

PEAPACK GLADSTONE FINANCIAL CORP  
 Form 4  
 February 22, 2007

**FORM 4**

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

OMB APPROVAL

OMB Number: 3235-0287  
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
 SPENGE MAN CRAIG C

2. Issuer Name and Ticker or Trading Symbol  
 PEAPACK GLADSTONE FINANCIAL CORP [PGC]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)  
 190 MAIN STREET  
 (Street)

3. Date of Earliest Transaction (Month/Day/Year)  
 01/03/2007

Director  10% Owner  
 Officer (give title below)  Other (specify below)  
 President

GLADSTONE, NJ 07934

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D) Code V Amount (D) Price			
Common Stock					10,084.4278 (1)	D	
Common Stock					5,909.8589	I	Profit Sharing Plan
Common Stock					859.4278 (7)	I	Spouse

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

displays a currently valid OMB control number.

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Amount or Number of Shares	
				Code	V (A) (D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares
Stock option (right to buy)	\$ 11.85					<u>(2)</u>	08/14/2007	Common Stock	4,744
Stock option (right to buy)	\$ 18.66					<u>(3)</u>	02/05/2009	Common Stock	5,870
Stock option (right to buy)	\$ 13.68					<u>(4)</u>	09/14/2010	Common Stock	1,398
Stock option (right to buy)	\$ 16.86					<u>(5)</u>	01/11/2011	Common Stock	3,992
Stock option (right to buy)	\$ 13.62					<u>(6)</u>	05/10/2011	Common Stock	2,661
Stock option (right to buy)	\$ 28.89					01/09/2004	01/09/2014	Common Stock	21,999
Stock option (right to buy)	\$ 28.1	01/03/2007		A	4,000	<u>(8)</u>	01/03/2017	Common Stock	4,000

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
SPENGEMAN CRAIG C 190 MAIN STREET GLADSTONE, NJ 07934	X		President	

## Signatures

Craig C.  
Spengeman 02/22/2007

\_\_Signature of Date  
Reporting Person

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) The reporting person received 4.4997 shares through dividend reinvestment since the last filing.
- (2) The options were exercisable in five equal annual installments on August 14, 1998, 1999, 2000, 2001 and 2002.  
The options were exercisable in five equal annual installments on February 5, 2000, 2001, 2002, 2003 and 2004. On December 11, 2003, the Compensation Committee of the Board of Directors of Peapack-Gladstone Financial Corporation authorized the accelerated vesting of the remaining options.
- (3) The options were exercisable in five equal annual installments on September 14, 2001, 2002, 2003, 2004 and 2005. On December 11, 2003, the Compensation Committee of the Board of Directors of Peapack-Gladstone Financial Corporation authorized the accelerated vesting of the remaining options.
- (4) The options were exercisable in five equal annual installments on January 11, 2002, 2003, 2004, 2005 and 2006. On December 11, 2003, the Compensation Committee of the Board of Directors of Peapack-Gladstone Financial Corporation authorized the accelerated vesting of the remaining options.
- (5) The options were exercisable in five equal annual installments on May 10, 2002, 2003, 2004, 2005 and 2006. On December 11, 2003, the Compensation Committee of the Board of Directors of Peapack-Gladstone Financial Corporation authorized the accelerated vesting of the remaining options.
- (6) The reporting person's spouse received 4.4997 shares through dividend reinvestment since the last filing.
- (8) The options are exercisable in five equal annual installments on January 3, 2008, 2009, 2010, 2011 and 2012.
- (9) Option grant has no purchase or sale price.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. SEQ=28,EFW="2144375",CP="PALL

CORPORATION",DN="1",CHK=828313,FOLIO='25',FILE='DISK045:[04NYC1.04NYC8321]DM8321A.;16',USER='JGUE  
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conditions that differ from those to which the surrendered prior award was subject. However, no grant of a new award under the Plan in exchange for a prior award may be made unless (i) the aggregate fair value of the new award does not exceed the aggregate fair value of the prior award, determined as of the time the new award is granted, and (ii) the grant of the new award would not constitute a "repricing" of any option or would not otherwise be treated as a "material revision" of the Plan for purposes of the applicable rules of the New York Stock Exchange.

### Shares Available for Awards

The number of shares available for awards made under the Plan will be subject to the following limitations:

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An aggregate of 5,000,000 shares of Common Stock may be distributed in respect of awards made under the Plan. Of that aggregate number, no more than 2,500,000 shares will be available for awards of restricted shares, restricted units, performance shares, performance units and annual award units. The maximum aggregate number of shares that may be issued upon exercise of incentive stock options granted under the Plan may not exceed 2,500,000 shares.

These limitations are subject to adjustment in such manner as the compensation committee may deem equitable to prevent substantial dilution or enlargement of the rights granted to or available for the Plan participants, if any change should occur in the shares of Common Stock such as a stock dividend, stock split, recapitalization or reorganization.

There shall be added back to the aggregate number of shares available for the grant of awards under the Plan

- a. any shares as to which a stock option granted under the Plan has not been exercised at the time of its expiration, cancellation or forfeiture,
- b. any shares that otherwise would have been issued under the Plan upon the exercise of an option granted under the Plan, and that are surrendered in payment of the exercise price of such option,
- c. any shares included in any form of award granted under the Plan other than stock options, to the extent that a Plan participant's right to receive such shares, or any cash payment in settlement of such award, becomes forfeited,
- d. any shares that otherwise would have been issued upon the exercise of an option or in payment with respect to any other form of award granted under the Plan, and that are surrendered in payment or partial payment of taxes required to be withheld in connection with the exercise of such option or the making of such payment,
- e. any shares represented by restricted units or performance units granted under the Plan as to which payment is made in cash instead of by the issuance and delivery of shares, and
- f. any shares subject to an option granted under the Plan, or covered by any other form of award made under the Plan, to the extent such option or other award is surrendered in exchange for any other award made under the Plan. However, no grant of a new award in exchange for a prior award may be made unless (i) the aggregate fair value of the new award does not exceed the aggregate fair value of the prior award, determined as of the time the new award is granted, and (ii) the grant of the new award would not constitute a "repricing" of any option or would not otherwise be treated as a "material revision" of the Plan for purposes of the applicable rules of the New York Stock Exchange.

**Administration of the Plan**

*In General*

Except as otherwise specifically provided in the Plan, the Plan will be administered

by the Company's board of directors with respect to all aspects of awards made under the Plan to Eligible Directors,

by the compensation committee of the board of directors (a) with respect to all aspects of awards made under the Plan to Eligible Employees who are Elected Officers, and (b) with respect to those aspects of awards which are made under the Plan to all Eligible Employees who are not Elected Officers and which are not within the scope of the authority and powers specifically granted to the chief executive officer, and

by the Company's chief executive officer with respect to those specific aspects of awards which are made under the Plan to Eligible Employees who are not Elected Officers and which are within the scope of the authority and powers specifically granted to the chief executive officer under the Plan or delegated by the compensation committee to the chief executive officer. See *The Chief Executive Officer's Authority and Powers* below.

*Modification of Awards*

To the extent consistent with the terms of the Plan or any provision of applicable law, the compensation committee may waive or modify any of the terms and conditions set forth in the instrument evidencing the grant of any award made to a Plan participant, including

- a. in the case of any option, to permit such option to become exercisable as to any portion of the shares subject to the option at any time earlier than the time specified in such instrument, to extend the term of such option beyond the date specified in such instrument as the expiration date for the term of the option (but not beyond the day immediately preceding the tenth anