax-exempt rate, which was 2.29% at November 3, 2018. To the extent that a company has a net unrealized built-in gain at the time of an ownership change, which is realized or deemed recognized during the five-year period following the ownership change, there is an increase in the annual limitation for each of the first five-years that is cumulative to the extent it is not all utilized in a year.

The Company has an ongoing study of the rolling three-year testing periods. Based upon the elections the Company has made and the information that has been filed with the Securities and Exchange Commission through November 3, 2018, the Company has not had a Section 382 ownership change through November 3, 2018.

If an ownership change should occur in the future, the Company's ability to use the NOL to offset future taxable income will be subject to an annual limitation and will depend on the amount of taxable income generated by the Company in future periods. There is no assurance that the Company will be able to fully utilize the NOL and the Company could be required to record an additional valuation allowance related to the amount of the NOL that may not be realized, which could impact the Company's result of operations.

We believe that these NOL carryforwards are a valuable asset for us. Consequently, we have a stockholder rights plan in place, which was approved by the Company's stockholders, to protect our NOLs during the effective period of the rights plan. Although the rights plan is intended to reduce the likelihood of an "ownership change" that could adversely affect us, there is no assurance that the restrictions on transferability in the rights plan will prevent all transfers that could result in such an "ownership change".

The rights plan could make it more difficult for a third party to acquire, or could discourage a third party from acquiring, our Company or a large block of our common stock. A third party that acquires 4.9% or more of our common stock could suffer substantial dilution of its ownership interest under the terms of the rights plan through the issuance of common stock or common stock equivalents to all stockholders other than the acquiring person.

The foregoing provisions may adversely affect the marketability of our common stock by discouraging potential investors from acquiring our stock. In addition, these provisions could delay or frustrate the removal of incumbent directors and could make more difficult a merger, tender offer or proxy contest involving us, or impede an attempt to acquire a significant or controlling interest in us, even if such events might be beneficial to us and our stockholders.

Table of Contents

Item 6. Exhibits

Exhibit Index

Exhibit No.	Exhibit Description	Incorporated by Reference: Form	SEC File No.	Exhibit	Filing Date	Filed (†) Herewith (as indicated)
3.1	Restated Certificate of Incorporation of J. C. Penney Company, Inc., as amended to May 20, 2011	10-Q	001-15274	3.1	6/8/2011	
3.2	J. C. Penney Company, Inc. Bylaws, as amended to July 20, 2016	8-K	001-15274	3.1	7/21/2016	
3.3	Certificate of Designation, Preferences and Rights of Series C Junior Participating Preferred Stock	8-K	001-15274	3.1	8/22/2013	
10.1	Amended and Restated Credit Card Program Agreement by and Between J. C. Penney Corporation, Inc. and Synchrony Bank dated as of October 5, 2018					†
10.2	Form of Executive Termination Pay Agreement, effective September 14, 2018					†
10.3	Letter Agreement dated September 29, 2018 between J. C. Penney Company, Inc. and Jill A. Soltau	8-K	001-15274	10.1	10/2/2018	
10.4	Executive Termination Pay Agreement dated September 29, 2018 between J. C. Penney Company, Inc. and Jill A. Soltau	8-K	001-15274	10.2	10/2/2018	
31.1	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					†
31.2	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					†
32.1	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					†
32.2	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					†
101.INS	XBRL Instance Document					†
101.SCH	XBRL Taxonomy Extension Schema Document					†
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					†
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					†
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					†
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					†

SIGNATURES

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

J. C. PENNEY COMPANY, INC.
By /s/Andrew S. Drexler
Andrew S. Drexler
Senior Vice President, Chief Accounting Officer and Controller
(Principal Accounting Officer)

Date: November 28, 2018

Exhibit 10.1

EXECUTION COPY

AMENDED AND RESTATED

CREDIT CARD PROGRAM AGREEMENT

By and Between

J. C. PENNEY CORPORATION, INC.

and

SYNCHRONY BANK

Dated as of October 5, 2018

TABLE OF CONTENTS

AMENDED AND RESTATED

CREDIT CARD PROGRAM AGREEMENT

This Amended and Restated Credit Card Program Agreement (“ **Agreement**”) is made as of October 5, 2018 (the “**Effective Date**”) by and between J. C. PENNEY CORPORATION, INC., with its principal place of business at Plano, Texas, and SYNCHRONY BANK, with its principal place of business at Draper, Utah.

WITNESSETH

WHEREAS, Bank is in the business of providing consumer and commercial credit programs to finance the purchase of goods or services; and

WHEREAS, JCPenney is in the business of selling consumer and commercial goods and services and desires Bank to provide a consumer and a commercial credit program for its customers; and

WHEREAS, JCPenney and Bank are parties to a Consumer Credit Program Agreement, amended and restated as of November 5, 2009, pursuant to which JCPenney and Bank offer JCPenney-branded consumer credit cards (as amended, the “**Existing Consumer Agreement**”); and

WHEREAS, JCPenney and Bank are parties to a letter agreement for a commercial credit program, dated as of October 11, 2013 (as amended, the “**Existing Commercial Agreement**”); and

WHEREAS, JCPenney and Bank desire to amend and restate the Existing Consumer Agreement and the Existing Commercial Agreement as set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions stated herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree to amend and restate the Existing Consumer Agreement and the Existing Commercial Agreement as follows:

ARTICLE I
DEFINITIONS

1.1 Certain Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them in Article XV unless otherwise specifically defined in this Agreement.

1.2 Usage. Unless the context indicates otherwise, the term “**party**” shall mean Bank, on the one hand, and JCPenney, on the other hand, and the term “parties” shall mean Bank and JCPenney.

1.3 Conventions. Unless the context indicates otherwise, the use of: (a) the word “**including**” shall be deemed to be equivalent to “including, but not limited to”; and (b) the word “**amended**” shall mean “amended, modified, restated or supplemented, from time to time.”

1.4 Interpretation. For purposes of interpreting this Agreement, reference to a Section or a subsection shall be deemed to include any corresponding Schedule or corresponding subsection thereof, as the case may be (e.g., a reference to Section 10.4 of this Agreement shall be deemed to include Schedule 10.4(a) and Schedule 10.4(b)). In the event there are inconsistencies between this Agreement (exclusive of the Schedules) on the one hand, and the Schedules on the other hand, the former shall govern; provided, however, that the terms of the Schedules shall control in the event of such inconsistency to the extent expressly provided in Schedule 13, Schedule 14 and Schedule 16.

ARTICLE II
ESTABLISHMENT AND PROMOTION OF THE PROGRAM

2.1 Establishment of Program and Accounts.

(a) JCPenney and Bank have established and will maintain the Program pursuant to which (i) under the Private Label Program, the Dual Card Program and the Home Services Card Program, JCPenney and Bank will make open-end, revolving credit available to existing and new qualified customers of JCPenney and the Authorized Entities and (ii) under the Commercial Card Program JCPenney and Bank will make non-revolving credit available to Persons for commercial purposes, in each case with Bank making loans to such Persons to finance Purchases pursuant to the terms and conditions of this Agreement.

(b) During the Term (i) Bank shall operate the Program in accordance with this Agreement, including the Service Level Standards, as this Agreement may be amended from time to time by agreement in writing of the parties hereto, (ii) JCPenney shall maintain, on an ongoing basis, the credit-related point-of-sale functionality sufficient to meet the requirements of the Program and this Agreement, including the capability to capture and transmit to Bank information for instant credit applications, authorizations and settlements, which functionality may be modified or upgraded after the Effective Date solely by mutual agreement of the parties, which agreement shall not be unreasonably withheld, conditioned or delayed, (iii) the parties shall reasonably cooperate with each other to implement modifications or upgrades to such point-of-sale functionality that are mutually agreed to by the parties from time-to-time, and (iv) while performing its responsibilities under this Agreement, particularly those responsibilities requiring customer contact, Bank will use commercially reasonable efforts to make its role as third-party provider (and that of its Affiliates and others acting on Bank's behalf) transparent to Cardholders to the extent possible and legally permissible; provided that it is understood that Credit Card Agreements and Account Documentation shall reflect the relationship between Bank and Cardholders.

(c) Subject to the terms and conditions of this Agreement, for each consumer who has an address within the fifty (50) states of the United States,, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States (the "**Territory**"), and who applies for an Account after the date hereof (i) in person at a retail JCPenney Location within the Territory, (ii) by mailing to Bank a Credit Card Application obtained from a JCPenney Location within the Territory, (iii) via the Internet or any JCPenney digital channel as mutually agreed to by the parties, (iv) by telephone, (v) by any direct mail offerings, (vi) through an APO or FPO address for those members of the United States and state military residing outside the United States, or (vii) through any other application method mutually agreed to by the parties, and who qualifies for credit under the Program in accordance with the Risk Criteria (as the same may be determined by Bank and modified in accordance with Section 2 (Risk Criteria) of

Schedule 3.3(b) (Minimum Target Approval Rates and Incidental Credit Line Targets; Risk Criteria), Bank shall open an Account, issue to such Cardholder a Credit Card, activate such Cardholder's Credit Card and grant credit to such Cardholder for Purchases. Bank's rights and obligations in respect of consumers with addresses in Canada shall be as stated in Schedule 2.1(c) (Canadian Consumers).

(d) Services. Subject to the terms and conditions of this Agreement, Bank shall perform all of the services necessary to operate and actively market the Program in accordance with the terms and conditions of this Agreement at its own expense (except as otherwise expressly set forth herein), in accordance with the Program resource requirements set forth in Schedule 2.1(d) (Program Resource Requirements) ("**Services**") including:

(i) Operate and market the Program as customized, JCPenney-branded credit plans;

(ii) Actively solicit, accept, and review Credit Card Applications from, or on behalf of, prospective Cardholders;

(iii) Determine the creditworthiness of prospective Cardholders and approve creditworthy Credit Card Applications in accordance with the Risk Criteria;

(iv) Establish Accounts for all approved Applicants with credit limits to be set by Bank in accordance with the Risk Criteria;

(v) Provide all required disclosures, terms and conditions to Cardholders, including Credit Card Agreements;

(vi) Produce and issue Credit Cards to approved Applicants featuring the JCPenney name and logotype or such other names or logotypes as are mutually agreed to by the parties;

(vii) Provide authorizations to JCPenney and Authorized Entities for Purchases by means of Bank's authorization system and in accordance with the Bank Operating Procedures;

(viii) Extend credit on Accounts to Cardholders for purchases of Goods and/or Services by Cardholders from JCPenney and Authorized Entities;

(ix) Support the use of Inserts, statement messages and other marketing efforts of JCPenney to Cardholders as provided in Section 3.16 (Inserts and Other Statement Communications);

(x) Support the marketing efforts in this Agreement with respect to Accounts, including use of the Accounts in the Incidental Marketing Programs specified in Section 3.7 (Incidental Marketing and Debt Protection Programs);

(xi) Generate and deliver Billing Statements to Cardholders;

(xii) Process and apply Cardholder payments to the applicable Accounts in accordance with the Service Level Standards;

(xiii) Manage all collection, charge-off, recovery and bankruptcy processes arising from defaulted Accounts and upon written request provide to JCPenney periodic reports of charge-off and recovery activity related to bad debts;

(xiv) Respond to all Cardholder service and billing inquiries and disputes relating to Accounts in a courteous manner and in accordance with the Service Level Standards;

(xv) Settle with JCPenney for any amounts due hereunder in accordance with Schedule 4.1 (Settlement);

(xvi) Operate call centers (each, a "**Call Center**") to address, among other things, customer inquiries regarding the Program, collections calls, calls involving potential Cardholder fraud, and similar calls related to the Credit Cards in accordance with Section 6 (Customer Service and Collections Locations) of Schedule 2.1(d) (Program Resource Requirements);

(xvii) Operate a high quality, ethical Program that enhances the goodwill of JCPenney and Bank with Cardholders and other JCPenney customers;

(xviii) Perform periodic credit reviews of the Accounts; and

(xix) Generally operate the Program and service all Accounts and Cardholders in accordance with this Agreement and competitive industry standards.

(e) Compliance with Applicable Law. Bank shall perform its Services under this Agreement in compliance with Bank Applicable Law. Bank shall be responsible for monitoring changes in Bank Applicable Law which affect the Program or Bank's Services hereunder and for implementing appropriate changes in Bank's practices to the extent necessary to comply with Bank Applicable Law. Bank shall also inform JCPenney of any changes to Bank Applicable Law to the extent such changes in Bank Applicable Law requires a change by JCPenney or any Authorized Entity.

(f) Critical Change in Applicable Law. In the event of a Critical Change in Applicable Law (as defined in Schedule 2.1(f) (Critical Change in Applicable Law)), Bank and JCPenney shall have the rights and obligations set forth in Schedule 2.1(f) (Critical Change in Applicable Law) (it being understood, in circumstances where the requirements of Schedule 2.1(f) are different from those of Schedules 10.3 (Rights and Obligations Upon Notice of Termination) and 10.4(a) (Purchase Option) of this Agreement, the provisions of said Schedule 2.1(f) (Critical Change in Applicable Law) shall govern).

(g) Service Level Standards; Resource Requirements. Bank will perform the Services in accordance with this Agreement and all schedules attached hereto, including the Service Level

Standards set forth in Schedule 2.1(g) (Service Level Standards) and the resource requirements set forth in Schedule 2.1(d) (Program Resource Requirements), as they may be amended from time to time by agreement of the parties hereto. The provisions of Schedule 2.1(g) (Service Level Standards) shall apply in the event of a failure to meet any Service Level Standards as set forth in Schedule 2.1(g) (Service Level Standards).

2.2 Certain Obligations of JCPenney Under the Program .

(a) During the Term of this Agreement, JCPenney shall, at its expense (unless otherwise specified herein), in accordance with the terms and conditions of this Agreement: perform in-store services to encourage the creation of Accounts and facilitate the use of Accounts by Cardholders. JCPenney shall perform such services, including the following activities:

(i) Accept the Credit Card in order that Cardholders may make Purchases on their Accounts at or through all JCPenney Locations in accordance with the terms of the applicable Program;

(ii) Promote in accordance with the Marketing Plan, and accept and forward in accordance with the Bank Operating Procedures, Credit Card Applications, and communicate information therefrom about prospective Cardholders to Bank;

(iii) Instruct Cardholders on how to make changes of address or contact Bank to facilitate any changes to the Cardholder's Account;

(iv) Obtain authorizations in accordance with the Bank Operating Procedures;

(v) Assist Cardholders in communicating with Bank through Bank-provided toll-free telephone number facilities, the Program website, email, mobile application (including any chat functions), and other commonly accepted forms of communication;

(vi) Provide receipts to or for Cardholders relating to In-Store Payments and handle such In-Store Payments as provided in Section 3.11(b) (In-Store Payments);

(vii) Provide the benefits to Cardholders as set forth on Schedule 2.2.(a)(vii) (Cardholder Benefits) (collectively, the "**Cardholder Benefits**"), and after prior notice and consultation with Bank, JCPenney may, in its sole discretion, change the Cardholder Benefits at any time; provided, however, that (A) JCPenney shall maintain multi-tier benefits for Private Label Credit Cards and first purchase incentives for all Credit Cards, (B) the Cardholder Benefits, in the aggregate, shall be competitive to the benefits provided by the Synchrony Peer Group to their cardholders, and (C) the Cardholder Benefits shall be in addition to benefits in any multi-tender loyalty program offered by JCPenney. For the avoidance of doubt, JCPenney, in its sole discretion, may offer additional bonus promotions in connection with the JCPenney rewards program that are tender neutral;

(viii) Offer assistance to customers requesting Credit Card Applications or resolution of problems related to the Accounts of those who become Cardholders;

(ix) Display promotional materials related to Accounts in accordance with Section 2.4 (Promotion of Program);

(x) In consultation with Bank, provide to Bank design elements meeting Bank's specifications for use in producing Credit Cards and other JCPenney-branded Program Materials;

(xi) Encourage the establishment and use of Accounts at all JCPenney Locations and ensure that the Program is the preferred financing alternative for Goods and/or Services at JCPenney Locations, subject to JCPenney's rights under Section 3.21 (Exclusivity);

(xii) Provide the relevant Bank-provided disclosures (A) in any Program-related advertising performed by or on behalf of JCPenney or an Authorized Entity, (B) to each Applicant before transmitting such individual's Credit Card Application information to Bank, and (C) to each Cardholder in connection with promotional credit transactions;

(xiii) Maintain a commercially reasonable policy for the exchange, return and adjustment of Goods and/or Services that is adequately communicated to customers and is in accordance with Applicable Law;

(xiv) Only submit Charge Transaction Data in respect of Goods and/or Services that JCPenney or the Authorized Entities sold at or through JCPenney Locations;

(xv) Cooperate in the resolution of any Cardholder disputes; and

(xvi) Contact the Bank on the Cardholder's behalf when instructed to do so when an authorization request is denied or a Credit Card Application is pended.

(b) JCPenney shall provide, at its expense, to Cardholders forms of Charge Slips and/or copies thereof, and forms of Credit Slips. To the extent not available to Bank through JCPenney's electronic system, JCPenney shall provide, upon Bank's request, copies of delivery slips, Credit Card Applications, or other Account materials retained by JCPenney or an Authorized Entity.

(c) Authorized Entities.

(i) JCPenney shall use commercially reasonable efforts to maintain Authorized Entities in accordance with its practices as of the Effective Date, and shall communicate on an ongoing basis with Cardholders regarding their ability to use Credit Cards at the Authorized Entities in a manner reasonably acceptable to both JCPenney and Bank.

(ii) An Authorized Entity shall be permitted to accept Credit Cards (other than Commercial Cards) in accordance with the provisions of this Agreement applicable to acceptance of Credit Cards by JCPenney, including the promotion of such acceptance, and JCPenney shall be responsible to Bank for compliance with such provisions by the Authorized Entity. For avoidance of doubt, an Authorized Entity shall not accept In-Store Payments or assist in processing Credit Card Applications. Bank shall have the same rights against JCPenney, and JCPenney shall have the same obligations to Bank, with respect to acts or omissions by an Authorized Entity related to acceptance of Credit Cards and other participation in the Program as Bank would have under this Agreement if JCPenney had committed the act or omission. If Bank notifies JCPenney of an Authorized Entity's non-compliance with the terms of this Agreement, and the Authorized Entity fails to cure such non-compliance within thirty (30) days of such notice, then Bank may deliver to JCPenney a notice of termination for such Authorized Entity, and if the Authorized Entity does not cure such non-compliance within fifteen (15) days of JCPenney's receipt of the notice of termination for such Authorized Entity, Bank shall immediately have the right to terminate the authority of such Authorized Entity to accept Credit Cards. Notwithstanding anything in this Agreement, Bank may suspend the authority of an Authorized Entity for non-compliance with the terms of this Agreement with notice to JCPenney in Exigent Circumstances.

(iii) In the case of JCPenney, and in the event that any Authorized Entity which is an Affiliate of JCPenney shall cease to be an Affiliate of JCPenney, at the request of JCPenney, Bank shall permit such Affiliate to continue to participate in the Program as an Authorized Entity, subject to Bank's rights under Section 2(c)(ii).

(d) JCPenney shall (at its own expense unless otherwise provided in the Marketing Plan) actively promote the Program in a manner to be agreed upon by the parties, including: (i) providing training to its employees in accordance with Section 3.12 (Training); (ii) providing materials to customers that are the most recent materials provided by Bank to JCPenney Locations; and (iii) at JCPenney's discretion, providing other support, such as in-store discounts, designed to promote credit marketing in accordance with the Marketing Plan.

(e) JCPenney shall be solely responsible for allocating payments made to it by Bank for any Authorized Entities hereunder, and Bank shall not be responsible or liable, for or in connection with, a failure by JCPenney to do so.

(f) When submitting authorizations for Cardholder transactions, if Bank does not respond to JCPenney's authorization requests due to the failure of Bank's authorization system, JCPenney may submit transactions at or below the Floor Limit without any authorization, and all such transactions will be deemed "authorized" transactions. As of the Effective Date, the Floor Limit is two hundred dollars ($200) for all days other than days during the Freeze Period, and five hundred dollars ($500) for all days during the Freeze Period. JCPenney may request an increase in the Floor Limit for any sustained period when Bank's authorization system is not operational. Any increase in the Floor Limit must be approved by Bank Program Coordinator or designee in writing, with approval through e-mail being sufficient.

2.3 Obligation to Extend Credit. Bank shall extend credit to Cardholders in amounts set forth in Charge Transaction Data received and accepted by Bank; provided that such extension of credit shall be subject to (i) the credit limits applicable to each Account, including any automatic credit overline extension, and (ii) the Risk Criteria and the terms and conditions in the Credit Card Agreements.

2.4 Promotion of Program.

(a) Bank and JCPenney mutually agree to actively market the Program in accordance with the marketing plan mutually approved by the parties (the "**Marketing Plan**"). Bank shall support marketing of the Program by, among other things, funding the Bank Marketing Fund as set forth in Section 2.6 (Marketing Fund). Unless otherwise agreed in writing by the parties, the Bank Private Label Marketing Obligation, and the portion of the Bank Dual Card Marketing Obligation attributable to Dual Card In-Store Net Credit Volume shall be used to promote the Program in JCPenney Locations and the portion of the Bank Dual Card Marketing Obligation attributable to the Dual Card Out of Store Net Credit Volume shall be used to promote the Program outside of JCPenney Locations. JCPenney shall support the Program by, among other things, providing the Cardholder Benefits in accordance with the terms of Schedule 2.2(a)(vii) (Cardholder Benefits). JCPenney shall (i) administer incentive programs for sales associates consistent with existing JCPenney practices and (ii) coordinate host/hostess booth personnel as mutually agreed to by the parties in the Marketing Plan, using funding to be provided pursuant to the Marketing Plan. JCPenney shall notify Bank of any employee incentive programs related to the Program prior to the implementation of such programs, and Bank shall have the right to review and approve the terms of such employee incentive programs for compliance with Bank Applicable Law and Bank policy, provided that such Bank policy is consistent with policies applied by Bank to its other private label and co-branded credit card programs.

(b) Either party, from time to time, may propose a promotion related to the Program. JCPenney may, in its reasonable discretion, determine whether to run any such promotion.

(c) JCPenney shall display and make available at JCPenney Locations, in a manner to be agreed by the parties, Credit Card Applications provided by Bank as a Program Expense, to be used in connection with the Program. Expenses in respect of in-store signage, including point-of-sale signage and tent signage related to Accounts, and decals for acceptance of Credit Cards, shall be applied against the Bank Marketing Fund in accordance with Section 2.6 (Marketing Fund). Any credit-related advertising or signage used by JCPenney shall be displayed or otherwise employed in a manner consistent with the Marketing Plan. Any in-store signage and in-store promotional materials, as well as any outbound telemarketing scripts, must be approved by JCPenney prior to usage. JCPenney may not, without Bank's prior written consent, use Bank's name or logo type (or the name or logo type of any Affiliate of Bank) in any advertisement, press release or promotional materials. Bank shall have the right to review all Program advertising created by JCPenney. Bank's determination of the billing or credit terms for any promotion is not intended to be and will not be construed to be an approval of any materials used in advertising or implementing such promotions, except that Bank shall be responsible for any Truth-in-

Lending or similar state credit disclosure language provided by Bank to JCPenney or any Authorized Entity for use in advertising copy, if such language is used without modification and in the manner specified by Bank. Any approval by JCPenney of any materials that contain billing or credit terms is not intended to be and will not be construed to be an approval of such terms.

(d) Development and Review of Program Materials . In addition to the obligations set forth in Section 2.4(b) and (c), JCPenney and Bank shall have the following responsibilities for the development of Account materials, Targeted Solicitation Materials, Fulfillment Materials, and General Advertising Materials (collectively, "**Program Materials**"):

(i) Targeted Solicitation Materials. Bank shall develop direct, digital and mail pieces, telemarketing scripts, usage and retention communications and other related materials that target prospective or existing Cardholders (collectively, "**Targeted Solicitation Materials**") and new card packages for new Cardholders and other related informational pieces for Cardholders (collectively, "**Fulfillment Materials**"). Bank shall provide JCPenney an opportunity to review and approve the Targeted Solicitation Materials and the Fulfillment Materials. Bank shall implement any reasonably requested modifications to the design, content and format of the Targeted Solicitation Materials and the Fulfillment Materials.

(ii) General Advertising Materials. JCPenney shall develop, as a JCPenney Expense unless otherwise mutually agreed, store circulars, newspaper inserts, store information, television, radio, and e-mail advertising, and other advertising materials that offer Credit Cards (collectively, "**General Advertising Materials**"). Bank shall provide JCPenney with standard disclosures to be used by JCPenney in General Advertising Materials. JCPenney shall produce General Advertising Materials in compliance with the standard disclosures and shall present General Advertising Materials to Bank for its timely review and approval for compliance with Bank Applicable Law.

(e) The design of any Credit Cards used in the Program shall be the same as the design used in the Program on the Effective Date, with such modifications as are mutually agreed to by JCPenney and Bank, except that JCPenney may, in its sole discretion, alter the JCPenney logo and color used on any Credit Card used in the Program with reasonable advance notice to Bank for new Credit Cards only. Bank will assume the cost, as a Bank Expense, of one legally permissible reissuance of a Credit Card; such reissuance to include the re-issuance of all Credit Cards on which there has been a purchase within the past twelve (12) months, and excluding Bank's customary and usual Account exclusions, as discussed with JCPenney.

2.5 Marketing Plans.

(a) The parties intend that a Marketing Plan will be agreed upon prior to the commencement of a Fiscal Year, and although the parties may agree upon amendments and modifications during the Fiscal Year, such Marketing Plan will be in effect for the duration of such Fiscal Year. Annual changes to the Marketing Plan for a Fiscal Year shall be agreed to by JCPenney and Bank in accordance with the normal ongoing JCPenney planning processes, and in any event no later than ninety (90) days prior to the commencement of such Fiscal Year

("**Marketing Plan Date**"). If the parties cannot agree upon the Marketing Plan by the Marketing Plan Date, then the parties may refer the dispute or disagreement to the Program Coordinators. Until the dispute or disagreement is resolved, the parties will implement those portions of the modifications to the Marketing Plan on which the parties have agreed. With respect to other credit marketing initiatives on which the parties cannot agree, JCPenney shall make the determination with respect to such credit marketing initiatives as will be implemented at JCPenney Locations and Bank shall make the determination with respect to such credit marketing initiatives as will be implemented in locations other than JCPenney Locations, provided that the amount of the Bank Marketing Fund that shall be utilized for such JCPenney Locations and non-JCPenney Location credit marketing initiatives shall be consistent with the distribution of marketing expenditures as between JCPenney Locations and non-JCPenney Location credit marketing activities for the last Fiscal Year.

(b) The Marketing Plan for each Fiscal Year shall include an analysis provided by Bank, which analysis shall be prepared using free publicly available information of competitive private label credit programs offered by entities in the Technology Peer Group or such other competitors as are otherwise agreed to by the Program Coordinators. Such analysis shall include a comparison of Cardholder pricing and terms, card features such as rebate/point programs or loyalty programs, exclusive cardholder offerings, different product offerings such as preferred shopper cards, and supporting creative materials, such as Cardholder applications and marketing materials. Such analysis also shall include a comparison of Internet credit card functionality, including application, approval and authorization and other factors that would support a comprehensive comparison of the Program to that of such other retailers, including credit sales penetration, credit line utilization, and average balance level.

(c) Within thirty (30) days of the end of each Fiscal Quarter, Bank shall provide to JCPenney reports tracking the effectiveness of the Marketing Plan. The tracking metrics to be included in the quarterly reports will be included as part of the Marketing Plan.

2.6 Marketing Fund.

(a) Bank shall establish the bank marketing fund (by creation of a record maintained by Bank) and make disbursements from such fund in connection with credit marketing of the Program (the "**Bank Marketing Fund**") as provided in this Agreement. For each Fiscal Year during the Term, Bank shall credit the Bank Marketing Fund in the amount of the Bank Marketing Obligations (or, for the Fiscal Year in which this Agreement commences or terminates, the amount of the Bank Marketing Obligation computed for that portion of such Fiscal Year that this Agreement is in effect). The Bank Marketing Fund expenditures for each Fiscal Year shall be made throughout that Fiscal Year in accordance with the then-current Marketing Plan or as otherwise agreed to by the parties. Unspent amounts from a given Fiscal Year during the Term will be carried over to future Fiscal Years to be spent during the Term. Those activities, the expenses of which shall be applied against the Bank Marketing Fund, as well as those activities the expenses of which shall be either a Bank Expense, JCPenney Expense or Program Expense, and shall not be applied against the Bank Marketing Fund, are set forth in Schedule 2.6 (Marketing). Bank shall provide a quarterly report to JCPenney regarding all marketing expenses paid by Bank that will be applied against the Bank Marketing Fund during the prior Fiscal Quarter and a forecast of such expenses for the balance of the Fiscal Year. Any funds remaining in the Bank Marketing Fund at the end of the Term shall be treated as income of the Program for purposes of the Program Gain Share Payment under Section 4.5 (Program Gain Share Payment).

(b) In addition to the Bank Marketing Obligation, Bank shall pay to JCPenney, as a Bank Expense, additional amounts as set forth in Section 3 (Additional Marketing Obligations) of Schedule 2.6 (Marketing) for marketing support that JCPenney provides directly to the Program.

(c) JCPenney agrees to marketing obligations as set forth in Section 4 (Other Marketing Agreements) of Schedule 2.6 (Marketing).

2.7 Promotional Financing Programs. JCPenney may offer Deferred Interest Promotions, Reduced Interest Promotions and No Interest Promotions (each as defined below), or such other promotions as are mutually agreed to by the parties, to consumers as a part of marketing the Program other than the Commercial Card Program ("**Credit Promotions**"). The frequency and volume of such Credit Promotions for Purchases shall be determined by JCPenney. The Credit Promotions will be subject to Promotional Discount Charges payable by JCPenney to Bank in accordance with the calculation set forth in Schedule 2.7 (Promotional Financing Programs). JCPenney will receive a credit for any Promotional Discount Charges paid to Bank that are associated with Purchases subject to chargeback or return. Based on the Credit Promotions that Bank has priced, JCPenney, in its sole discretion, will determine what Credit Promotions it will run. Bank shall not remove any consumer's promotional rate during the stated promotional period without the prior written consent of JCPenney. "**Deferred Interest Promotion**" means a credit promotion pursuant to which a Cardholder must make at least minimum payments during the promotional period and if they pay the promotional balance in full during the promotional period, no interest charges are imposed with respect to such promotional purchases (but if the promotional purchase balance is not paid in full during the promotional period, interest charges are assessed from the purchase date). "**Reduced Interest Promotion**" means a credit promotion pursuant to which a Cardholder pays interest charges that are reduced from standard charges on new purchases for a specified period of time but must make minimum monthly payments. "**No Interest Promotion**" means a credit promotion pursuant to which a Cardholder does not pay interest charges on a purchase for a specified period of time but must make minimum monthly payments. In addition to the forgoing, the parties shall have the rights and obligations set forth in Schedule 2.7 (Promotional Financing Programs).

ARTICLE III
ADMINISTRATION OF PROGRAM

3.1 Preparation of Documents. Bank and JCPenney shall cooperate with and assist each other in the preparation and delivery of Account Documentation to be used in connection with the Program. Bank shall provide to JCPenney, as a Program Expense, copies of all such Account Documentation, in Bank's possession both current and historical, and such other documents or materials as are reasonably requested by JCPenney, to comply with any regulatory agency proceedings. JCPenney shall provide to Bank, as a JCPenney Expense, copies of such Account Documentation in JCPenney's possession, both current and historical, and such other documents or materials as are reasonably requested by Bank to comply with any regulatory agency proceedings. Bank agrees to provide the current Account Documentation which Bank is obligated to provide under this Agreement in sufficient quantities to enable

JCPenney to maintain its participation in the Program, and Bank shall deliver such Account Documentation to such locations as the parties mutually agree. The design and marketing panels, and segments thereof (if any), of certain Account Documentation materials, namely Credit Card Applications, Credit Card carriers, Credit Card Agreements, Credit Cards, change of terms notices, and other credit-related promotional materials, shall be agreed upon by Bank and JCPenney, and are subject to change from time to time as mutually agreed to by the parties.

3.2 Personnel, Features and Technology.

(a) Personnel, Features and Technology. In order to operate a competitive credit program, Bank shall: (i) provide a team of dedicated key management personnel as set forth on Schedule 2.1(d) (Program Resource Requirements) to operate the Program in accordance with this Agreement with the levels of competence, experience and expertise at least equal in the aggregate to those provided by Bank to Bank's other major credit card programs; (ii) make available features and employ technology in support of the Program within a reasonable time after Bank makes such features available to and employs such technology for Bank's other similar credit card programs (except where unable to do so because of the proprietary rights of others); and (iii) make available features and employ technology in connection with the Program which are, in the aggregate, at least equal to the features provided and the technology employed by other leading similar credit card programs. JCPenney shall have the right to interview the Bank Managers, and provide feedback with respect to their role with the Program, to the extent provided in Schedule 2.1(d) (Program Resource Requirements).

(b) Personnel Review. On an annual basis, Bank shall conduct a review of the quantity and the quality of the personnel operating the Program and will prepare a plan detailing the Program's personnel needs for the next Fiscal Year. Such plan will be discussed with the JCPenney Program Coordinator and if the JCPenney Program Coordinator believes that the plan is inadequate, the area of concern will be presented for further discussion by the parties. In the event that the parties determine that additional staffing shall be necessary to provide the Services or improve the effectiveness or competitiveness in the Program, Bank shall use commercially reasonable efforts to make sufficient personnel, with appropriate levels of competence, experience and expertise, available to provide such Services as promptly as practicable.

(c) Evolution. The parties anticipate that the Program (including the features of the Program and the systems and technologies used by both parties in the Program) will evolve over time to keep pace with technological advancements and improvements in the methods of delivering data, receiving data, processing data, generating output, marketing innovations, and performing other Services in connection with the Program, and that the pace of technical advancements and improvements will be at least consistent with the pace of technical advancements and improvements of the Peer Group Programs in the aggregate. Subject to the provisions of this Section 3.2, the parties agree to cooperate with each other in taking advantage of such technological advancements and other improvements to maintain and improve the effectiveness and competitiveness of the Program.

(d) Certain Expenses. The costs and expenses of maintaining, developing, enhancing or otherwise modifying the systems and technologies of the Bank used in the Program shall be a Bank Expense. The costs and expenses of maintaining, developing, enhancing or otherwise modifying the systems and technologies of JCPenney used in the Program shall be a JCPenney Expense. Notwithstanding anything in this Agreement, a party shall not undertake any development, enhancement or other modification of its systems or technologies that would require the other party to make any material development, enhancement or modification to the other party's systems or technologies, or incur any cost or expense with respect thereto, without the other party's prior written consent.

(e) SaaS Agreement. The parties agree that the SaaS Agreement shall terminate upon the Effective Date. Additionally upon the Effective Date, the parties shall abide by the software as a service terms set forth in Schedule 3.2(e) (Software as a Service).

(f) Mobile Wallets. The parties shall have the rights and obligations with respect to the provisioning of Mobile Wallets and the facilitating of certain transactions by Mobile Wallets as set forth in Schedule 3.2(f) (Mobile Wallets).

3.3 Cardholder Terms and Risk Criteria.

(a) The Cardholder Terms for Private Label Accounts, Dual Card Accounts, and Home Services Accounts, as of the Effective Date, and certain rights and obligations of the parties with respect to modification of the Cardholder Terms are set forth in Schedule 3.3(a) (Certain Cardholder Terms). Bank shall have the sole right to establish and change Cardholder Terms subject to the provisions of this Section 3.3(a) and Schedule 3.3(a) (Certain Cardholder Terms).

(b) The Approval Rate Targets and Average Initial Credit Line Targets for the Private Label Program and the Risk Criteria for the Program, respectively as of the Effective Date, and certain rights and obligations of the parties with respect to modification of Risk Criteria are set forth in Schedule 3.3(b) (Minimum Target Approval Rates and Initial Credit Line Targets; Risk Criteria). Bank shall have the sole right to establish and change Risk Criteria subject to the provisions of this Section 3.3(b) and Schedule 3.3(b) (Minimum Target Approval Rates and Initial Credit Line Targets; Risk Criteria). Notwithstanding any rights to modify Risk Criteria set forth in Schedule 3.3(b) (Minimum Target Approval Rates and Initial Credit Line Targets; Risk Criteria), Bank will periodically perform periodic reviews of Private Label Accounts and Dual Card Accounts to determine adjustments, including adjustments that may increase credit lines on such Accounts.

3.4 Losses.

(a) As between Bank and JCPenney, all losses, including fraud, credit, deceased, bankruptcy, or unauthorized transactions on Accounts, shall be borne solely by Bank without recourse to JCPenney; except for (i) losses incurred in respect of transactions charged back pursuant to Section 7.1 (Chargeback) hereof, (ii) losses incurred after Accounts are purchased by JCPenney in accordance with

Section 10.4(a) (Purchase Option), 3.25 (Securitization), and (iii) other losses expressly specified in Schedule 3.7 (Incidental Marketing and Debt Protection Programs).

3.5 Accounts.

(a) Ownership of Accounts. Bank shall be the sole and exclusive owner of all Accounts and shall be entitled to receive all payments made by Cardholders on Accounts. Purchases under the Program shall constitute extensions of credit directly from Bank to Cardholders. JCPenney will not, at any time, have any rights in any of the Accounts established under the Program or in any obligations owing at any time thereunder unless JCPenney subsequently purchases such Accounts or obligations from Bank.

(b) Record Retention. Bank shall comply with record retention standards for the Program to be agreed upon by the parties, such record retention standards to be no less than Bank's record retention standards on the Effective Date, provided that Bank shall keep individual electronic Account records for a minimum of forty-eight (48) months after the Account ceases to be a Financially Active Account.

3.6 Ownership and Use of Information. The parties' rights and obligations with respect to JCPenney Information, Program Information and other data used by the parties in connection with the Program and this Agreement are set forth in Schedule 3.6 (Ownership and Use of Information; Data Security). In addition, the parties' respective data security obligations, including rights and obligations related to any Security Incident, are also set forth in Schedule 3.6 (Ownership and Use of Information; Data Security).

3.7 Incidental Marketing and Debt Protection Programs. The parties' rights and obligations in respect of (a) Incidental Marketing Programs and (b) the Debt Protection Program shall be as set forth in Schedule 3.7(a) and Schedule 3.7(b), respectively. "**Debt Protection Program**" means the program which may be offered through Bank and under which Bank makes Debt Protection Products available to Cardholders.

3.8 New Stores; Acquisitions/New Affiliates. The parties' rights and obligations in respect of new stores, acquisitions and new affiliates shall be as set forth in Schedule 3.8 (New Stores, Acquisitions/New Affiliates).

3.9 Store Closings; Going Out of Business Sales. The parties' rights and obligations in respect of store closings and going out of business sales shall be as set forth in Schedule 3.9 (Store Closings; Going Out of Business Sales).

3.10 Information Access. In order to enable JCPenney to update JCPenney Information, Bank shall provide to JCPenney monthly, as a Program Expense, the portion of the cardholder extract file containing the Account information maintained by or for Bank that Bank provides to JCPenney as of the Effective Date. Schedule 3.10 (Information in Cardholder Extract File Provided to JCPenney) sets forth the customer Account information to be included in the customer extract file, which Account information may be changed from time to time by agreement of the parties, subject to such limitations provided in

Schedule 3.6 or as required by Applicable Law. The parties agree that they will use commercially reasonable efforts in accordance with applicable privacy laws, regulations, standards and policies in order to exchange their "Do not solicit lists" or their "Do not write lists" of Cardholders.

3.11 Other In-Store Credit Activities.

(a) Credit Support. JCPenney shall provide in-store credit activities, which include, but are not limited to, acceptance of In-Store Payments and other credit support, as more specifically set forth on Schedule 3.11(a) (In-Store Credit Activities).

(b) In-Store Payments. JCPenney shall accept, regardless of tender, In-Store Payments from Cardholders on their Accounts in accordance with the Credit Store Manual. All In-Store Payments shall be deemed to be held in trust by JCPenney for the benefit of Bank until such payments are actually received by Bank or netted by Bank against Charge Transaction Data submitted to Bank in accordance with the Settlement Procedures in Schedule 4.1 (Settlement). JCPenney may promote the fact that Cardholders, or other persons acting on behalf of Cardholders, may make In-Store Payments. JCPenney shall notify Bank immediately of receipt of In-Store Payments pursuant to the processes described in the Credit Store Manual. Bank shall credit In-Store Payments to the Cardholder's Account as of the date the payment is accepted in the store, and the "open-to-buy" on such Account shall be increased upon Bank's receipt of notice of payment from JCPenney to reflect such In-Store Payment regardless of tender (subject to Bank's standard procedures on restoring the open-to-buy on Accounts). JCPenney shall issue receipts for such payments in compliance with Applicable Law and shall report to Bank the tender type for each payment.

3.12 Training.

(a) Bank and JCPenney acknowledge the importance of training. The parties shall agree upon the training which is appropriate and necessary to achieve a successful Program.

(b) To train Bank Field Sales Managers, JCPenney in coordination with Bank, as a Program Expense, shall develop training materials to introduce Bank employees to JCPenney and to keep them current on direction, products, merchandising and marketing programs of JCPenney's various businesses and Bank, as a Program Expense, shall make its employees and the materials available for training with respect to JCPenney's and Authorized Entities' businesses, using appropriate means to provide such training. Bank, as a Program Expense, shall develop, cause to be developed, or purchase, and administer all other training to its employees to enhance their ability to perform the services contemplated under this Agreement.

(c) To train JCPenney employees, Bank in coordination with JCPenney, as a Program Expense, shall develop and produce materials for training associates of JCPenney and the Authorized Entities on the Program. JCPenney, as a JCPenney Expense, shall use such materials to train its associates and the associates of Authorized Entities to promote the Program, and obtain authorizations using appropriate means to provide such training. In the case of JCPenney, such training shall also include acceptance of Credit Card Applications. Bank also shall assist JCPenney and the Authorized Entities with training of employees of JCPenney and Authorized Entities in credit-related issues, which training shall be provided by Field Sales Managers or in such other fashion as may be mutually agreed to by the parties.

JCPenney and Authorized Entities shall use their training distribution mechanism and the training staff to provide store personnel and other appropriate employees the information to perform store operations and other obligations of JCPenney and Authorized Entities under the Program.

(d) Bank shall assist JCPenney and Authorized Entities with making commercially reasonable changes to the credit-related provisions of the Credit Store Manual and with training of employees by providing them with training materials with respect to the implementation of in-store credit-related changes as a result of changes in Applicable Law.

3.13 Change and Quality Control.

Excluding changes in Section 3.3(a) (Cardholder Terms) and Section 2 (Risk Criteria) of Schedule 3.3(b) (Minimum Target Approval Rates and Internal Credit Line Targets; Risk Criteria) (which shall be governed by Section 3.3 (Cardholder Terms and Risk Criteria) and not this Section 3.13):

(a) Where practicable, all material changes to the features, products and services offered to Cardholders or prospective Cardholders proposed to be made by the Bank during any Fiscal Year shall be submitted to the planning process that occurs between Bank and JCPenney prior to the beginning of such Fiscal Year. Notwithstanding the foregoing, either party may propose material changes to such features, products and services during a Fiscal Year that will take effect during such Fiscal Year, and the parties will use reasonable efforts to agree upon terms associated with any such proposed change. Subject to mutual agreement of the parties, the parties shall (as a Program Expense) test or analyze any proposed material changes prior to implementation to reduce the risk that such changes do not achieve their intended results or result in an adverse impact on Cardholders, the Program, or the parties. Upon the discovery by either party of any material unintended adverse effect on the Cardholders, the Program or the parties, the parties shall use good faith efforts to eliminate or mitigate such material unintended adverse effect as soon as reasonably practicable.

(b) Bank shall provide JCPenney prior notice, and keep JCPenney reasonably informed during the process of making material changes to its systems or processes relating to the Program. In particular, Bank shall notify JCPenney as early as practicable prior to closing any material facilities used to provide the Services or operate the Program. Prior to making any of the changes described in this Section 3.13(b), and subject to the mutual agreement of the parties, Bank shall, to the extent prudent (taking into account factors such as Bank's prior experience with such changes and other appropriate factors), test or analyze such changes to ensure that such changes achieve their intended results in a reliable manner. Upon the discovery of any material, unintended adverse effect on the Cardholders, JCPenney, Bank or the Program, unless otherwise mutually agreed, Bank shall immediately take all commercially reasonable steps (taking into account the impact on the Program and the parties) to restore the Program to its intended state as soon as practicable. Bank shall keep JCPenney informed regarding the results of tests or analyses and the implementation of changes under this Section 3.13 and shall provide JCPenney with appropriate opportunities to provide input regarding such tests or analyses and changes.

(c) Notwithstanding Section 3.13(b), Bank shall not, without the prior consent of JCPenney, make any changes to its systems or processes relating to the Program that will have a material adverse impact on the Program or that will require JCPenney to make material changes to its systems or processes, except if as required by a change in Applicable Law. In such case, Bank shall take commercially reasonable steps to minimize the cost and disruption of any such change to JCPenney.

(d) Without Bank's prior written approval, JCPenney shall not make any changes to its systems or processes relating to the Program that will have a material adverse impact on the Program or that will require the Bank to make material changes to its systems or processes, except if as required by a change in Applicable Law. In such case, JCPenney shall take commercially reasonable steps to minimize the cost and disruption of any such change to Bank.

3.14 Delivery of Information.

(a) Bank shall be responsible for, as a Program Expense, all delivery of electronic information to and from JCPenney. In addition, all risk of delivery before electronic information arrives at JCPenney, and risk of delivery once electronic information leaves the possession of JCPenney, shall be the risk and liability of Bank. Bank shall be responsible, as a Bank Expense, for arranging all maintenance of electronic delivery channels owned or provided by Bank. JCPenney shall be responsible, as a JCPenney Expense, for arranging all maintenance of electronic delivery channels owned or provided by JCPenney or any Authorized Entity.

(b) Each party shall bear the risk and cost of delivery of materials it ships to the other party by other methods, and such cost shall be a Program Expense, as the case may be. Risk of delivery lies with the sender until receipt by the other party. For the avoidance of doubt, the parties agree that JCPenney shall be responsible for all postage costs (whether public or private) as a Program Expense, related to shipment of materials from JCPenney Locations to Bank or locations in the Territory designated by Bank, and Bank shall be responsible for all postage costs (whether public or private), as a Program Expense, related to shipment of materials from Bank locations to JCPenney Locations or locations in the Territory designated by JCPenney.

3.15 Merchandise Liability. Notwithstanding any other provision of this Agreement, (a) JCPenney shall be liable under any transaction it or an Authorized Entity has with any Cardholder with respect to the Goods and/or Services purchased by such Cardholder (as opposed solely to the Credit Card Agreement, Account or Indebtedness), and, to the extent JCPenney or such Authorized Entity is responsible for the performance of the duties and obligations pursuant thereto, JCPenney or such Authorized Entity shall remain liable to the same extent as if this Agreement had not been executed, (b) the exercise by Bank of any of its rights pursuant to this Agreement shall not release JCPenney or such Authorized Entity from any of its duties or obligations under any transaction with any Cardholder with respect to Goods and/or Services purchased by such Cardholder, (c) Bank shall not have any obligation or liability of any nature, secured or unsecured, whether fixed, contingent or otherwise, with respect to any such Goods and/or Services and (d) JCPenney shall be obligated under this Section 3.15 to perform or otherwise bear any such duty or obligation or liability of any Authorized Entity.

3.16 Inserts and Other Statement Communications. JCPenney shall have the sole right, except as provided below, to include JCPenney's, Authorized Entities' or third parties' product and service advertisements in Billing Statements sent to Cardholders, whether as a statement insert, statement message, bangtail, envelope message or other form (including an electronic equivalent to the extent practicable and provided under similar terms if Bank implements electronic billing) (collectively, "**Inserts**"), provided that such Inserts conform to the requirements for such Billing Statement inserts or other messages initially as set forth in Schedule 3.16 (Inserts and Other Statement Communications), including the timing for delivery to specified locations. The parties' rights and obligations in respect of Inserts and other Statement Communications shall be as set forth in Schedule 3.16 (Inserts and Other Statement Communications).

3.17 Credit Store Manual and Bank Operating Procedures.

(a) The Credit Store Manual may be amended from time to time by JCPenney in its sole discretion, provided that no such amendment that could reasonably be expected to have a material adverse effect on the Program or Bank shall be made without mutual agreement of the parties unless required by JCPenney Applicable Law. JCPenney shall provide reasonable notice to Bank of changes to the Credit Store Manual that impact the Program; provided, however, that such notice shall be provided as soon as reasonably practicable in the event that such changes are implemented due to Exigent Circumstances.

(b) Bank Operating Procedures may be amended from time to time by Bank in its sole discretion, provided that (i) no such amendment that could reasonably be expected to have a material adverse effect on the Program or JCPenney shall be made without mutual agreement of the parties unless required by Bank Applicable Law; and (ii) any such amendment is reasonably consistent with operating procedures applied by Bank to its other private label and co-branded credit card programs. Bank shall provide reasonable notice to JCPenney of changes to the Bank Operating Procedures; provided, however, that such notice shall be provided as soon as reasonably practicable in the event that such changes are implemented due to Exigent Circumstances.

3.18 Program Governance.

(a) Bank and JCPenney each shall assign, on a full time basis, an employee knowledgeable about the Program to serve as its liaison to the other party with regard to the day-to-day operation of the Program (a "**Program Coordinator**"). Bank's employee shall be referred to as the "**Bank Program Coordinator**" and JCPenney's employee shall be referred to as the "**JCPenney Program Coordinator**." Bank agrees that it will appoint a Senior Vice President as the Bank Program Coordinator to be responsible for the day-to-day operation of the Program. JCPenney will have the right to interview the Bank Program Coordinator. JCPenney agrees that it will appoint a senior manager at the Vice President level as the JCPenney Program Coordinator.

(b) Upon the inability of the Program Coordinators to resolve a disagreement or dispute, the parties agree to participate and cooperate fully in the dispute resolution process in Schedule 3.18(b) (Dispute Resolution).

3.19 No Surcharge. JCPenney shall not impose any surcharge, application, restocking, processing or other fee or special condition on Cardholders, except where a comparable fee or condition applies equally to non-Cardholders.

3.20 Reports.

(a) Bank shall make available to JCPenney the reports set forth on Schedule 3.20 (Reports; Financial Statements), and such other standard and customized reports relating to the Cardholders, the Accounts and the Program as JCPenney may reasonably request from time to time. Bank will not charge for requested customized reports similar to the types of reports that Bank provides to its management or other customers at no cost. Bank shall not make any material changes to the form or content of such reports without prior approval of JCPenney. The forum for requesting such reports shall be the Program Coordinators and the expense, content, form, timing (e.g., daily, weekly, monthly, etc.) and method of delivery (e.g., electronic, paper, etc.) of such reports shall be discussed by the Program Coordinators.

3.21 Exclusivity. The parties' rights and obligations in respect of exclusivity shall be as set forth in Schedule 3.21 (Exclusivity).

3.22 Customer Satisfaction Surveys. Bank shall, as a Program Expense, arrange for an independent third party to conduct customer satisfaction surveys in respect of the Program at least once each calendar year of existing, former and potential Cardholders and JCPenney store managers. Such independent third party shall be selected by Bank but subject to JCPenney's approval, which approval will not be unreasonably withheld, conditioned or delayed. Each survey shall be designed and conducted by the third party in consultation with the Bank and JCPenney so as to determine the level of satisfaction with the Program, including satisfaction with the Bank's service compared to Bank's other retailer credit programs. Bank and JCPenney shall discuss the results of each survey and ways to improve satisfaction with the Program consistent with the parties' rights and obligations under the Agreement. Either Bank or JCPenney may propose modifications to the Program based upon survey results, and the parties will negotiate in good faith implementation of any appropriate modifications. Failure by the parties to agree upon the implementation of any such modifications will be addressed through the dispute resolution process in Schedule 3.18(b) (Dispute Resolution).

3.23 Outsourcing.

(a) Bank acknowledges that JCPenney entered this Agreement because of the specific skills presented by Bank and its other Affiliates. Unless JCPenney consents otherwise, Bank and its Affiliates shall perform operations as set forth in Schedule 2.1(d) (Program Resource Requirements).

(b) Outsourcing of Services other than Call Center customer service, early stage collections, and key management positions shall not require JCPenney's consent; provided that Bank shall notify JCPenney of such other outsourcing after the Effective Date (except where such outsourcing is to an Affiliate of Bank). All outsourcing arrangements, including with an Affiliate of Bank, shall be subject to the same system back-up and disaster recovery standards for which Bank is responsible pursuant to this

Agreement. Any outsourcing arrangement entered into by Bank in connection with the Program shall not relieve Bank of its obligations or liability under this Agreement, including but not limited to the Service Level Standards, and Bank shall be liable for any actions of such outsourcing entity that performs functions on behalf of Bank in connection with the Program.

3.24 Sales Tax Recovery. The parties have agreed to jointly gather the documentation and information necessary for the parties to pursue, analyze, file, defend and/or litigate sales tax refunds, deductions, credits and/or audit offsets arising from Written-Off Accounts (the "**Sales Tax Recovery Program**"). The procedures for the Sales Tax Recovery Program shall be as set forth in Schedule 3.24 (Sales Tax Recovery).

3.25 Securitization. The parties shall have rights and obligations in respect of securitization of the Accounts and Indebtedness as set forth in Schedule 3.25 (Securitization).

ARTICLE IV
SETTLEMENT

4.1 Settlement Procedures. The settlement procedures set forth in Schedule 4.1 (Settlement) shall apply to the Program.

4.2 Participation Fee. Bank shall pay to JCPenney Participation Fees as defined in and calculated in accordance with Schedule 4.2 (Participation Fee) on the date(s) specified in Schedule 4.2 (Participation Fee).

4.3 Signing Bonus. Bank shall pay to JCPenney the Signing Bonus as defined and in accordance with the terms set forth in Schedule 4.3 (Signing Bonus) on the date(s) specified in such Schedule 4.3 (Signing Bonus).

4.4 Innovation Fund. Bank shall pay to JCPenney an amount and on terms as provided for in Schedule 4.4 (Innovation Fund) on the date(s) specified in such Schedule 4.4 (Innovation Fund).

4.5 Program Gain Share Payment. Bank shall pay to JCPenney the Program Gain Share Payment(s) as defined in and calculated in accordance with Schedule 4.5 (Program Gain Share Payment) on the date(s) specified in such Schedule 4.5 (Program Gain Share Payment).

4.6 Partial Year Calculations
. Notwithstanding anything in this Agreement, if a Program Gain Share Payment pursuant to this Article IV is calculated for a period of less than a full calendar year, then Bank shall instead calculate such Program Gain Share Payment on a pro-rated basis for such partial period.

4.7 Interchange Adjustment. The parties' rights and obligations in respect of changes to interchange fees are set forth in Schedule 4.7 (Interchange Adjustment).

4.8 Effective Date of Change in Economic Terms .

(a) Notwithstanding anything in this Agreement: (i) the Economic Provisions of the Existing Consumer Agreement shall continue to apply from the Effective Date until January 31, 2019; and (ii) the Economic Provisions of this Agreement shall begin to apply on February 1, 2019; provided, however, that Section 4.3 (Signing Bonus) and Section 5 (Reserve Account) of Schedule 4.1 (Settlement) of this Agreement shall begin to apply on the Effective Date.

(b) The "**Economic Provisions of the Existing Consumer Agreements**" means the economic terms between the parties, including the following provisions of the Existing Consumer Agreement: Section 2.7 (Marketing Fund); Article IV including Schedule 4.1 (Settlement), Schedule 4.2 (Participation Fee), Schedule 4.3 (Performance Payments), Schedule 4.4 (Growth Incentive Payments) and Schedule 4.5 (Program Gain Share Payments); Section 13.20 (Settlement/Payments in respect of the Dual Card Program) of Schedule 13 (The Dual Card Program); and Exhibit X (In-Store Support Activities for JCPenney Credit in JCPenney Stores).

(c) The "**Economic Provisions of this Agreement**" means the economic terms between the parties, including the following provisions of this Agreement: Section 2.6 (Marketing Fund); Article IV, including Schedule 4.1 (Settlement), Schedule 4.2 (Participation Fee), Schedule 4.4 (Innovation Fund), Schedule 4.5 (Program Gain Share Payment), and Schedule 4.7 (Interchange Adjustment); Section 5 (Promotion of the Dual Card Program) of Schedule 13 (The Dual Card Program); and Section 4(b)-(c) (Home Services Marketing Obligation) of Schedule 16 (Home Services Card Program).

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS OF JCPENNEY

5.1 General Representations and Warranties. To induce Bank to enter into this Agreement and to establish and administer this Program, all as herein provided for, JCPenney makes to Bank the representations and warranties set forth in this Section 5.1 as of the Effective Date.

(a) Corporate Existence. JCPenney represents and warrants that it is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to conduct business under such laws as now conducted, and shall maintain such status and authority during the Term.

(b) Corporate Power and Authorization. JCPenney represents and warrants that it has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. JCPenney further represents and warrants that this Agreement has been duly authorized by all necessary corporate and stockholder action and has been duly executed and delivered by JCPenney and is the valid and binding obligation of JCPenney, enforceable against JCPenney in accordance with its terms.

(c) No Default. JCPenney represents and warrants that no default has occurred which, with the passage of time or the giving of notice or both, and the failure to cure, would constitute an Event of Default as defined in Section 9.1 (Events of Default).

(d) No Pending Litigation. JCPenney represents and warrants that there are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending (including any counterclaims) or, to JCPenney's knowledge, threatened against JCPenney or any Authorized Entity that would materially impair the ability of JCPenney to perform its obligations under this Agreement; or (ii) Liabilities or any other facts or circumstances to JCPenney's knowledge that form the basis for any valid claim against or liability of JCPenney or any Authorized Entity that would materially impair the ability of JCPenney to perform its obligations under this Agreement.

(e) Noncontravention. JCPenney represents and warrants that the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the charter or by-laws or any equivalent organizational document of JCPenney, or (ii) violate any applicable material law, rule, regulation, judgment, injunction, order or decree to which JCPenney is subject, or (iii) violate any material contract, instrument or document to which JCPenney is a party or (iv) constitute a default under any existing material contract, instrument or document to which JCPenney is a party.

(f) Trademarks. JCPenney represents and warrants to Bank that it has the right and power to license the JCPenney Marks as defined in Section 15.1 (Defined Terms) to Bank for use as contemplated by this Agreement, and that it shall continue to have such right and power during the Term.

5.2 General Covenants. To induce Bank to enter into this Agreement and to establish and administer this Program, all as herein provided for, in addition to the other covenants and obligations set forth in this Agreement, JCPenney makes to Bank the covenants set forth in this Section 5.2.

(a) JCPenney Financial Information. If at any time during the Term JCPenney is not obligated to, or for any other reason does not, timely file periodic financial reports with the Securities and Exchange Commission pursuant to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, JCPenney will: (i) as soon as practicable but in any event not more than ninety (90) days after the end of each Fiscal Year, deliver to Bank JCPenney's audited annual financial statements, including its audited consolidated balance sheet, income statement and statement of cash flows and financial position and accompanying notes to such financial statements; and (ii) as soon as practicable but in any event not more than sixty (60) days after the end of each Fiscal Quarter, deliver to Bank its unaudited quarterly financial statements, including its unaudited consolidated balance sheet, income statement and statement of cash flows and financial position, and accompanying notes to such financial statements, accompanied by a certificate from JCPenney's chief financial officer that such financial statements were prepared in accordance with generally accepted accounting principles applied on a consistent basis and present fairly the consolidated financial position of JCPenney as of the end of such Fiscal Quarter and the results of its operations, subject to normal year-end audit adjustments.

(b) Compliance with Law. JCPenney shall comply, and shall cause each of the Authorized Entities to comply, with JCPenney Applicable Law in all material respects relating to the Program.

(c) Accounts. Prior to the exercise and completion of the Purchase Option under Section 10.4(a) (Purchase Option), JCPenney shall not, and shall not permit any Authorized Entities to, represent itself as the owner of Accounts or Indebtedness owned by Bank hereunder.

(d) Notice of Adverse Conditions. JCPenney agrees to notify Bank, subject to any confidentiality requirements, promptly after it is notified, and in any case no later than fifteen (15) days thereafter, of any order by any court or regulatory body or any agreement with a court or regulatory body materially and adversely affecting its or an Authorized Entity's ability to perform its or their obligations hereunder, or in connection with the Program or engage in any activities, contemplated in connection with the Program or under this Agreement or is notified of any activity that would reasonably be expected to have a material adverse effect on the Program or would reasonably be expected to have a material adverse effect on any of them or Bank. JCPenney also agrees, subject to any confidentiality requirements, to provide advance warning of any discussions with any court or regulatory body that would reasonably be expected to adversely and materially affect any of the activities contemplated under this Agreement.

(e) Records. JCPenney shall keep, and shall cause each of the Authorized Entities to keep, adequate records and books of account with respect to all of its business activities relating to the Program, in which proper entries, reflecting all of JCPenney's or the Authorized Entities' (as applicable) financial transactions, are made in accordance with applicable accounting procedures.

(f) Cardholder Relations. JCPenney agrees to each of the following covenants with respect to the Accounts:

(i) JCPenney shall respond to Bank promptly, and cooperate with Bank, in connection with the resolution of disputes with Cardholders;

(ii) JCPenney shall maintain a policy for the exchange and return of goods and adjustments for Services rendered or not rendered that is in accordance with Applicable Law;

(iii) JCPenney shall comply with any of JCPenney's warranties, and shall cause each Authorized Entity to comply with such Authorized Entity's warranties, with respect to Goods and/or Services sold under an Account. Nothing in this paragraph (iii) shall restrict JCPenney from selling Goods and/or Services subject to normal manufacturer's warranties.

(g) Taxes. Unless Bank shall otherwise consent in writing, JCPenney shall, and shall cause each of the Authorized Entities to, pay, collect and remit, when due, any sales taxes relating to the sale of Goods and/or Services.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS OF BANK

6.1 General Representations and Warranties. To induce JCPenney to enter into this Agreement and participate in the Program, all as herein provided for, Bank makes to JCPenney the representations and warranties set forth in this Section 6.1 as of the Effective Date.

(a) Corporate Existence. Bank represents and warrants that it is a federal savings bank duly organized, validly existing and in good standing under the laws of the United States and is authorized to conduct business under such laws as now conducted. Bank shall maintain such status and authority during the Term.

(b) Corporate Power and Authorization. Bank represents and warrants that it has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. Bank further represents and warrants that this Agreement has been duly authorized by all necessary corporate and stockholder action and has been duly executed and delivered by Bank and is the valid and binding obligation of Bank, enforceable against Bank in accordance with its terms.

(c) No Default. Bank represents and warrants that no default has occurred which, with the passage of time or the giving of notice or both, and the failure to cure, would constitute an Event of Default as defined in Section 9.1 (Events of Default).

(d) No Pending Litigation. Bank represents and warrants that there are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending (including any counterclaims) or, to Bank's knowledge, threatened against Bank that would materially impair the ability of Bank to perform its obligations under this Agreement, or (ii) Liabilities or any other facts or circumstances to Bank's knowledge that form the basis for any valid claim against or liability of Bank that would materially impair the ability of Bank to perform its obligations under this Agreement.

(e) Noncontravention. Bank represents and warrants that the execution, delivery and performance by Bank of this Agreement and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the charter or by-laws or any equivalent organizational document of Bank, or (ii) violate any applicable material law, rule, regulation, judgment, injunction, order or decree to which Bank is subject, or (iii) violate any material contract, instrument or document to which Bank is a party, or (iv) constitute a default under any existing material contract, instrument or document to which Bank is a party.

(f) Trademarks. Bank represents and warrants to JCPenney that it has the right and power to license the Bank Marks, as defined in Section 15.1 (Defined Terms) to JCPenney for use as contemplated by this Agreement, and that it shall continue to have such right and power during the Term.

6.2 General Covenants. To induce JCPenney to enter into this Agreement and participate in the Program, all as herein provided for, in addition to the other covenants and obligations set forth in this Agreement, Bank makes to JCPenney the covenants set forth in this Section 6.2.

(a) Bank's Financial Information. JCPenney may review Bank's call report and other publicly available financial data. To facilitate JCPenney in doing so, Bank shall, upon JCPenney's request, and as a Program Expense, deliver to JCPenney such publicly available financial reports and financial data promptly as soon as such information otherwise is available.

(b) Compliance with Law. Bank shall comply with Bank Applicable Law in all material respects relating to the Program.

(c) Processing Existing Products. Bank shall maintain all necessary processing capabilities in order to process Existing Products.

(d) Notice of Adverse Conditions. Bank agrees to notify JCPenney, and subject to any confidentiality requirements, promptly after Bank is notified, and in any case no later than fifteen (15) days thereafter, of any order by any court or regulatory body or any agreement with a court or regulatory body materially and adversely affecting the ability of Bank to furnish the Services, or engage in any activities, contemplated in connection with the Program or under this Agreement or is notified of any activity that would reasonably be expected to have a material adverse effect on the Program or would reasonably be expected to have a material adverse effect on JCPenney or any Authorized Entity. Bank also agrees, subject to confidentiality requirements, to provide advance warning of any discussions with any court or regulatory body that would reasonably be expected to adversely and materially affect any of the activities contemplated under this Agreement.

(e) Records. Bank shall keep adequate records and books of account with respect to all of its business activities relating to the Program, in which proper entries, reflecting all of Bank's financial transactions with respect to the Program, are made in accordance with applicable accounting procedures.

(f) Cardholder Relations. Bank shall respond to JCPenney promptly, and cooperate with JCPenney, in connection with the resolution of disputes with Cardholders.

ARTICLE VII
CHARGEBACKS

7.1 Chargebacks. Bank's chargeback rights and procedures to be followed shall be as set forth in Schedule 7.1 (Chargeback).

ARTICLE VIII
UCC FILINGS

8.1 Grant of Security Interest; Precautionary Filing .

(a) Purchases under the Program shall constitute extensions of credit directly from Bank to customers of JCPenney or Authorized Entities and/or, to the extent of Purchases under the Dual Card Program, other merchants. The Uniform Commercial Code ("**UCC**") does not apply to the Program or to any of the transactions under the Program including the Bank Marketing Fund or the Bank Marketing Obligation. However, both (i) against the possibility that it is determined that such extensions of credit are secured financings of JCPenney, and (ii) to secure payment of and performance by JCPenney of any and all indebtedness, liabilities, or obligations, now existing or hereafter arising pursuant to this Agreement, JCPenney hereby grants to Bank a security interest in all of JCPenney's right, title and interest, if any, now existing or hereafter arising in, to and under the following property (in each case, existing at any time, past, present or future) (collectively, the "**Bank Property**"): (A) all Accounts, Account Documentation and Indebtedness; (B) the Bank Marketing Fund and the Bank Marketing Obligation; (C) all deposits, credit balances and reserves on Bank's books related to any Accounts; (D) all returned merchandise sold on an Account; and (E) all proceeds of the foregoing.

(b) JCPenney represents and warrants that it has not, on or before the Effective Date, granted any Potentially Competing Security Interests or signed any Potentially Competing Financing Statements other than any security interests or financing statements that have lapsed or been terminated. JCPenney agrees that it will not, on or after the date of this Agreement, grant any Potentially Competing Security Interest or sign any Potentially Competing Financing Statement, by adding to any grant of a security interest by JCPenney that may be a Potentially Competing Security Interest, which shall expressly include a provision in such grant that excludes any interest of Bank as provided in Section 8.1(a). If, despite JCPenney's commercially reasonable efforts, such language is not included through inadvertence in a grant of Potentially Competing Security Interest, JCPenney will act diligently in soliciting such other secured party to carve out of its security interest the property specified in Section 8.1(a) so that there is no Potentially Competing Security Interest.

(c) JCPenney agrees to cooperate fully with the Bank as Bank may reasonably request in order to give effect to and perfect the security interests granted by this Article VIII and Section 5 (Reserve Account) of Schedule 4.1 (Settlement). JCPenney agrees to provide Bank with not less than thirty (30) days prior written notice of any change in location of the executive offices or principal place of business of JCPenney or of any change of JCPenney's corporate name and JCPenney shall supply Bank with signed copies of all filings requested by Bank within ten (10) days of such request. JCPenney hereby authorizes Bank to make such filings on behalf of JCPenney, and shall promptly take such actions, in each case as Bank may reasonably determine to be necessary or appropriate to preserve and maintain at all times the perfection and priority of the security interests granted or purported to be granted to Bank hereunder. Bank shall provide notice to JCPenney at least three (3) Business Days prior to such filing. Unless Bank shall have otherwise consented in writing, JCPenney shall not create, assume or suffer to exist any lien on any of its right, title or interest under this Agreement or in the proceeds thereof.

JCPenney's obligations with respect to filings to perfect the security interests granted under this Agreement shall terminate and Bank shall release any such filings (i) in connection with the sale of the Program Assets under Schedule 10.4(a) (Purchase Option), or (ii) after the Term when JCPenney has fully performed all obligations under this Agreement which are secured by the security interest and no further obligations may arise.

ARTICLE IX
EVENTS OF DEFAULT

9.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "**Event of Default**" hereunder giving the non-defaulting party the remedies set forth in Section 9.2 (Remedies):

(a) If Bank fails to make any settlement payment when due and payable pursuant to this Agreement and the Settlement Procedures with respect to the daily settlement payments set forth in Schedule 4.1 (Settlement) and, such settlement payment is not paid within three (3) Business Days following notice of such failure to pay.

(b) Either party shall fail to make any payment (other than a daily settlement payment pursuant to the Settlement Procedures) of any amount due pursuant to this Agreement when due and payable or declared due and payable and the same shall remain unpaid for a period of thirty (30) days after the other party has given written notice of such failure to pay.

(c) If Bank is subject to a final consent order with a Governmental Authority involving alleged unfair or deceptive practices in the opening or servicing of Accounts by Bank, and (i) such consent order requires Bank to take (or prevents Bank from taking) particular actions that are reasonably expected to have an MAE on Revenues after mitigation efforts by Bank and (ii) other providers of retailer credit card programs are reasonably expected to not be subject to similar requirements with respect to such particular actions.

(d) Either party shall breach any covenant or provision contained herein that is required to be performed by it, which breach has a material adverse impact on the other party or the Program, and the same shall remain unremedied for a period of forty-five (45) days after written notice thereof to the breaching party.

(e) Any express representation or warranty of either party in this Agreement shall not be true and correct in any material respect as of the date when made or reaffirmed, and that party cannot make that representation or warranty true within thirty (30) days after written notice thereof to the breaching party and the failure thereof results in a material adverse impact on the other party or the Program.

(f) Either party (i) shall not be Solvent; (ii) shall have any proceeding instituted by or against it seeking to adjudicate it as bankrupt or insolvent or seeking liquidation or any similar alternative under any law relating to bankruptcy or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver or other similar official for it or for any substantial part of its property, and, in the case of any proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of thirty (30) days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver or other similar official for, it or any substantial part of its property) shall occur; or (iii) shall take any corporate action to authorize any of the actions set forth in clause (ii) of this paragraph (f).

(g) It shall be an Event of Default by Bank if Bank fails to maintain a "**Tier 1 risk-based capital ratio**" (as defined in applicable federal bank regulations, as amended from time to time) of six percent (6.0%) at the end of any two consecutive calendar quarters of Bank; provided, however, that for such an Event of Default to be effective, a notice of termination must be delivered within sixty (60) days after such second consecutive calendar quarter.

9.2 Remedies. Upon an Event of Default, the non-defaulting party, in addition to any other rights or remedies available to it under this Agreement, may terminate this Agreement in accordance with Section 10.2(a) (Termination, Events of Default).

ARTICLE X
TERM/TERMINATION

10.1 Initial and Renewal Term. This Agreement shall be effective as of the Effective Date, except as provided in Section 4.8 (Effective Date of Change in Economic Terms), and shall remain in effect until January 31, 2027 (the "**Initial Term**") and shall thereafter be automatically renewed for successive two (2) year terms (the "**Renewal Term(s)**") unless either party gives the other party at least three hundred and sixty-five (365) days' notice of its intent not to renew.

10.2 Termination. This Agreement may be terminated by a party if any of the following events occur:

(a) Event of Default. The non-defaulting party may terminate this Agreement upon the occurrence of an Event of Default.

(b) Force Majeure Event.

i. JCPenney may terminate this Agreement upon the occurrence of a Force Majeure Event in accordance with the terms of Section 12.19(c); and

ii. Bank may terminate this Agreement upon the occurrence of a Force Majeure Event in accordance with the terms of Section 12.19(d).

(c) Critical Change in Applicable Law. Each party may terminate this Agreement in accordance with the terms of Section 2.1(f) (Critical Change in Applicable Law) for a Critical Change in Applicable Law.

(d) Service Level Default. JCPenney shall have the right to terminate this Agreement with respect to a Service Level Default as set forth in Schedule 2.1(g) (Service Level Standards).

(e) Reserve Account. Bank shall have the right to terminate this Agreement with respect to a failure to establish or maintain a Reserve Account as set forth in Section 5 (Reserve Account) of Schedule 4.1 (Settlement).

10.3 Notice of Termination. To effect any termination of this Agreement, the terminating party will deliver a written notice of termination to the other party in accordance with the terms set forth in Schedule 10.3 (Rights and Obligations Upon Notice of Termination).

10.4 Effects of Termination or Expiration. Upon a termination or expiration of this Agreement, the following will occur:

(a) Purchase Option. The parties shall have purchase-related rights and obligations with respect to the Program Assets as set forth in Schedule 10.4(a) (Purchase Option) and Schedule 3.25 (Securitization).

(b) Liquidation. The parties shall have rights and obligations in respect of liquidation as set forth in Schedule 10.4(b) (Liquidation).

10.5 Survival. The parties acknowledge and agree that all aspects of this Agreement survive until the end of the Term and that each party shall remain responsible under this Agreement after the Term for matters occurring before the Termination Date.

(a) Survival Through the Liquidation Period. After the Term and until the end of the Liquidation Period, the following provision shall survive (subject to any express limitations on the time period of survival set forth in this Agreement): Section 4.2 (Participation Fees).

(b) Survival for Two Years After the Termination Date. The following provision shall survive for a period of two (2) years (or as required by Applicable Law) following the Termination Date: Section 12.18 (Audit).

(c) Indefinite Survival. After the Term, the following provisions shall survive (subject to any express limitations on the time period of survival set forth in this Agreement): Section 3.6 (Ownership and Use of Information); Section 3.15 (Merchandise Liability); Section 3.24 (Sales Tax Recovery); Section 7.1 (Chargebacks); Article VIII (UCC Filings); Section 10.4(b) (Liquidation); Section 10.5 (Survival); Article XI (Indemnification); Section 12.8 (Governing Law/Severability); Section 12.12 (Jurisdiction); Section 12.13 (Adjudication of Claims); Section 12.15 (Power of Attorney); Section 12.16 (Use of Names and Trademarks); Section 12.17 (Confidential Information); Section 12.22 (Press Releases); Section 12.26 (Tax and Financial Cooperation); Section 12.28 (Set-Off); Section 4(b) (Return of Materials) of Schedule 3.2(e) (Software as a Service); Section 5(c) of Schedule 3.9 (Store Closings; Going Out of Business Sales) (with respect to Bank's right to exercise its Liquidation rights without respect to any limitation in regards to JCPenney Competitors); Schedule 3.18(b) (Dispute Resolution); Section 5 (Reserve Account) of Schedule 4.1 (Settlement); the provisions of the Agreement related to acceptance of Credit Cards shall survive during the Liquidation Period if JCPenney is required to accept Credit Cards during such period, except as expressly provided; and any other provision that expressly applies after the Term. For the avoidance of doubt, any Schedule related to a Section shall survive if a Section survives.

ARTICLE XI
INDEMNIFICATION

11.1 Indemnified Losses. "**Indemnified Losses**" means any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), settlement amounts as provided for herein, judgments, damages, claims, demands, offsets, defenses, counterclaims, actions or proceedings, subpoenas, investigations, and related interest or penalties, including any incidental, consequential, exemplary, or indirect damages, lost profits or other business interruption damages, in tort, contract or otherwise, if any.

11.2 Indemnification by JCPenney. JCPenney agrees to indemnify, defend, protect and hold harmless Bank and its Affiliates, and their respective agents, employees, officers, directors, and representatives ("**Bank Indemnified Parties**"), from and against any and all Third-Party Claims brought against such Bank Indemnified Parties (including any Governmental Authority) and all Indemnified Losses to the extent such Indemnified Losses arise out of, relate to, or result from:

(a) Goods and/or Services charged to an Account (including (i) the quality or workmanship of such Goods and/or Services, (ii) the compliance of such Goods and/or Services with JCPenney Applicable Law, licensing or registration requirements, (iii) product liability or warranty claims relating directly to such Goods and/or Services; or (iv) any promise or representation made by JCPenney or an Authorized Entity relating to an Account);

(b) Any inaccuracy or misrepresentation in any representation or warranty of JCPenney contained in this Agreement;

(c) Any breach by JCPenney or an Authorized Entity of any of the terms, covenants or other provisions contained in this Agreement;

(d) The failure by JCPenney or an Authorized Entity to comply with JCPenney Applicable Law;

(e) Any and all advertising, promotions, sales practices and marketing programs, documents, disclosures or materials conducted, produced or prepared by or on behalf of JCPenney or an Authorized Entity, other than disclosures required by Bank or other Bank-provided content that has been approved by Bank;

(f) Any negligence, recklessness or willful misconduct of JCPenney, its Affiliates, Authorized Entities, or their respective agents, employees, officers or directors in relation to this Agreement or the Program; or

(g) A Security Incident involving the systems, or data in the possession of JCPenney, an Authorized Entity or their respective service providers or other agents.

11.3 Indemnification by Bank. Bank agrees to indemnify, defend, protect and hold harmless JCPenney, the Authorized Entities and their respective Affiliates, agents, employees, officers, directors, and representatives (the "**JCPenney Indemnified Parties**"), from and against any and all Third-Party

Claims brought against such JCPenney Indemnified Parties (including any Governmental Authority) and all Indemnified Losses to the extent such Indemnified Losses arise out of, relate to, or result from:

(a) Any breach by Bank of a duty to act with respect to the extension of credit pursuant to the Program;

(b) Any inaccuracy or misrepresentation in any representation or warranty of Bank contained in this Agreement;

(c) Any breach by Bank of any of the terms, covenants or other provisions contained in this Agreement;

(d) Any Truth-in-Lending or comparable state law credit disclosures verbiage used by JCPenney or the Authorized Entities, if such verbiage has been provided by Bank and is used in the manner specified by Bank;

(e) The failure of Bank or its Affiliates, or the failure of any documentation (including Account Documentation) provided by Bank relating to the Program, to comply with Bank Applicable Law;

(f) Any negligence, recklessness or willful misconduct of Bank, its Affiliates or their respective agents, employees, officers or directors in relation to this Agreement or the Program;

(g) A Security Incident involving the systems, or data in the possession of Bank, or its respective service providers or other agents.

(h) Bank's operation of that Credit Card Application process which provides an Applicant with the option to have his or her name, address and date of birth pre-populated in the Credit Card Application from his or her driver's license or other similar state-issued identification card (the "**DL Process**"); provided that Bank shall not be required to indemnify JCPenney if the Third-Party Claim would not have arisen but for one of the following events: (i) JCPenney does not follow the specifications and directions provided by Bank or if JCPenney makes any changes thereto, in each case without Bank's prior written consent, or (ii) JCPenney's use of information obtained through the DL Process from a Credit Card Applicant's driver's license or other similar state-issued identification card for any purpose other than for pre-populating such Applicant's Credit Card Application without the Applicant's prior approval.

(i) Any claim that JCPenney's, its Affiliates' or their respective sublicensees' use of any of Bank's Intellectual Property infringes or misappropriates the Intellectual Property rights of any third party, or any claim that the SaaS Materials infringes on such third party's Intellectual Property rights (provided, that such SaaS Material infringement shall be subject to Section 11.10 (SaaS Infringement Remedies and Limitations)).

11.4 Notice. Each party shall provide prompt notice to the other of any Third-Party Claims for which indemnity is sought, provided that any failure or delay in providing such notice shall not affect the indemnification obligations of the indemnifying party, except to the extent that the indemnifying party shall have been materially prejudiced by such failure. In any event, the indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) in the settlement or defense of any such claim, as set forth below.

11.5 General Procedure. Provided that if notice in accordance with Section 11.4 (Notice) is given, the indemnifying party, at its own expense (i.e., as a Bank Expense or JCPenney Expense, as the case may be) and using counsel of its own choosing, will promptly defend, contest and otherwise protect against any such claim, suit or proceeding. If the indemnifying party fails to timely defend, contest or otherwise protect against any such claim, suit or proceeding, the indemnified party may, but will not be obligated to, defend, contest or otherwise protect against the same, and make any compromise or settlement thereof and recover the entire cost of the defense, compromise or settlement from the indemnifying party, including reasonable fees and disbursements of counsel and amounts paid as a result of the resolution, settlement or compromise of such claim, suit or proceeding.

11.6 Role of Indemnified Party

.

(a) The indemnified party may, but will not be obligated to, participate in the defense of any Third-Party Claim, suit or proceeding, at its own expense (i.e., as a Bank Expense or JCPenney Expense, as the case may be) and using counsel of its own choosing, but the indemnifying party shall be entitled to control the defense thereof unless the indemnified party has relieved the indemnifying party from liability with respect to the particular matter. The indemnified party shall cooperate and provide such assistance as the indemnifying party reasonably may request in connection with the indemnifying party’s defense and shall be entitled to recover from the indemnifying party the reasonable out-of-pocket costs of providing such assistance (including reasonable fees of any counsel retained by the indemnified party with the consent of the indemnifying party to facilitate such assistance). The indemnifying party shall inform the indemnified party on a regular basis of the status of any claim, suit or proceeding and the indemnifying party’s defense thereof. Any payments required to be made under this Article XI shall be made promptly by the party responsible therefor.

(b) Notwithstanding the foregoing, the indemnifying party shall not have the right to defend any such Third-Party Claim if: (i) it refuses to acknowledge fully its obligations to the indemnified party (but only as to the obligations specific to the indemnifying party in the event a Third-Party Claim gives rise to indemnification obligations of more than one party) or it contests (in whole or in part), its indemnification obligations (but only as to the obligations specific to the indemnifying party in the event a Third-Party Claim gives rise to indemnification obligations of more than one party), except that in either case the indemnifying party may continue its right to defend the Third Party Claim while reserving its right to challenge its indemnification obligations with respect to the Third Party Claim if it affirms that it will zealously defend the Third Party Claim notwithstanding its refusal to acknowledge or contests its indemnification obligations; (ii) it fails to employ appropriate counsel approved by the indemnified party to assume the defense of such Third-Party Claim or refuses to replace such counsel upon the indemnified party’s reasonable request, as provided for herein; (iii) the indemnified party reasonably determines that there are issues which could raise possible conflicts of interest between the indemnifying party and the indemnified party or that the indemnified party has claims or defenses that are separate from or in addition to the claims or defenses of the indemnifying party; (iv) it undertakes claims or defenses that are contrary to the direction or instructions of the indemnified party; or (v) such Third-Party Claim seeks an injunction, cease and desist order, or other equitable relief against the indemnified party. In each such case described in clauses (i) - (v) above, the indemnified party shall have the right to direct the defense of the Third-Party Claim and retain its own counsel, and the indemnifying party shall pay the cost of such defense, including reasonable attorneys' fees and expenses.

(c) Notwithstanding anything herein to the contrary, if any Third-Party Claim under this Agreement principally relates to Intellectual Property owned or controlled by the indemnified party, then the indemnified party may control the defense of such Third-Party Claim, including the right to compromise and settle such Third-Party Claim, and retain its own counsel, and the indemnifying party shall pay the cost of such defense, including reasonable attorneys' fees and expenses.

11.7 Limitations on Parties. In any Third-Party Claim, the defense of which is controlled by the indemnifying party: (a) the indemnifying party shall not, without the indemnified party's prior written consent, compromise or settle such claim, suit or proceeding, if (i) such compromise or settlement would impose an injunction or other equitable relief upon the indemnified party or (ii) such compromise or settlement does not include the third-party's release of the indemnified party from all liability relating to such claim, suit or proceeding; and (b) the indemnified party shall not compromise or settle such claim, suit or proceeding without the prior written consent of the indemnifying party, provided that, if the indemnified party desires to compromise or settle such claim, suit or proceeding and the indemnifying party refuses to consent to such compromise or settlement, the indemnified party may enter into a compromise or settlement but shall be solely responsible for the cost of any compromise or settlement amount.

11.8 Apportionment of Costs. The parties recognize and acknowledge that Third-Party Claims may be made as part of an action, suit, investigation or proceeding that may give rise to the indemnification obligations of more than one party or that may include claims or counter-claims that are not subject to indemnification, and the parties agree that they shall cooperate in good faith to fairly apportion the Indemnified Losses relating to such claims or counter-claims. Indemnified Losses incurred in defending Third-Party Claims shall be apportioned to the respective party who has responsibility for each specific Third-Party Claim, but only to the extent that those Indemnified Losses directly arise from such Third-Party Claim.

11.9 Limitations on Liability. Except with respect to (a) an indemnifying party's obligations under this Article XI, (b) each party's obligations with respect to data under Section 3.6 (Ownership and Use of Information), (c) each party's confidentiality obligations under Section 12.17 (Confidential Information), or (d) damages arising out of infringement of third-party intellectual property rights, in no event shall a party or its affiliates, successors, or permitted assigns be liable to the other party under or in connection with this Agreement for any incidental, indirect, speculative, consequential (including lost profits, revenues, or business opportunities), special, punitive or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with this Agreement, regardless of whether such damages were foreseeable or whether any party has been advised of the possibility of such damages.

11.10 SaaS Infringement Remedies and Limitations.

(a) Remedies. If a claim exists under 11.3(i) (relating to infringement of SaaS Services or SaaS Materials and the SaaS Intellectual Property Right (as defined in Schedule 3.2(e) (Software as a Service)), Bank shall promptly, at its own expense, either, (a) procure for JCPenney the right to continue use of the affected SaaS Materials or SaaS Services; (ii) replace the affected SaaS Materials or SaaS Services with functionally equivalent non-infringing materials or services; or (iii) modify the affected SaaS Materials or SaaS Services to be non-infringing and functionally equivalent. If Bank cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Bank shall (i) accept the return of the affected SaaS Materials, along with any other components of any materials rendered unusable as a result of the affected SaaS Materials.

(b) Limitations. Bank has no duty to defend, indemnify or hold harmless JCPenney Indemnified Parties for Third Party Claims alleging infringement, misappropriation or other violation of a third party intellectual property right to the extent arising from or based on: (i) use of the SaaS Services after Bank notifies JCPenney to discontinue use because of such Third Party Claim; (ii) combining the SaaS Services with a product, service, data or business process not provided by Bank, other than the Bundled Application, if such Third Party Claim would not have arisen but for such combination, unless a license has been provided for such combination; or (iii) modifying the SaaS Services if the Third Party Claim would not have arisen but for such modification.

ARTICLE XII
MISCELLANEOUS

12.1 Assignability. The parties' rights and obligations in respect of assignment of this Agreement shall be as set forth in Schedule 12.1 (Assignability).

12.2 Entire Agreement; Amendment. This Agreement together with the Schedules hereto which are expressly incorporated by reference herein and made a part hereof constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements between the parties with respect to the subject matter hereof, whether written or oral. This Agreement may not be amended except by written instrument signed by duly authorized representatives of both Bank and JCPenney.

12.3 Waiver. The rights, obligations and duties of Bank and JCPenney under this Agreement may be waived only upon the written consent of the respective duly-authorized Program Coordinators, their superior officers at Bank and JCPenney, and persons acting pursuant to delegations from them. In no event shall a term or provision of this Agreement be deemed to have been waived or amended, unless a waiver or amendment is in writing and signed by a person specified in the previous sentence.

12.4 Delays or Omissions. Except as otherwise provided, Bank and JCPenney agree that no complete or partial delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. All remedies under this Agreement shall be cumulative and nonexclusive of each other.

12.5 Insurance. Bank warrants and represents for itself and any authorized subcontractor that it shall maintain from the Effective Date and until the termination date of this Agreement insurance of the following kinds and amounts, or in amounts required by applicable law, whichever is greater.

(a) Worker's compensation and employers' liability insurance affording (i) protection under the Worker's Compensation Law containing an all states endorsement and (ii) Employers' Liability Protection subject to a limit of not less than $100,000.

(b) Commercial general liability insurance written on an occurrence basis against claims on account of bodily injury, death or property damage. Such insurance shall have a combined single limit of not less than $2,500,000 per occurrence and $5,000,000 annual aggregate for bodily injury, death and property damage. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by JCPenney. Bank shall be liable for any deductible amount in the event of an insured loss.

(c) Insurance policies required to be maintained hereunder shall be procured from insurance companies rated at least A-VIII for commercial general liability and B++ VIII for worker's compensation and employer's liability, or better by the then current edition of Best's Insurance Reports published by A. M. Best Co. Liability insurance limits may be provided through any combination of primary and/or excess insurance policies.

(d) Bank shall provide JCPenney with a certificate of liability insurance evidencing that the required coverage is in full force and effect annually.

12.6 Rights of Persons Not a Party. This Agreement shall not create any rights on the part of any person or entity not a party hereto, whether as a third-party beneficiary or otherwise.

12.7 Headings. The headings, captions and arrangements of the provisions and sections of this Agreement are for convenience and reference only, are not a substantive part of this Agreement and are not to be used to affect the validity, construction or interpretation of this Agreement or any of its provisions.

12.8 Governing Law/Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to such state's principles of conflict of laws. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in such jurisdiction or in any other jurisdiction. If any provision of this Agreement is deemed to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is contrary to law, such provision shall, to the extent necessary, be deemed ineffective without invalidating the remaining provisions hereof.

12.9 Good Faith. The parties agree that, with regard to all of their respective dealings under this Agreement, they will act fairly and in good faith.

12.10 Drafting. Each party acknowledges that its legal counsel participated in the drafting of this Agreement. The parties hereby agree that the rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor one party over the other.

12.11 Counterparts. This Agreement may be executed (a) electronically, including by facsimile or other electronic transmission of original signatures, and (b) in one or more counterparts, each of which counterparts shall be deemed to be original, and all such counterparts shall constitute one and the same instrument.

12.12 JURISDICTION. ANY SUIT, COUNTERCLAIM, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT BY THE PARTIES SOLELY IN THE COURTS OF THE STATE OF DELAWARE OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE; AND JCPENNEY AND BANK HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND ANY APPELLATE COURTS THEREOF FOR THE PURPOSE OF ANY SUCH SUIT, COUNTERCLAIM, ACTION, PROCEEDING OR JUDGMENT (IT BEING UNDERSTOOD THAT SUCH CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WAIVES ANY RIGHT TO SUBMIT ANY DISPUTES HEREUNDER TO ANY COURTS OTHER THAN THOSE ABOVE).

12.13 Adjudication of Claims. Any claim or dispute between the parties that is not resolved in accordance with the process and procedures set forth in Schedule 3.18(b) (Dispute Resolution) shall be handled in accordance with this Section 12.13.

(a) Arbitration.

i. Either party may require any controversy or claim between the parties related to the Program, including those arising out of or relating to this Agreement or any related agreements or instruments and those arising from any alleged tort, to be determined by binding arbitration in accordance with the Federal Arbitration Act, the JAMS Comprehensive Arbitration Rules & Procedures of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**"), and the provisions of subsection (b) below. Arbitrability of any and all disputes shall be decided by the arbitrator. In the event of any inconsistency, the provisions of subsection (b) below shall control.

ii. Arbitration hereunder shall be conducted in the State of Delaware and administered by JAMS/Endispute, Inc. If JAMS/Endispute, Inc. is unable or legally precluded from administering the arbitration, then the American Arbitration Association shall serve. The parties shall use commercially reasonable efforts to cause JAMS/Endispute, Inc. or the American Arbitration Association, as applicable, to appoint an arbitrator with sufficient experience with complex transactions and expertise in bank matters. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; provided that (A) the commencement of such hearing may be extended upon mutual agreement of the parties, and (B) the arbitrator may extend the commencement of such hearing for an additional sixty (60) days upon a showing of cause.

iii. The parties shall maintain the confidential nature of the arbitration proceeding and any awards given pursuant thereto, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

iv. The parties hereby agree to equally share the costs of arbitration.

v. In any arbitration arising out of or related to this Agreement, the arbitrator(s) shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator(s) determine a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator(s) may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

vi. Notwithstanding Schedule 3.18(b) (Dispute Resolution) or the foregoing provisions of this Section 12.13, any dispute resolution process under Schedule 3.18(b) (Dispute Resolution), or any arbitration under this Section 12.13, in each case related to a dispute concerning the Purchase Price of Purchased Assets or the terms of a Purchase Agreement, shall be subject to an expedited dispute resolution process and expedited arbitration process in which the parties use best efforts to resolve the dispute through dispute resolution and/or arbitration as necessary to maintain the time frames specified in this Agreement for determining the Purchase Price or entering into the Purchase Agreement.

(b) Judicial Resolution and Venue. If the parties cannot resolve a dispute in accordance with the terms of Schedule 3.18(b) (Dispute Resolution), and neither party chooses to use arbitration as a means to adjudicate claims, then the claim or dispute shall be resolved by judicial means in a court of competent jurisdiction located in the State of Delaware.

12.14 Notices. All notices hereunder shall be in writing and shall be sent by certified mail return receipt requested, by hand, or by nationally recognized overnight courier service addressed to the party to whom such notice or other communication is to be given or made at such party's address as set forth below, or to such other address as such party may designate in writing to the other party from time to time in accordance with the provisions hereof and shall be deemed given five (5) days after being sent by certified mail, the same day if hand delivered, and one (1) Business Day after being sent by any other method described above, as follows: (i) if to JCPenney: (A) Program Coordinator, JCPenney Credit Card, J. C. Penney Corporation, Inc., 6501 Legacy Drive, Plano, Texas 75024-3698 with a copy to; (B) General Counsel, J. C. Penney Company, 6501 Legacy Drive, Plano, Texas 75024-3698, and (ii) if to Bank: Synchrony Bank, 170 W. Election Road, Draper, UT 84020, Attention: President, with a copy to: Synchrony Bank, 777 Long Ridge Road, Stamford, Connecticut 06902, Attention: General Counsel;

provided, however, if either of the above parties shall have designated a different address by notice to the other, then to the last address so designated.

12.15 Power of Attorney.

(a) JCPenney authorizes and empowers Bank to sign and endorse JCPenney's name on all checks, drafts, money orders or other forms of payment in respect of Accounts under this Agreement. This limited power of attorney conferred hereby is deemed a power coupled with an interest and shall be irrevocable for so long as Bank owns Accounts.

(b) Bank authorizes and empowers JCPenney to sign and endorse Bank's name on all checks, drafts, money orders or other forms of payment that are submitted as In-Store Payments pursuant to this Agreement. This limited power of attorney conferred hereby is deemed a power coupled with an interest and shall be irrevocable prior to termination as provided in Article X.

12.16 Use of Names and Trademarks.

(a) JCPenney hereby grants to Bank a limited, royalty-free, non-exclusive, non-transferable, non-sublicensable (except as otherwise required for Bank to perform its obligations under this Agreement, including the use of Affiliates and other third-party contractors) license to use, display and reproduce the JCPenney Marks specifically approved in writing by JCPenney during the Term, solely in the creation, development, marketing and administration of the Program, provided such JCPenney Marks are used strictly in accordance with JCPenney's guidelines. If so used, JCPenney will indemnify and hold Bank harmless from and against any and all claims, demands, regulatory proceedings or causes of action, and all damages, costs (including attorneys' fees and settlements) and expenses associated with any alleged infringement by the JCPenney Marks of any third-party's intellectual property rights.

(b) Bank hereby grants JCPenney a limited, royalty-free, non-exclusive, non-transferable, non-sublicensable (except as otherwise required by JCPenney to perform its obligations, including the use of Affiliates and other third-party contractors) license to use, display and reproduce the Bank Marks as specifically approved in writing by Bank during the Term, solely in the creation, development, marketing and administration of the Program, provided such Bank Marks are used strictly in accordance with Bank's guidelines. If so used, Bank will indemnify and hold JCPenney harmless from and against any and all claims, demands, regulatory proceedings or causes of action, and all damages, costs (including attorneys' fees and settlements) and expenses associated with any alleged infringement by the Bank Marks of any third-party's intellectual property rights.

(c) Each party agrees to submit to the other party, for its prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, samples of all uses of each party's Marks, and each party agrees to use the other party's Marks in a manner and only as approved by such party.

(d) The provisions of Schedule 12.16(d) (Ownership of Technology) shall apply with respect to the parties' rights in regards to intellectual property.

12.17 Confidential Information. The parties' rights and obligations in respect of Confidential Information shall be as set forth in Schedule 12.17 (Confidential Information).

12.18 Audit Rights.

(a) Bank and its regulators shall have the right, with or by its independent third party auditors (which auditors shall be nationally recognized in performing such audit functions and may not be competitors of JCPenney), to review, inspect and audit, as a Bank Expense, the books, records, data files and other information and the facilities, systems and operations maintained by or on behalf of JCPenney and the Authorized Entities (to the extent they are Affiliates or are permitted by their contracts), related to the operation of the Program and the performance of JCPenney's obligations and the Authorized Entities' obligations (to the extent permitted by their contracts) under this Agreement.

(b) JCPenney shall have the right, with or by its independent third party auditors (which auditors shall be nationally recognized in performing such audit functions and may not be competitors of Bank) duly appointed representative, to review, inspect and audit, as a JCPenney Expense, the books, records, data files and other information and the facilities and operations maintained by or on behalf of Bank, including FDR and any other Bank affiliated or other approved outsourcers (to the extent permitted pursuant to their contracts) related to the operation of the Program and the performance of its obligations under this Agreement, including but not limited to compliance with the Service Level Standards, payments between the parties, monitoring customer service and collection calls, telephone calls involving alleged Cardholder fraud, debt collection practices, and any information security procedures that JCPenney deems appropriate but excluding Bank's internal cost allocations, provided such cost allocations are customary or, if not, JCPenney is notified of changes to Bank's customary practices. JCPenney shall have the right to test any audit requirement and seed lists to ensure compliance with this Agreement. For the avoidance of doubt, JCPenney shall have no right to audit information with respect to any other program of Bank.

(c) Such inspections shall occur at such reasonable times as shall be agreed upon by the parties, and only during normal business hours, using reasonable care not to cause damage and not to interrupt the normal business operations of the audited party. Such audits (i) shall be subject to such security procedures as the inspected party may reasonably impose, (ii) shall be subject to such limitations as may be required under applicable rules, regulations or statutes governing the conduct of the inspected party's business, and (iii) shall be performed according to a mutually agreed upon audit plan, which shall include the scope of the audit and a description of necessary documents. The parties agree to use commercially reasonable efforts to obtain audit rights for the other party in future contracts entered into with third parties regarding the Program.

12.19 Force Majeure; Disaster Relief.

(a) Definition of Force Majeure Event. Neither party shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to a Force Majeure Event. A "**Force Majeure Event**" as used in this Agreement, shall mean an unanticipated event which is not reasonably within the control of the affected party or its Affiliates or subcontractors and which by exercise of reasonable due diligence, such affected party or its Affiliates or subcontractors could not reasonably have been expected to avoid, overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Such causes may include the following: terrorism, flood, earthquake, tornado, storm, fire, explosion, public emergency, civil disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, the cause of which was out of the control of the party seeking relief (whether valid or invalid); however, no party shall be relieved of its obligations hereunder, if its failure of performance is due to removable or remediable causes which such party fails to remove or remedy using commercially reasonable efforts within a reasonable time period. Either party rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event shall give twenty-four (24) hours' notice of such fact to the other, followed by written confirmation of notice, and shall exercise due diligence to remove such inability with all reasonable dispatch. The affected party shall provide notice to the other party within twenty-four (24) hours of the cessation of such Force Majeure Event. For the avoidance of doubt, the parties acknowledge and agree that any Force Majeure Event affecting an Affiliate of either party, an Authorized Entity, or an outsourcing arrangement pursuant to Section 3.23 (Outsourcing), shall be a "**Force Majeure Event**" for the purposes of this Agreement with respect to that party.

(b) Exclusions from Force Majeure. The following events shall not be deemed a Force Majeure Event: (i) a hardware or software failure of computer equipment not caused by events set forth in Section 12.19(a) (Definition of Force Majeure); (ii) Bank's failure to perform its obligations because of Bank's failure to comply with, or the failure of Bank's Disaster Recovery Plan; (iii) JCPenney's failure to perform its obligations because of JCPenney's failure to comply with, or the failure of JCPenney's Disaster Recovery Plan; or (iv) a Security Incident.

(c) This Agreement may be terminated by JCPenney upon written notice to Bank in the event that a Force Majeure Event shall prevent Bank from performing any material obligations under this Agreement for a period of at least sixty (60) consecutive days (each period as applicable constitutes the "**Force Majeure Period**").

(d) This Agreement may be terminated by Bank upon written notice to JCPenney in the event that a Force Majeure Event shall prevent JCPenney from performing any material obligations under this Agreement for a period of at least sixty (60) consecutive days (each period as applicable constitutes the Force Majeure Period).

(e) Disaster Relief Programs. In addition to the other obligations set forth in this Section 12.19, Bank and JCPenney shall discuss and agree upon disaster relief practices, including hurricane, flood, tornado and other natural disaster programs when either the Bank Program Coordinator or the JCPenney Program Coordinator believes such relief is necessary or appropriate under the circumstances.

12.20 Disaster Recovery Plan. Each party shall have a disaster recovery plan for the continuation of business (a "**Disaster Recovery Plan**") designed so that despite any reasonably foreseeable disruption in a party's obligation to perform its obligations under this Agreement from any particular location or through the efforts of any particular individuals, such party shall promptly be able to respond in the event of an operational outage. Each party may, upon reasonable request, review the other party's Disaster Recovery Plan onsite at the other party's location. Bank's Disaster Recovery Plan and related processes and controls related to the Program shall, at a minimum, (a) meet the requirements of all applicable governmental agency or authority and (b) include testing each year and a process to promptly notify JCPenney in the event its Disaster Recovery Plan or related processes or controls must be put into effect. JCPenney's Disaster Recovery Plan shall, at a minimum, include periodic testing and a plan to promptly notify Bank in the event there is an actual material disruption in JCPenney's ability to perform its obligations under this Agreement such that its Disaster Recovery Plan must be put into effect. Upon the request of a party, the other party shall provide reasonable evidence of Disaster Recovery Plan testing. Prior to making any change to its Disaster Recovery Plan that could materially impact the Program, a party will provide the other party notice of such change and provide the other party an opportunity to review and provide comment to such changes.

12.21 Review and Monitoring. JCPenney will permit Bank, and hereby authorizes Bank, to review and monitor, on an ongoing basis, the administration and promotion of the Program through anonymous requests to open or utilize accounts under the Program and by other reasonable means, provided that, Bank will use reasonable care not to interrupt the normal business operations of JCPenney nor to unduly interfere with JCPenney's information system processing. Bank will provide JCPenney with the findings of such monitoring on a quarterly basis. Bank will maintain the confidentiality of the findings of such monitoring and disclose them to non-affiliated third parties only for the purposes of its regulatory compliance obligations.

12.22 Press Releases or Publicity Statements. Any press release or publicity statement by Bank or JCPenney with regard to the Program shall be as mutually agreed to by Bank and JCPenney.

12.23 Independent Contractor. In the performance of its duties or obligations under this Agreement or any other contract, commitment, undertaking or agreement made pursuant to this Agreement, JCPenney shall not be deemed to be, or permit itself to be, understood to be the agent of Bank and Bank shall not be deemed to be, or permit itself to be, understood to be the agent of JCPenney and each party shall at all times take whatever measures as are necessary to ensure that its status shall be that of an independent contractor operating as a separate entity. None of any party's employees, agents, or servants are entitled to the benefits that are provided to the employees of the other parties. Each party is solely interested in the results obtained under this Agreement and therefore the manner and means of conducting the party's business affairs are under the sole control of such party which shall be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants.

12.24 No Joint Venture. Nothing in this Agreement or any collateral agreement shall be deemed to create a partnership or joint venture between JCPenney or an Authorized Entity and Bank. Except as expressly set forth herein, no party shall have any authority to bind or commit the other party.

12.25 Information Provided to Bank. JCPenney shall provide to Bank the information described in Schedule 12.25 (Information Provided to Bank).

12.26 Tax and Financial Cooperation. During the Term, and thereafter as provided in Article X, the parties agree to cooperate with each other in connection with any official tax inquiry, tax audit, determination or related proceeding affecting tax liability of either party or, in connection with a determination of any tax liability or treatment, to make available to each other party within a reasonable amount of time, at no cost to such party, documents, correspondence, reports, books and records of either party and any other materials bearing on such tax inquiry, audit, examination, proceeding or determination of tax liability or treatment, provided that each party shall be reimbursed for any out-of-pocket expenses it incurs in assisting another party hereunder.

12.27 No Violation. Notwithstanding anything else contained in this Agreement (including Section 3.6 (Ownership and Use of Information)), neither Bank nor JCPenney (nor any of their respective Affiliates) shall, and none of them shall be obligated to, take any action that such entity believes in good faith would violate, or would cause any of them to violate, Applicable Law (including causing any of them to become a "consumer reporting agency" for purposes of the federal Fair Credit Reporting Act).

12.28 Set-Off. Each party shall have the right to set-off or re-coup any obligation at any time owing by the party to the other party against or on account of any obligations owed by the other party under this Agreement. A party's rights under this Section 12.28 shall be in addition to any other rights the party has under this Agreement or Applicable Law, including the federal Bankruptcy Code. All payment rights between the parties, including any settlement and chargeback rights, shall be deemed a "single integrated transaction" for purposes of determining a party's right of recoupment against the other party. Bank shall provide JCPenney with a reasonable accounting of any amounts credited or debited pursuant to this Section 12.28.

ARTICLE XIII
DUAL CARD PROGRAM

13.1 General. The provisions of Schedule 13 (The Dual Card Program) shall apply in respect of the Dual Card Program.

ARTICLE XIV
COMMERCIAL CARD PROGRAM

14.1 General. The provisions of Schedule 14 (Commercial Card Program) shall apply in respect of the Commercial Card Program.

ARTICLE XV
DEFINED TERMS

15.1 Defined Terms. Unless otherwise defined herein, capitalized terms used in the Agreement (including the Schedules attached hereto) shall have the meanings assigned to them in this Article XV.

"**Account**" means and includes any and all Private Label Accounts, Dual Card Accounts, Home Services Accounts and Commercial Card Accounts.

"**Account Documentation**" means with respect to an Account, any and all documentation relating to such Account, including Credit Card Applications, credit bureau reports, Credit Card carriers, Credit Card Agreements, Credit Cards, Charge Transaction Data, Charge Slips, Credit Slips, transaction data in respect of Dual Card Cash/Quasi-Cash Transactions, transaction data in respect of Billing Statements, Account payment checks, receipts and stubs, adverse action information, change-of-terms notices, Cardholder/Bank correspondence, memoranda, documents, instruments, certificates, agreements, and invoices (including, in each case, but not limited to collection notices and billing inquires/disputes, including any and all amendments or modifications thereto), however stored or maintained and any other written information relating to an Account; provided that "**Account Documentation**" shall not include materials of JCPenney and/or the Authorized Entities used for advertising or solicitation including advertising or solicitations of Credit Promotions. For the avoidance of doubt, Account Documentation shall not include JCPenney Information.

"**Acknowledged**" shall have the meaning given in Schedule 2.1(g) (Service Level Standards).

"**Affiliate**" means, with respect to any Person, each Person that controls, is controlled by or is under common control with such Person or any affiliate of such Person. For the purpose of this definition, "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Amended and Restated Credit Card Program Agreement, including the Schedules hereto, as it may be amended, from time to time.

"**Applicable Law**" means collectively or individually any federal, state or local law, rule, regulation or judicial, governmental or administrative order, decree, ruling, opinion, interpretation or guidance relating to or affecting any aspect of the Program, the Accounts established thereunder, the transactions reflected on the Accounts (including with respect to JCPenney and the Authorized Entities, the Goods and/or Services charged to Accounts), any of the rights or obligations of the parties under this Agreement, or a party's business, including the Consumer Credit Protection Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Fair Credit Billing Act, the Fair Credit Reporting Act and the implementing regulations and official commentaries issued thereunder from time to time, and local, state and federal laws and regulations applicable to usury, sales practices, privacy, telephone monitoring, advertising, unfair, deceptive or abusive acts or practices, and marketing.

"**Applicant**" means any Person that submits a Credit Card Application.

"**Authorized Entity**" means a Person other than JCPenney that is authorized to accept the Private Label Credit Card or the Home Services Credit Card, and the Existing Provider. As of the Effective Date, the Authorized Entities are (i) Transamerica, in its capacity as the Existing Provider, (ii) www.sephora.com, (iii) CashStar, Inc., (iv) Rite Aid, (v) Teleflora and (vi) Walgreen's.

"**Bank**" means Synchrony Bank, and its successors and permitted assigns under Section 12.1 (Assignability) of this Agreement.

"**Bank Applicable Law**" means Applicable Law that applies to Bank in connection with the operation of its business, including its participation in the Program and the performance of its obligations under this Agreement, including (i) the Truth in Lending Act and Regulation Z; (ii) the Equal Credit Opportunity Act and Regulation B; (iii) the Fair Debt Collection Practices Act; (iv) the Fair Credit Reporting Act; (v) GLBA; (vi) the Foreign Corrupt Practices Act; (vii) the USA PATRIOT Act; (viii) the Dodd-Frank Wall Street Reform and Consumer Protection Act; and (ix) other Applicable Law that apply to Bank in connection with Bank's obligations under this Agreement relating to Accounts, including origination, administration and servicing thereof.

"**Bank Dual Card Marketing Obligation**" shall have the meaning given in Schedule 13 (The Dual Card Program) of this Agreement.

"**Bank Expense**" means a cost or expense that Bank must bear, which cost or expense will not be included in the calculation of the Program Gain Share Payment.

"**Bank Indemnified Parties**" shall have the meaning given in Section 11.2 (Indemnification by JCPenney) of this Agreement.

"**Bank Manager**" shall have the meaning given in Schedule 2.1(d) (Program Resource Requirements).

"**Bank Marketing Fund**" shall have the meaning given in Section 2.6(a) (Marketing Fund) of this Agreement.

"**Bank Marketing Obligation**" means the Bank Private Label Marketing Obligation, the Bank Dual Card Marketing Obligation and the Home Services Marketing Obligation.

"**Bank Marks**" means the brand names, logos, trade styles, service marks or trademarks used by Bank in the operation of its business on the Effective Date, and all replacements, successors, modifications, and amendments thereto.

"**Bank Matter**" shall have the meaning given in Schedule 3.18(b) (Dispute Resolution).

"**Bank Operating Procedures**" means the instructions and procedures established by Bank in connection with the operation and administration of the Program as in existence on the Effective Date, as changed or modified by Bank from time to time.

"**Bank Private Label Marketing Obligation**" shall have the meaning given in Schedule 2.6 (Marketing).

"**Bank Program Coordinator**" shall have the meaning given in Section 3.18(a) (Program Governance) of this Agreement.

"**Bank Property**" has the meaning given to it in Section 8.1 (Grant of Security Interest; Precautionary Filing) of this Agreement.

"**Billing Statements**" means periodic Account activity statements issued by Bank to Cardholders, by paper or electronic means, with respect to Accounts from time to time.

"**Business Day**" means any day except Saturday, Sunday or a day on which banks are required or permitted to be closed in the State of Utah or New York; provided that with respect to settlement, " **Business Day**" means any day on which the FedWire is in operation.

"**Call Center**" shall have the meaning given in Section 2.1(d)(xvi) of this Agreement.

"**Cardholder**" means any Person who (a) has at any time entered into a Credit Card Agreement, (b) is obligated under or with respect to an Account, (c) is issued and is authorized to use a Credit Card, or (d) is authorized to use a Credit Card by a Person who has been issued a Credit Card.

"**Cardholder Benefits**" has the meaning set forth in Section 2.2(a)(vii).

"**Cardholder Terms**" means the finance charge rates, annual fee, late fees, other fees and charges, grace periods, fee or rate computation methods, including the timing thereof, and minimum payments specified in the Credit Card Agreement.

"**Charge Slip**" means a sales receipt, register receipt tape or other invoice or documentation, whether in hard copy or electronic draft capture form, in each case evidencing a JCPenney Purchase or other Purchase that is to be or has been debited to a Cardholder's Account.

"**Charge Transaction Data**" means Account or Cardholder identification and transaction information with regard to each Purchase by a Cardholder on an Account, and information with respect to each return of a Purchase of Goods and/or Services for credit to the applicable Account, including Charge Slips and Credit Slips, which data shall be submitted or transmitted by JCPenney to Bank in accordance with this Agreement for purposes of settlement between the parties.

"**Charges**" means any and all fees, expenses and charges contracted for or imposed on or with respect to an Account or any related Indebtedness, including interest, finance charges, service charges, default rates, late fees, NSF fees, overlimit fees and minimum finance charges.

"**Closing Date**" shall have the meaning given in Schedule 10.4(a) (Purchase Option).

"**Commercial Card**" means a Credit Card in respect of a Commercial Card Account.

"**Commercial Card Account**" means a charge card account in respect of the Commercial Card Program.

"**Commercial Card Agreement**" means a Credit Card Agreement in respect of a Commercial Card Account.

"**Commercial Card Application**" means a Credit Card Application in respect of a Commercial Card Account.

"**Commercial Card Program**" means the non-revolving charge card program established by Bank pursuant to this Agreement under which Commercial Cards are issued for use at JCPenney for commercial purposes, and pursuant to which the Commercial Cardholder is required to pay the balance in full upon a specified number of days after billing. The term "**Commercial Card Program**" includes the extension of credit by Bank to Commercial Cardholders, billings, collections, accounting between the parties and all aspects of the customized charge card plan contemplated herein. For avoidance of doubt, Authorized Entities shall not accept Commercial Cards without Bank's prior written consent.

"**Commercial Cardholder**" means a Cardholder in respect of a Commercial Card Account.

"**Confidential Information**" shall have the meaning given to it in Schedule 12.17 (Confidential Information) of this Agreement.

"**Credit Card**" means the plastic card or other device (other than a Mobile Wallet) issued to Cardholders, which evidences, among other things, a Cardholder's right to make JCPenney Purchases, and, as appropriate, other Purchases, and/or Dual Card Cash/Quasi-Cash Transactions which are to be debited to a Cardholder's Account.

"**Credit Card Agreement**" means the credit agreement between Bank and a Cardholder (and any replacement of such Agreement), governing the use of an Account, together with any amendments.

"**Credit Card Application**" means an application for an Account, whether in hard copy, telephonic or electronic form, whether an acceptance to a prescreened or preapproved offer or a full or short form application which must be completed and submitted (or the information contained therein electronically transmitted) to Bank for review by Bank for approval or decline.

"**Credit Promotions**" shall have the meaning given in Section 2.7 (Promotional Financing Programs) of this Agreement.

"**Credit Slip**" means a sales credit receipt, register receipt, tape or other invoice or documentation, whether in hard copy or electronic draft capture form, in each case evidencing a return or exchange of Goods and/or Services, or other goods or services, an adjustment for other services rendered or not rendered by JCPenney, an Authorized Entity or another merchant to a Cardholder under the Program, or correction of a misposting.

"**Credit Store Manual**" means the instructions and procedures established by JCPenney in connection with JCPenney's operation and administration of JCPenney's responsibilities under the Program as in existence on the Effective Date, as changed or modified by JCPenney from time to time.

"**Critical Change in Applicable Law**" shall have the meaning given in Schedule 2.1(f) (Critical Change in Applicable Law) of this Agreement.

"**Customer List**" shall have the meaning given in Schedule 3.6 (Ownership and Use of Information; Data Security).

"**Debt Protection Products**" means debt cancellation and debt suspension products.

"**Debt Protection Program**" shall have the meaning given in Section 3.7 (Incidental Marketing and Debt Protection Programs) of this Agreement.

"**Deferred Interest Promotion**" shall have the meaning given in Section 2.7 (Promotional Financing Programs) of this Agreement.

"**Designated Purchaser**" shall have the meaning given in Schedule 10.4(a) (Purchase Option).

"**Disaster Recovery Plan**" shall have the meaning given in Section 12.20 (Disaster Recovery Plan) of this Agreement.

"**DL Process**" shall have the meaning given in Section 11.3(h) (Indemnification by Bank) of this Agreement.

"**Dual Card**" means a Credit Card in respect of a Dual Card Account.

"**Dual Card Account**" means a credit card account in respect of the Dual Card Program.

"**Dual Card Agreement**" means a Credit Card Agreement in respect of a Dual Card Account.

"**Dual Card Cash/Quasi-Cash Transactions**" shall have the meaning given in Schedule 13 (The Dual Card Program).

"**Dual Card In-Store Net Credit Volume**" shall have the meaning given in Schedule 13 (The Dual Card Program).

"**Dual Card Net Credit Volume**" shall have the meaning given in Schedule 13 (The Dual Card Program).

"**Dual Card Out of Store Net Credit Volume**" shall have the meaning given in Schedule 13 (The Dual Card Program).

“**Dual Card Program**” means the co-branded open-end revolving credit card program involving credit cards branded with the names of JCPenney and the Network established under this Agreement pursuant to which Bank shall extend credit for purchases from entities other than JCPenney and Authorized Entities who accept cards bearing the name of the Network while still extending credit for purchases from JCPenney and Authorized Entities without processing the credit card transactions through the Network and, accordingly, without subjecting JCPenney and Authorized Entities to the Network’s interchange fees in respect of such transactions. The term “**Dual Card Program**” includes the extension of credit by Bank to Cardholders of a Dual Card Account, billings, collections, accounting between the parties and all aspects of the revolving credit plan contemplated herein.

“**Dual Cardholder**” means any natural person who (a) has at any time entered into a Dual Card Agreement, (b) is obligated under or with respect to a Dual Card Account, (c) is issued and is authorized to use a Dual Card, or (d) is authorized to use a Dual Card by a consumer who has been issued a Dual Card.

“**Effective Date**” means the date set forth in the preamble to this Agreement.

“**Evaluation Trigger**” shall have the meaning given in Schedule 10.4(a) (Purchase Option).

“**Event of Default**” shall have the meaning given in Section 9.1 (Events of Default) of this Agreement.

“**Exigent Circumstance**” means fraud, material harm, or another circumstance that involves loss or damage that reasonably demands a party take action more quickly than in the otherwise applicable period in order to avoid such loss or damage.

“**Existing Commercial Agreement**” has the meaning set forth in the Preamble.

“**Existing Products**” shall have the meaning given in Schedule 3.7(a) (Incidental Marketing Programs).

“**Existing Provider**” shall have the meaning given in Schedule 3.7(a) (Incidental Marketing Programs).

“**FDR**” means First Data Resources, Inc.

“**Financially Active Account**” means an Account for which a payment has been made, or a statement has been issued, in the prior month.

“**Fiscal Month**” means a month as set forth in the JCPenney internal financial calendar to establish its financial reporting periods.

“**Fiscal Quarter**” means a quarter as set forth in the JCPenney internal financial calendar to establish its financial reporting periods.

"**Fiscal Year**" means a JCPenney fiscal year (a 52 or 53 week period) beginning at the start of the February Fiscal Month and ending on the last Saturday at the end of the following January Fiscal Month.

"**Floor Limit**" means the maximum amount of credit for any single credit transaction that JCPenney or an Authorized Entity may submit Charge Transaction Data to Bank for settlement without securing prior authorization from Bank.

"**Force Majeure Event**" shall have the meaning given in Section 12.19(a) (Definition of Force Majeure) of this Agreement.

"**Freeze Period**" means the November, December and January Fiscal Months.

"**Fulfillment Materials**" shall have the meaning given in Section 2.4(d)(i) (Targeted Solicitation Materials) of this Agreement.

"**GAAP**" means generally accepted accounting principles applicable in the United States, consistently applied.

"**General Advertising Materials**" shall have the meaning given in Section 2.4(d)(ii) (General Advertising Materials) of this Agreement.

"**GLBA**" means the Gramm-Leach-Bliley Act, 15 USC 6801 et seq. (as it may be amended from time to time).

"**Going out of Business Sale**" or "**GOB Sale**" shall have the meaning given in Schedule 3.9 (Store Closings; Going Out of Business Sales).

"**Goods and/or Services**" means all merchandise and services that may be purchased with Credit Cards, including any products, merchandise and/or services that may be purchased under an Incidental Marketing Program (including credit and other insurance products and membership services), and any sales tax and/or shipping and handling amounts included thereon.

"**Governmental Authority**" shall have the meaning given in Schedule 2.1(f) (Critical Change in Applicable Law).

"**Home Services**" means in-home products and services provided by JCPenney or JCPenney Services either directly or through Home Services Companies and Subcontractors.

"**Home Services Account**" means an Account in respect of the Home Services Card Program.

"**Home Services Card Program**" means the open-end private label revolving credit card program established by Bank under which Home Services Credit Cards are issued solely for the purpose of financing the purchase of Home Services. The term "**Home Services Card Program**" includes the extension of credit by Bank to Home Services Cardholders, billings, collections, accounting between the parties and all aspects of the customized revolving credit plan contemplated herein.

"**Home Services Card Program Operating Procedures** " means the instructions and procedures established in connection with the operation and administration of the Home Services Card Program as in existence on the Effective Date, as changed or modified from time to time; provided, however such instructions and procedures may not be changed or modified by Bank without JCPenney's prior written approval, not to be unreasonably withheld, conditioned or delayed by JCPenney.

"**Home Services Cardholder**" means a Cardholder in respect of a Home Services Credit Card.

"**Home Services Company**" means a Person retained by JCPenney or JCPenney Services to provide Home Services.

"**Home Services Credit Card**" means a Credit Card in respect of a Home Services Account.

"**Home Services Credit Card Agreement** " means a Credit Card Agreement in respect of a Home Services Account.

"**Home Services Credit Card Application** " means a Credit Card Application in respect of a Home Services Account.

"**Home Services Marketing Obligation** " shall have the meaning in Schedule 16 (The Home Services Card Program).

"**Home Services Purchase**" means the purchase of Home Services (including any sales tax and/or shipping and handling amounts assessed thereon) by a Home Services Cardholder on a Home Services Account, or amounts debited on a Home Services Account pursuant to a Debt Protection Program.

"**Incidental Marketing Program** " means any products or services other than the Credit Card or Debt Protection Products that are billed on a recurring basis and are marketed by or through JCPenney to Cardholders, whether at a JCPenney Location or not, including, credit insurance and other insurance programs, credit card protection plans (other than debt cancellation or suspension products), legal services, auto clubs, extended warranties, or other services.

"**Indebtedness**" means, with respect to an Account, any and all amounts owing from time to time by a Cardholder in respect of an Account, including any unpaid balances (whether as a result of purchasing Goods and/or Services, including participating in an Incidental Marketing Program or conducting Dual Card Cash/Quasi-Cash Transactions), finance charges, late fees, returned check fees, and any other charges to an Account, whether accrued or billed.

"**Indemnified Losses**" shall have the meaning given in Section 11.1 (Indemnified Losses) of this Agreement.

"**Initial Term**" shall have the meaning given in Section 10.1 (Initial and Renewal Term) of this Agreement.

"**Inserts**" shall have the meaning given in Section 3.16 (Inserts and Other Statement Communications) of this Agreement.

"**In-Store Payment**" means any payment on an Account made by a Cardholder (or other person acting on behalf of a Cardholder) at a JCPenney Location operated by JCPenney and so designated by JCPenney.

"**Intellectual Property**" shall have the meaning given in Schedule 12.16(d) (Ownership of Technology).

"**JAMS**" shall have the meaning given in Section 12.13(a)(i) (Arbitration) of this Agreement.

"**JCPenney**" means J. C. Penney Corporation, Inc., a Delaware corporation.

"**JCPenney Applicable Law**" means Applicable Law that applies to JCPenney in connection with the operation of its business, including the offering and sale of goods and services, its participation in the Program and the performance of its obligations under this Agreement.

"**JCPenney Debt Protection Payment**" shall have the meaning given in Schedule 3.7(b) (Debt Protection Program) of the Agreement.

"**JCPenney Expense**" means a cost or expense that JCPenney must bear, which cost or expense will not be included in the calculation of the Program Gain Share Payment.

"**JCPenney Expert**" shall have the meaning given in Schedule 10.4(a) (Purchase Option) of the Agreement.

"**JCPenney Indemnified Parties**" shall have the meaning given in Section 11.3 (Indemnification by Bank).

"**JCPenney Information**" shall have the meaning given in Schedule 3.6 (Ownership and Use of Information; Data Security).

"**JCPenney Location(s)**" means all retail stores and all sites for mail order, the JCPenney Website and other direct access medium within the Territory that are owned or operated by JCPenney or any Authorized Entity.

"**JCPenney Marks**" means the brand names, logos, trade styles, service marks and trademarks used by JCPenney in the operation of its business on the Effective Date, and all replacements, successors, modifications, and amendments thereto.

"**JCPenney Program Coordinator**" shall have the meaning given in Section 3.18(a) (Program Governance) of this Agreement.

"**JCPenney Purchase(s)**" means a purchase by a Cardholder of Goods and/or Services from JCPenney or an Authorized Entity, including a Home Services Purchase and a purchase under Incidental Marketing Programs, as to which Bank advances funds and debits an Account under the Program, whether such purchase occurs at a JCPenney Location, by mail order, by telephone order, by computer or other direct access method, or by any other medium or method through which a purchase of (i) Goods and/or Services, (ii) Home Services or (iii) products or services under an Incidental Marketing Program can be effected.

"**JCPenney Website**" means the website currently located at www.jcpenney.com (or any successor), and the official websites of each of the Authorized Entities.

"**JCPenney Share Percentage**" shall have the meaning given in Schedule 3.7(b) (Debt Protection Program).

"**Liabilities**" means any and all debts, liabilities, commitments and obligations, whether fixed, contingent or absolute, secured or unsecured, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, whenever or however arising (including whether arising out of any contract or tort based on negligence or strict liability) and whether the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"**Marketing Plan**" shall have the meaning given in Section 2.4(a) (Promotion of Program) of this Agreement.

"**Marketing Plan Date**" shall have the meaning given in Section 2.5(a) (Marketing Plans) of this Agreement.

"**Marketing Program**" shall have the meaning given in Schedule 2.6 (Marketing).

"**Marks**" means, as the context requires, either Bank Marks or JCPenney Marks.

"**Mastercard**" means MasterCard International Incorporated.

"**MAE on Revenue**" shall have the meaning given in Schedule 2.1(f) (Critical Change in Applicable Law).

"**Mobile Wallet**" shall have the meaning given in Schedule 3.2(f) (Mobile Wallets).

"**Net Credit Volume**" shall have the meaning given in Schedule 2.6 (Marketing).

"**Network**" shall mean Visa or Mastercard, if the name of such entity is used on Dual Cards. As of the Effective Date, the Network is Mastercard. Any change between Mastercard and Visa must be mutually agreed upon in writing by the parties.

"**Network Rules**" means, with respect to a party, the operating rules, guidelines, and other requirements, as in effect from time to time, issued by any Network in which the Dual Cards participate that apply to such party with respect to the (i) Dual Card Program and (ii) performance of such party's obligations hereunder.

“**No Interest Promotion**” shall have the meaning given to it in Section 2.7 (Promotional Financing Programs).

“**Non-Conforming Payments**” shall have the meaning given in Schedule 2.1(g) (Service Level Standards).

“**Peer Group Programs**” means the Technology Peer Group and the Synchrony Peer Group.

“**Person**” means and includes any individual, partnership, joint venture, limited liability company, corporation, trust, unincorporated organization or government or any department or agency thereof.

“**Potentially Competing Financing Statement**” means any financing statement in favor of any Person that covers any of the Bank Property or that would cover such property if, contrary to the intent of the parties to the Agreement, JCPenney were determined to have any rights therein.

“**Potentially Competing Security Interest**” means any security interest in favor of any Person that attaches to any of the Bank Property or that would attach to such property, if contrary to the intent of the parties to the Agreement, JCPenney were determined to have any rights therein.

“**Private Label Account**” means an Account in respect of the Private Label Program.

“**Private Label Cardholder**” means a Cardholder in respect of a Private Label Account.

“**Private Label Credit Card**” means a Credit Card in respect of a Private Label Account.

“**Private Label Credit Card Agreement**” means a Credit Card Agreement in respect of a Private Label Account.

“**Private Label Credit Card Application**” means a Credit Card Application in respect of a Private Label Account.

“**Private Label Net Credit Volume**” means the Net Credit Volume in respect of Private Label Accounts.

“**Private Label Program**” means the open-end revolving private label credit card program established by Bank pursuant to this Agreement under which credit cards are issued for use primarily to make purchases at JCPenney and are not generally usable outside the operations of JCPenney and Authorized Entities. The term “**Private Label Program**” includes the extension of credit by Bank to

Private Label Cardholders, billings, collections, accounting between the parties and all aspects of the customized revolving credit plan contemplated herein.

"**Program**" means, collectively, the Private Label Program, the Dual Card Program, the Home Services Card Program and the Commercial Card Program.

"**Program Annual Average Receivables**" shall have the meaning given in Schedule 4.5 (Program Gain Share Payment).

"**Program Assets**" shall have the meaning given in Schedule 10.4(a) (Purchase Option).

"**Program Coordinator(s)**" shall have the meaning given in Section 3.18 (Program Governance) of this Agreement.

"**Program Expense**" means a cost or expense borne by JCPenney or Bank, which cost or expense will be included in the calculation of the Program Gain Share Payment.

"**Program Gain Share Eligible Amount**" shall have the meaning given in Schedule 4.5 (Program Gain Share Payment).

"**Program Gain Share Payment**" shall have the meaning given in Schedule 4.5 (Program Gain Share Payment).

"**Program Information**" shall have the meaning given in Schedule 3.6 (Ownership and Use of Information; Data Security).

"**Program Losses**" shall have the meaning given in Schedule 4.5 (Program Gain Share Payment).

"**Program Materials**" shall have the meaning given in Section 2.4(d) (Development and Review of Program Materials) of this Agreement.

"**Purchase(s)**" means JCPenney Purchase(s) or other purchase(s) of goods and services by a Cardholder as to which Bank advances funds and debits an Account under the Program, excluding Dual Card Cash/Quasi-Cash Transactions.

"**Purchase Active Account**" means an Account for which a JCPenney Purchase has been submitted in the past twelve (12) months (or in the past three (3) months if a Significant Event has occurred).

"**Purchase Option Expiration Date**" shall have the meaning given in Schedule 10.4(a) (Purchase Option).

"**Renewal Term**" shall have the meaning given in Section 10.1 (Initial and Renewal Term).

"**Retail Card**" means the Retail Card business unit of Bank.

"**Risk Criteria**" means all Account credit decisioning criteria (including Credit Card Application decisioning criteria, score cutoff strategies, line assignment strategies, and decisioning for approved Applicants on Credit Card type), and Account management activities (including authorizations and line management).

"**SaaS Agreement**" means the Software as a Service Agreement by and between Synchrony Bank and J.C. Penney Corporation, Inc. dated July 21, 2016, as it has been or may be amended.

"**Sales Tax Recovery Program**" shall have the meaning given to it in Section 3.24 (Sales Tax Recovery) of the Agreement.

"**Security Incident**" shall have the meaning given in Schedule 3.6 (Ownership and Use of Information; Data Security).

"**Service Level Standard(s)**" means the standards for the service levels to be provided by Bank, directly or indirectly, in connection with the Program, as specified in Schedule 2.1(g) (Service Level Standards), as may be amended, restated, supplemented or modified.

"**Services**" shall have the meaning given in Section 2.1(d) (Services) of this Agreement.

"**Service Level Default**" shall have the meaning given in Schedule 2.1(g) (Service Level Standards).

"**Settlement Procedures**" means the procedures pursuant to which JCPenney and Bank will settle with one another with respect to transactions under the Program, as specified in Schedule 4.1 (Settlement).

"**Solvent**" means, with respect to any party, that as of the date of determination, (a) the sum of such party's debt (including contingent liabilities) does not exceed the present fair saleable value of such party's present assets; (b) such party's capital is not unreasonably small in relation to its business as contemplated on the Effective Date or with respect to any transaction contemplated to be undertaken after the Effective Date; and (c) such party has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise). For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standards No. 5).

"**Statement Communications**" shall have the meaning given in Schedule 3.16 (Inserts and Other Statement Communications).

"**Subcontractor**" means a Person who is retained to provide, on behalf of a Home Services Company, all or a portion of the Home Services that are to be provided to a customer.

"**Suspension Event**" shall have the meaning given in Schedule 10.3 (Rights and Obligations Upon Notice of Termination).

"**Synchrony Peer Group**" means Macy's, Kohl's, TJX, Walmart, Target, and Amazon.

"**Targeted Solicitation Materials**" shall have the meaning given in Section 2.4(d)(i) (Targeted Solicitation Materials) of this Agreement.

"**Technology Peer Group**" means Amazon, Gap, Kohl's, Lowes, and TJX.

"**Term**" means the period beginning on the Effective Date and ending on the Termination Date.

"**Termination Date**" shall have the meaning given in Schedule 10.3 (Rights and Obligations Upon Notice of Termination).

"**Termination Service Levels**" shall have the meaning given in Schedule 2.1(g) (Service Level Standards).

"**Territory**" has the meaning given to it in Section 2.1(c) (Establishment of Program and Accounts) of the Agreement.

"**Third Expert**" has the meaning given to it in Schedule 10.4(a) (Purchase Option) of the Agreement.

"**Third-Party Claim**" means any claim (including counter or cross-claim), assertion, event, condition, investigation or proceeding by any third party (including Governmental Authorities) concerning any Indemnified Losses.

"**Transamerica**" means Transamerica Corporation Insurance Company.

"**Visa**" means Visa Inc.

"**Written-Off Account**" means an Account that has been written off in accordance with Bank Applicable Law and is consistent with the write-off policies applied by Bank with respect to its other private label and co-branded credit card programs.

ARTICLE XVI
HOME SERVICES CARD PROGRAM

16.1 General. The parties' respective rights and obligations in respect of the Home Services Card Program and Home Services Accounts opened thereunder shall be as set forth in Schedule 16 (The Home Services Card Program).

IN WITNESS WHEREOF, Bank and JCPenney have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the date first above written.

J. C. PENNEY CORPORATION, INC.

By: /s/ James Ward
Name: James Ward
Title: Vice President, Credit

SYNCHRONY BANK

By: /s/ Thomas M. Quindlen
Name: Thomas M. Quindlen
Title: Executive Vice President, Retail Card

Exhibit 10.2

[INSERT DATE OF DELIVERY]

EXECUTIVE TERMINATION PAY AGREEMENT
[INSERT NAME OF EXECUTIVE OFFICER]

This Executive Termination Pay Agreement (the "Agreement"), dated as of _______________, 20___ is between J. C. Penney Corporation, Inc. ("Corporation") and **[INSERT NAME OF EXECUTIVE OFFICER]** , its **[TITLE]**, a member of the Corporation's executive team (the "Executive").

WHEREAS, in order to achieve its long-term objectives, the Corporation recognizes that it is essential to attract and retain superior executives;

WHEREAS, in order to induce the Executive to serve in the Executive's position with the Corporation, the Corporation desires to provide the Executive with the right to receive certain benefits in the event the Executive experiences an Involuntary Separation from Service other than for Cause, as defined in this Agreement, on the terms and subject to the conditions hereinafter set forth; and

WHEREAS, in return for receiving the benefits provided for in this Agreement in connection with the Executive's Involuntary Separation from Service other than for Cause, the Executive agrees to be bound by certain restrictive covenants, as described in Section 3 of this Agreement, in connection with the Executive's Voluntary Separation from Service or Involuntary Separation from Service other than for Cause.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, it is agreed as follows:

1. Termination Payments and Benefits.

1.1 *Death or Permanent Disability.* In the event of a Separation from Service due to death, or in the event of a Separation from Service within 30 days following a determination of Permanent Disability (as defined in Section 2 of this Agreement) of the Executive, then as soon as practicable or within the period required by law, but in no event later than 30 days after Separation from Service, the Corporation shall pay:

(a) the Compensation Payments; and

(b) the Prorated Bonus.

The payment of any death benefits or disability benefits under any employee benefit or compensation plan that is currently maintained by the Corporation for the Executive's benefit shall be governed by the terms of such plan in effect at the time of death or permanent disability.

1.2 *Involuntary Separation from Service for Cause.* In the event of the Involuntary Separation from Service (as defined in Section 2 of this Agreement) of the Executive for Cause (as defined in Section 2 of this Agreement), the Corporation shall pay the Compensation Payments to the Executive as soon as practicable or within the period required by law, and the Executive shall be entitled to no other compensation, except as otherwise due to the Executive under applicable law, or an applicable plan or program for which he or she remains eligible as of the date of the Involuntary Separation from Service. The Executive shall not be entitled to the payment of any bonuses for any portion of the fiscal year in which such Separation from Service occurs. If the Executive has accrued a bonus for all, or a portion of, the fiscal year preceding the date of such Separation from Service that is readily ascertainable, but not yet paid, the Executive shall be entitled to such payment in the same form and manner as otherwise set forth in the Management Incentive Compensation Program or other applicable plan or program for which he or she remains eligible as of the date of the Involuntary Separation from Service.

1.3 *Voluntary Separation from Service by the Executive* . In the event of a Voluntary Separation from Service by the Executive (i) the Corporation shall pay the Executive any accrued and unpaid Base Salary as soon as practicable or within the period required by law, and (ii) the Executive agrees to be bound by the terms of the Covenants and Representations contained in Section 3 of this Agreement. The Executive shall be entitled to no other compensation, except as otherwise due to the Executive under applicable law, or applicable plan or program for which he or she remains eligible as of the date of the Voluntary Separation from Service. The Executive shall not be entitled to the payment of any bonuses, including any amounts payable under the Management Incentive Compensation Program for any portion of the fiscal year in which such Separation from Service occurs, except as may otherwise be expressly provided under the Management Incentive Compensation Program. If the Executive has accrued a bonus for all, or a portion of, the fiscal year preceding the date of such Separation from Service that is readily ascertainable, but not yet paid, the Executive shall be entitled to such payment in the same form and manner as otherwise set forth in the Management Incentive Compensation Program or other applicable plan or program for which he or she remains eligible as of the date of the Voluntary Separation from Service.

1.4 *Involuntary Separation from Service without Cause.*

(a) *Form and Amount*. In the event of the Involuntary Separation from Service of the Executive without Cause, the Corporation shall pay the Compensation Payments to the Executive as soon as practicable or within the period required by law. In addition, conditioned upon receipt of the Executive's written release of claims in such form as may be required by the Corporation and the expiration of any applicable period during which the Executive can rescind or revoke such release, the Corporation shall pay the Executive

(i) severance pay in equal installments, no less frequently than monthly, during the applicable Severance Period equal to the Executive's monthly Base Salary;

(ii) the Executive's target annual incentive (at $1.00 per unit) under the Corporation's Management Incentive Compensation Program for the fiscal year in which the Executive experiences an Involuntary Separation from Service other than for Cause converted to a monthly amount by dividing that target annual incentive amount by 12, in equal installments, no less frequently than monthly, during the applicable Severance Period;

(iii) subsidized COBRA payments, if the Executive is eligible for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") under the group health plan coverage options (medical, dental, vision, etc.) under the J. C. Penney Corporation, Inc. Health and Welfare Benefit Plan ("Health and Welfare Plan") and the Executive elects COBRA continuation coverage under the group health plan coverage options under the Health and Welfare Plan. The amount of such subsidy shall be equal to the Corporation's portion of the premium cost of the Executive's group health plan coverage elections under the Health and Welfare Plan that the Corporation paid while the Executive was an active associate;

(iv) a lump sum equal to (a) Special Bonus Hours to the extent provided under Section 1.4(c) of this Agreement, if applicable, and (b) $25,000 to pay for outplacement services and financial counseling services.; and

(v) a lump sum equal to the Severance Bonus. If the Executive has accrued a bonus for all, or a portion of, the fiscal year preceding the date of such Separation from Service that is readily ascertainable, but not yet paid, the Executive shall be entitled to such payment in the same form and manner as otherwise set forth in the Management Incentive Compensation Program or other applicable plan or program for which he or she remains eligible as of the date of the Involuntary Separation from Service.

Notwithstanding the foregoing, such lump sum amounts under this Section 1.4(a) shall be paid to the Executive within 14 days of the Executive's Involuntary Separation from Service other than for Cause, but in no event later than two and one-half months after the end of the Executive's tax year in which the Involuntary Separation from Service occurs. If the applicable revocation or rescission period described in this

Section 1.4(a) with respect to any waiver or release of claims begins in one taxable year and ends in a second taxable year, any payments and other rights described in this Section 1.4(a) shall not commence until the second taxable year. In addition to the payments provided for herein, following an Involuntary Separation from Service other than for Cause, the Corporation shall also provide to the Executive Accelerated Vesting as provided in Section 1.4(d) of this Agreement.

(b) *Health and Dental Insurance Continuation*. Following an Involuntary Separation from Service other than for Cause, the Executive will, as provided in Section 1.4(a)(iii) of this Agreement, be eligible to receive COBRA continuation coverage under the group health plan options, as applicable, at active associate rates if (i) the Executive is enrolled in a full-time group health plan option, as applicable, under the Health and Welfare Plan on the effective date of the Executive's Involuntary Separation from Service other than for Cause and the Corporation currently is paying a portion of the Executive's premium for the group health plan coverage on the Executive's behalf, and (ii) the Executive timely elects COBRA continuation coverage under the Health and Welfare Plan. If the Executive satisfies these prerequisites, the Corporation will allow the Executive to participate in COBRA continuation coverage under the Health and Welfare Plan at active associate rates until the earlier of (i) the end of the month that coincides with or next follows the term of the Severance Period; and (ii) the end of the month prior to the month the Executive fails to timely make any required premium payment under the Health and Welfare Plan in connection with receiving COBRA continuation coverage under the Health and Welfare Plan or otherwise loses eligibility for COBRA continuation coverage. Any subsidized COBRA continuation coverage provided under this Section 1.4(b) will run concurrently with the Executive's maximum statutory continuation period under COBRA.

(c) *Special Bonus Hours*. Following an Involuntary Separation from Service, the Corporation shall pay the Executive a lump sum payment for Special Bonus Hours, if the Executive is a participant in the Corporation's PTO Policy. Such payment shall be determined in accordance with the provisions of the PTO Policy applicable to an involuntary termination resulting from a reduction in force.

(d) *Accelerated Vesting.* On Executive's Involuntary Separation from Service other than for Cause, Executive shall:

(i) with respect to any equity award that constitutes an Inducement Award, immediately vest in such Inducement Award as provided in the applicable award notice or agreement evidencing the award.

(ii) with respect to any award of stock options, stock appreciation rights, or time-based restricted stock or restricted units, immediately vest in a prorated number of the stock options, stock appreciation rights, and/or time-based restricted stock or restricted stock units based on the Executive's length of employment during the vesting period provided in the applicable award notice or agreement.

(iii) with respect to any award of performance-based restricted stock or restricted stock unit awards, vest in a prorated number of such performance-based restricted stock or restricted stock units based on (X) Executive's length of employment during the performance period, and (Y) the attainment of the performance goal as of the end of the performance period, all as provided under the terms of the respective award notice or agreement.

(iv) with respect to any award of performance cash, vest in a prorated amount of such performance cash based on (X) Executive's length of employment during the performance period, and (Y) the attainment of the performance goal as of the end of the performance period, all as provided under the terms of the respective award notice or agreement.

1.5 *Section 409A.* To the extent applicable, it is intended that portions of this Agreement either comply with or be exempt from the provisions of section 409A of the Code (as defined in Section 2 of this Agreement). Any provision of this Agreement that would cause this Agreement to fail to comply with or be exempt from Code section 409A shall have no force and effect until such provision is either amended to comply with or be exempt from Code section 409A (which amendment may be retroactive to the extent permitted by Code section 409A and the Executive hereby agrees not to withhold consent unreasonably to any amendment requested by the Corporation for the purpose of either complying with or being exempt from Code section 409A).

1.6 *Enforcement and Forfeiture*. Notwithstanding the foregoing provisions of this Section 1, in addition to any remedies to which the Corporation is entitled, any right of the Executive to receive termination payments and benefits under Section 1 shall be forfeited to the extent of any amounts payable or benefits to be provided after a breach of any covenant set forth in Section 3. On the Corporation's becoming aware that the Executive has breached, or potentially has breached, any covenant set forth in Section 3 of this Agreement, the Corporation shall suspend all future installment payments under Section 1.4(a) of this Agreement and may seek full recoupment of all amounts previously paid to the Executive under Section 1.4(a) this Agreement, and reasonable attorneys' fees and legal expenses incurred in obtaining such recoupment. The forfeiture or recoupment of any equity awards that are subject to covenants like those contained in Section 3 of this Agreement shall be governed by the terms of the applicable equity award agreement containing such covenants.

1.7 *Non-Eligibility For Management Incentive Compensation Program benefits and Other Company Separation Pay Benefits*. The benefits provided for herein are intended to be in lieu of, and not in addition to, benefits under the Management Incentive Compensation Program the Executive could earn with respect to any incentive compensation or bonus program in place for the fiscal year in which the Executive's Involuntary Separation from Service other than for Cause occurs or any other separation pay benefits to which the Executive might be entitled, including those under the Corporation's Separation Pay Plan, or any successor plan or program offered by the Corporation, which the Executive hereby waives. If the Executive receives benefits under the Corporation's CIC Plan, in the event of Employment Termination (as defined in the CIC Plan), the covenants set forth in Section 3 hereof shall automatically terminate and, if the Executive shall receive all benefits to which the Executive is entitled under the CIC Plan, the Executive waives all benefits hereunder.

1.8 *Corporation's Right of Offset* . If the Executive is at any time indebted to the Corporation, or otherwise obligated to pay money to the Corporation for any reason, to the extent exempt from or otherwise permitted by Code section 409A and the Treasury Regulations thereunder, including Treasury Regulation section 1.409A-3(j)(4)(xiii) or any successor thereto, the Corporation, at its election, may offset amounts otherwise payable to the Executive under this Agreement, including, but without limitation, Base Salary and incentive compensation payments, against any such indebtedness or amounts due from the Executive to the Corporation, to the extent permitted by law.

1.9 *Mitigation*. In the event of the Involuntary Separation from Service of the Executive, the Executive shall not be required to mitigate damages by seeking other employment or otherwise as a condition to receiving termination payments or benefits under this Agreement. No amounts earned by the Executive after the Executive's Involuntary Separation from Service, whether from self-employment, as a common law employee, or otherwise, shall reduce the amount of any payment or benefit under any provision of this Agreement.

1.10 *Resignations*. Except to the extent requested by the Corporation, upon termination of the Executive's service with the Corporation for any reason, the Executive shall immediately resign all positions and directorships with the Corporation and each of its subsidiaries and affiliates.

2. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

2.1 *"Agreement*" shall mean this Executive Termination Pay Agreement.

2.2 *"Base Salary"* shall mean the Executive's annual base salary as in effect at the effective date of termination of the Executive's employment with the Corporation.

2.3 *"Cause"* shall mean (a) an intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during or in the course of Executive's employment with the Corporation; (b) intentional damage to the Corporation's assets; (c) intentional disclosure of the Corporation's confidential information contrary to Corporation's policies; (d) material breach of Executive's obligations under this Agreement; (e) intentional engagement in any competitive activity which would constitute a breach of Executive's duty of loyalty or of Executive's obligations under this Agreement; (f) the willful and continued failure to substantially perform Executive's duties for the Corporation (other than as a result of incapacity due to physical or mental illness); provided, however, that termination for Cause based on clause (f) shall not be effective unless the Executive shall have written notice from the Chief Executive Officer of the Corporation (which notice shall include a description of the reasons and circumstances giving rise to such notice) not less than 30 days prior to the Executive's termination and the Executive has failed after receipt of such notice to satisfactorily discharge the Executive's duties; or (g) intentional breach of any of Corporation's policies, willful conduct or gross negligence by Executive that is in either case demonstrably and materially injurious to Corporation, monetarily or otherwise. Failure to meet performance standards or objectives, by itself, does not constitute "Cause." "Cause" also includes any of the above grounds for dismissal regardless of whether the Corporation learns of it before or after terminating Executive's employment.

2.4 "*CIC Plan*" shall mean the Corporation's Change in Control Plan, to which Executive is a participant at the time of termination of employment.

2.5 "*Code*" shall mean the Internal Revenue Code of 1986, as amended, including proposed, temporary or final regulations or any other guidance issued by the Secretary of the Treasury or the Internal Revenue Service with respect thereto.

2.6 “*Compensation Payments*” shall mean:

(a) any accrued and unpaid Base Salary (as defined in Section 2 of this Agreement); and

(b) any vacation to which the Executive was entitled as of the effective date of termination of the Executive’s employment with the Corporation under the terms of the applicable MTO Policy or PTO Policy to which Executive is a participant at the time of termination of employment.

2.7 “*Competing Business*” shall have the meaning ascribed thereto in Section 3.4 of this Agreement.

2.8 “*Corporation”* shall mean J.C. Penney Corporation, Inc.

2.9 “*Executive*” shall mean the undersigned member of the Corporation’s executive team.

2.10 “*Inducement Award”* shall mean an equity award granted to Executive in consideration of Executive’s (i) employment with the Corporation and (ii) forfeiture of equity awards granted by a former employer.

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

2.12 *“Management Incentive Compensation Program”* shall mean the Amended and Restated Management Incentive Compensation Program approved by shareholders of J. C. Penney Company, Inc. on May 19, 2017, as such may be amended from time to time, or any successor plan or program that replaces the Management Incentive Compensation Program.

2.13 "*MTO Policy”* shall mean the Corporation’s My Time Off Policy, to which the Executive is a participant at the time of termination of employment.

2.14 *“Permanent Disability”* means the Executive is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, within the meaning of Code section 409A and Treasury Regulation section

1.409A-3(i)(4)(i)(A) or any successor thereto. A determination of Permanent Disability, for purposes of payment under this Agreement, will be made by the Corporation's disability insurance plan administrator or insurer.

2.15 *"Proprietary Information*" shall have the meaning ascribed thereto in Section 3.

2.16 *"Prorated Bonus"* shall mean the target annual incentive (at $1.00 per unit) under the Corporation's Management Incentive Compensation Program for the fiscal year in which the date of death or the determination of Permanent Disability occurs, prorated for the actual period of service for that fiscal year.

2.17 "*PTO Policy*" shall mean the Corporation's Paid Time Off Policy, to which the Executive is a participant at the time of termination of employment.

2.18 "*Separation from Service"* within the meaning of Code section 409A and Treasury Regulation section 1.409A-1(h) or any successor thereto, shall mean the date an Executive retires, dies or otherwise has a termination of employment with the Service Recipient. In accordance with Treasury Regulation section 1.409A-1(h) or any successor thereto, if an Executive is on a period of leave that exceeds six months and the Executive does not retain a right to reemployment under an applicable statute or by contract, the employment relationship is deemed to terminate on the first date immediately following such six-month period, and also, an Executive is presumed to have separated from service where the level of bona fide services performed (whether as an employee or an independent contractor) decreases to a level equal to 20 percent or less of the average level of services performed (whether as an employee or an independent contractor) by the Executive during the immediately preceding 36-month period (or the full period of service to the Service Recipient if the employee has been providing services for less than the 36-month period).

2.19 "Separation Pay Plan" means the J. C. Penney Corporation, Inc. Separation Pay Plan as such plan may be amended from time to time, including any successor plan or program that replaces the Separation Pay Plan.

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

2.21 "*Severance Bonus*" shall mean the actual incentive compensation payable to the Executive under the terms of the Management Incentive Compensation Program for the fiscal year in which the Executive experiences an Involuntary Separation from Service other than for Cause, prorated for the Executive's actual period of service for the fiscal year, less any amounts previously paid to the Executive under the incentive compensation program for that fiscal year. If the incentive compensation formula under the Management Incentive Compensation Program for the fiscal year in which the Executive's Involuntary Separation from Service other than for Cause occurs includes an individual performance component/goal, for purposes of calculating the actual incentive compensation payable to the Executive for that fiscal year the portion of the incentive compensation attributable to the achievement of the individual performance component/goal will be determined at target for that fiscal year.

2.22 "*Severance Period*" shall mean the following period, based on the Executive's title at the time of termination of the Executive's employment with the Corporation:

Title	Severance Period
Executive Vice Presidents and above	18 months
Senior Vice Presidents	12 months

2.23 "*Voluntary Separation from Service* " shall mean a Separation from Service other than as a result of the Executive's death, Permanent Disability, or an Involuntary Separation from Service.

3. Covenants and Representations of the Executive . The Executive hereby acknowledges that the Executive's duties to the Corporation require access to and creation of the Corporation's confidential or proprietary information and trade secrets (collectively, the "Proprietary Information"). The Proprietary Information has been and will continue to be developed by the Corporation and its subsidiaries and affiliates at substantial cost and constitutes valuable and unique property of the Corporation. The Executive further acknowledges that due to the nature of the Executive's position, the Executive will have access to Proprietary Information affecting plans and operations in every

location in which the Corporation (and its subsidiaries and affiliates) does business or plans to do business throughout the world, and the Executive's decisions and recommendations on behalf of the Corporation may affect its operations throughout the world. Accordingly, the Executive acknowledges that the foregoing makes it reasonably necessary for the protection of the Corporation's business interests that the Executive agree to the following covenants in connection with the Executive's Involuntary Separation from Service other than for Cause and receipt of benefits under this Agreement or the Executive's Voluntary Separation from Service:

3.1 *Confidentiality*. The Executive hereby covenants and agrees that the Executive shall not, without the prior written consent of the Corporation, during the Executive's employment with the Corporation or at any time thereafter disclose to any person not employed by the Corporation, or use in connection with engaging in competition with the Corporation, any Proprietary Information of the Corporation.

(a) It is expressly understood and agreed that the Corporation's Proprietary Information is all nonpublic information relating to the Corporation's business, including but not limited to information, plans and strategies regarding suppliers, pricing, marketing, customers, hiring and terminations, employee performance and evaluations, internal reviews and investigations, short term and long range plans, acquisitions and divestitures, advertising, information systems, sales objectives and performance, as well as any other nonpublic information, the nondisclosure of which may provide a competitive or economic advantage to the Corporation. Proprietary Information shall not be deemed to have become public for purposes of this Agreement where it has been disclosed or made public by or through anyone acting in violation of a contractual, ethical, or legal responsibility to maintain its confidentiality.

(b) In the event the Executive receives a subpoena, court order or other summons that may require the Executive to disclose Proprietary Information, on pain of civil or criminal penalty, the Executive will promptly give notice to the Corporation of the subpoena or summons and provide the Corporation an opportunity to appear at the Corporation's expense and challenge the disclosure of its Proprietary Information, and the Executive shall provide reasonable cooperation to the Corporation for purposes of affording the Corporation the opportunity to prevent the disclosure of the Corporation's Proprietary Information.

(c) Nothing in this Agreement shall restrict the Executive from, directly or indirectly, initiating communications with or responding to any inquiry from, or providing testimony before, the Securities and Exchange Commission ("SEC"), Financial Industries Regulatory Authority ("FINRA"), or any other self-regulatory organization or state or federal regulatory authority.

3.2 *Nonsolicitation of Employees*. The Executive hereby covenants and agrees that during the Executive's employment with the Corporation and, in the event the Executive has a Voluntary Separation from Service or will receive or has received the severance benefits provided for in Section 1.4, for a period equal to the Severance Period thereafter, the Executive shall not, without the prior written consent of the Corporation, on the Executive's own behalf or on the behalf of any person, firm or company, directly or indirectly, attempt to influence, persuade or induce, or assist any other person in so persuading or inducing, any of the employees of the Corporation (or any of its subsidiaries or affiliates) to give up his or her employment with the Corporation (or any of its subsidiaries or affiliates), and the Executive shall not directly or indirectly solicit or hire employees of the Corporation (or any of its subsidiaries or affiliates) for employment with any other employer, without regard to whether that employer is a Competing Business, as defined in section 3.4(b), below.

3.3 *Noninterference with Business Relations.* The Executive hereby covenants and agrees that during the Executive's employment with the Corporation and, in the event the Executive has a Voluntary Separation from Service or will receive or has received the severance benefits provided for in Section 1.4, for a period equal to the Severance Period thereafter, the Executive shall not, without the prior written consent of the Corporation, on the Executive's own behalf or on the behalf of any person, firm or company, directly or indirectly, attempt to influence, persuade or induce, or assist any other person in so persuading or inducing, any person, firm or company to cease doing business with, reduce its business with, or decline to commence a business relationship with, the Corporation (or any of its subsidiaries or affiliates).

3.4 *Noncompetition.*

(a) The Executive covenants that during the Executive's employment with the Corporation and, in the event the Executive has a Voluntary Separation from Service or will receive or has received the severance benefits provided for in Section 1.4, for a period equal to the Severance Period thereafter, the Executive will not, except as otherwise provided for in this Section 3.4, undertake any work for a Competing Business, as defined in Section 3.4(b).

(b) As used in this Agreement, the term "Competing Business" shall specifically include, but not be limited to:

(i) Amazon.com, Inc., Burlington Stores, Inc., Kohl's Corporation, Lowe's Companies, Inc., Macy's, Inc., Target Corporation, The TJX Companies, Inc., Ross Stores, Inc., Walmart Inc., and any of their respective subsidiaries or affiliates, or

(ii) any business (A) that, at any time during the Severance Period, competes directly with the Corporation through sales of merchandise or services in the United States or another country or commonwealth in which the Corporation, including its divisions, affiliates and licensees, operates, and (B) where the Executive performs services, whether paid or unpaid, in any capacity, including as an officer, director, owner, consultant, employee, agent, or representative, where such services involve the performance of (x) substantially similar duties or oversight responsibilities as those performed by the Executive at any time during the 12-month period preceding the Executive's termination from the Corporation for any reason, or (y) greater duties or responsibilities that include such substantially similar duties or oversight responsibilities as those referred to in (x); or

(iii) any business that provides buying office or sourcing services to any business of the types referred to in this Section 3.4(b).

(c) For purposes of this section, the restrictions on working for a Competing Business shall include working at any location within the United States or Puerto Rico. Executive acknowledges that the Corporation is a national retailer with operations throughout the United States and Puerto Rico and that the duties and responsibilities that the Executive performs, or will perform, for the Corporation directly impact the Corporation's ability to compete with a Competing Business in a nationwide marketplace. Executive further acknowledges that Executive has, or will have, access to sensitive and confidential information of the Corporation that relates to the Corporation's ability to compete in a nationwide marketplace.

3.5 *Non-Disparagement.* The Executive covenants that the Executive will not make any statement or representation, oral or written, that could adversely affect the reputation, image, goodwill or commercial interests of the Corporation. This provision will be construed as broadly as state or federal law permits, but no more broadly than permitted by state or federal law. This provision is not intended to and does not prohibit the Executive from participating in a governmental investigation concerning the Corporation, or providing truthful testimony in any lawsuit, arbitration, mediation, negotiation or other matter.

3.6 *Injunctive Relief.* If the Executive shall breach any of the covenants contained in this Section 3, the Corporation shall have no further obligation to make any payment to the Executive pursuant to this Agreement and may recover from the Executive all such damages as it may be entitled to under the terms of this Agreement, any other agreement between the Corporation and the Executive, at law, or in equity. In addition, the Executive acknowledges that any such breach is likely to result in immediate and irreparable harm to the Corporation for which money damages are likely to be inadequate. Accordingly, the Executive consents to injunctive and other appropriate equitable relief without the necessity of bond in excess of $500.00 upon the institution of proceedings therefor by the Corporation in order to protect the Corporation's rights hereunder.

4. Employment-at-Will. Notwithstanding any provision in this Agreement to the contrary, the Executive hereby acknowledges and agrees that the Executive's employment with the Corporation is for an unspecified duration and constitutes "at-will" employment, and the Executive further acknowledges and agrees that this employment relationship may be terminated at any time, with or without Cause or for any or no Cause, at the option either of the Corporation or the Executive.

5. Miscellaneous Provisions.

5.1 *Execution and Delivery of this Agreement.* You will have 90 days following the ***later of*** (i) your effective date of employment, or (ii) the date you receive a copy of this Agreement, either physically or electronically, to execute and return this Agreement evidencing your acceptance of its terms and your agreement to be bound by the restrictive covenants under Section 3 of this Agreement in connection with your Voluntary Separation from Service or your Involuntary Separation from Service other than for Cause in order to receive the benefits under this Agreement in connection with your Involuntary Separation from Service other than for Cause. Failure to timely deliver an executed version of this Agreement within the timeframe provided in this Section 5.1 shall be evidence of your waiver of the benefits under this Agreement.

5.2 *Dispute Resolution*. Any dispute between the parties under this Agreement shall be resolved (except as provided below) through informal binding mandatory arbitration by an arbitrator selected under the rules of the American Arbitration Association for arbitration of employment disputes (located in the city in which the Corporation's principal executive offices are based) and the arbitration shall be conducted in that location under the rules of said Association. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions, except as expressly provided in Section 3.4 and only in the event the Corporation has not brought an action in a court of competent jurisdiction to enforce the covenants in Section 3. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by he arbitrator. The determination of the arbitrator shall be conclusive and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating the arbitrator's determination, and shall furnish to each party a signed copy of such determination. The expenses of arbitration shall be borne equally by the Corporation and the Executive or as the arbitrator equitably determines consistent with the application of state or federal law; provided, however, that the Executive's share of such expenses shall not exceed the maximum permitted by law. To the extent applicable, in accordance with Code section 409A and Treasury Regulation section 1.409A-3(i)(1)(iv)(A) or any successor thereto, any payments or reimbursement of arbitration expenses which the Corporation is required to make under the foregoing provision shall meet the requirements below. The Corporation shall reimburse the Executive for any such expenses, promptly upon delivery of reasonable documentation, provided, however, all invoices for reimbursement of expenses must be submitted to the Corporation and paid in a lump sum payment by the end of the calendar year following the calendar year in which the expense was incurred. All expenses must be incurred within a 20 year period following the Separation from Service. The amount of expenses paid or eligible for reimbursement in one year under this Section 5.1 shall not affect the expenses paid or eligible for reimbursement in any other taxable year. The right to payment or reimbursement under this Section 5.1 shall not be subject to liquidation or exchange for another benefit.

Any arbitration or action pursuant to this Section 5.1 shall be governed by and construed in accordance with the substantive laws of the State of Texas and, where applicable, federal law, without giving effect to the principles of conflict of laws of such State. The mandatory arbitration provisions of this Section 5.1 shall supersede in their entirety the J.C. Penney Alternative, a dispute resolution program generally applicable to employment terminations, any existing Binding Mandatory Arbitration Agreement between Executive and the Corporation, and the JCPenney Rules of Employment Arbitration, in the limited context of claims regarding the enforcement of this Agreement. Any other claims shall be resolved by J. C. Penney Alternative, a dispute resolution program generally applicable to employment terminations, any existing Binding Mandatory Arbitration Agreement between Executive and the Corporation, and the JCPenney Rules of Employment Arbitration. Executive explicitly waives, and may not litigate, any multi-party claims or claims available in multi-party litigation, such as class actions.

Notwithstanding the foregoing, the Corporation shall not be required to seek or participate in arbitration regarding any actual or threatened breach of the Executive's covenants in Section 3, but may pursue its remedies, including temporary or permanent injunctive relief, for such breach in a court of competent jurisdiction in the city in which the Corporation's principal executive offices are based, or in the sole discretion of the Corporation, in a court of competent jurisdiction where the Executive has committed or is threatening to commit a breach of the Executive's covenants, and no arbitrator may make any ruling inconsistent with the findings or rulings of such court.

5.3 *Binding on Successors; Assignment*. This Agreement shall be binding upon and inure to the benefit of the Executive, the Corporation and each of their respective successors, assigns, personal and legal representatives, executors, administrators, heirs, distributees, devisees, and legatees, as applicable; provided however, that neither this Agreement nor any rights or obligations hereunder shall be assignable or otherwise subject to hypothecation by the Executive (except by will or by operation of the laws of intestate succession) or by the Corporation except that the Corporation may assign this Agreement to any successor (whether by merger, purchase or otherwise) to all or substantially all of the stock, assets or businesses of the Corporation, if such successor expressly agrees to assume the obligations of the Corporation hereunder.

5.4 *Governing Law*. **This Agreement shall be governed, construed, interpreted, and enforced in accordance with the substantive law of the State of Texas and federal law, without regard to conflicts of law principles, except as expressly provided herein. In the event the Corporation exercises its discretion under Section 5.1 of this Agreement to bring an action to enforce the covenants contained in Section 3 of this Agreement in a court of competent jurisdiction where the Executive has breached or threatened to breach such covenants, and in no other event, the parties agree that the court may apply the law of the jurisdiction in which such action is pending in order to enforce the covenants to the fullest extent permissible.**

5.5 *Severability*. Any provision of this Agreement that is deemed invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective, to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provisions of this Agreement invalid, illegal or unenforceable in any other jurisdiction. If any covenant in Section 3 should be deemed invalid, illegal or unenforceable because its time, geographical area, or restricted activity, is considered excessive, such covenant shall be modified to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

5.6 *Notices*. For all purposes of this Agreement, all communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when hand delivered or dispatched by electronic facsimile transmission (with receipt thereof confirmed), or five business days after having been mailed by United States registered or certified mail, return receipt requested, postage prepaid, or three business days after having been sent by a nationally recognized overnight courier service, addressed to the Corporation at its principal executive office, c/o the Corporation's General Counsel, and to the Executive at the Executive's principal residence, or to such other address as any party may have furnished to the other in writing and in accordance herewith, except that notices of change of address shall be effective only upon receipt.

5.7 *Counterparts*. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

5.8 *Entire Agreement*. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the Executive's employment by the Corporation and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceedings to vary the terms of this Agreement.

5.9 *Amendments; Waivers.* This Agreement may not be modified, amended, or terminated except by an instrument in writing, approved by the Corporation and signed by the Executive and the Corporation. Failure on the part of either party to complain of any action or omission, breach or default on the part of the other party, no matter how long the same may continue, shall never be deemed to be a waiver of any rights or remedies hereunder, at law or in equity. The Executive or the Corporation may waive compliance by the other party with any provision of this Agreement that such other party was or is obligated to comply with or perform only through an executed writing; provided, however, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure.

5.10 *No Inconsistent Actions*. The parties hereto shall not voluntarily undertake or fail to undertake any action or course of action that is inconsistent with the provisions or essential intent of this Agreement. Furthermore, it is the intent of the parties hereto to act in a fair and reasonable manner with respect to the interpretation and application of the provisions of this Agreement.

5.11 *Headings, Section References, and Recitations* . The headings used in this Agreement are intended for convenience or reference only and shall not in any manner amplify, limit, modify or otherwise be used in the construction or interpretation of any provision of this Agreement. All section references are to sections of this Agreement, unless otherwise noted. The Recitations contained at the beginning of this Agreement are intended to be a part of this Agreement.

5.12 *Beneficiaries*. The Executive shall be entitled to select (and change, to the extent permitted under any applicable law) a beneficiary or beneficiaries to receive any compensation or benefit payable hereunder following the Executive's death, and may change such election, in either case by giving the Corporation written notice thereof in accordance with Section 5.5. In the event of the Executive's death or a judicial determination of the Executive's incompetence, reference in this Agreement to the "Executive" shall be deemed, where appropriate, to be the Executive's beneficiary, estate or other legal representative.

5.13 *Withholding*. The Corporation shall be entitled to withhold from payment any amount of withholding required by law.

5.14 *Installments*. For purposes of applying section 409A of the Code to this Agreement, each separately identified amount the Executive is entitled to receive under this Agreement shall be treated as a separate payment. In addition, to the extent permitted under section 409A of the Code, the right to receive any installment payments under this Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

J. C. Penney Corporation, Inc.

By:
Name:
Title:

Executive

Name:
Title:

Exhibit 31.1

CERTIFICATION

I, Jill Soltau, certify that:

1. I have reviewed this quarterly report on Form 10-Q of J. C. Penney Company, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 28, 2018

/s/ Jill Soltau
Jill Soltau
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Michael Fung, certify that:

1. I have reviewed this quarterly report on Form 10-Q of J. C. Penney Company, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 28, 2018

/s/ Michael Fung
Michael Fung
Interim Executive Vice President, Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of J. C. Penney Company, Inc. (the “Company”) on Form 10-Q for the period ended November 3, 2018 (the “Report”), I, Jill Soltau, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 28, 2018

/s/ Jill Soltau
Jill Soltau
Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of J. C. Penney Company, Inc. (the "Company") on Form 10-Q for the period ended November 3, 2018 (the "Report"), I, Michael Fung, Interim Executive Vice President, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 28, 2018

/s/ Michael Fung
Michael Fung
Interim Executive Vice President, Chief Financial Officer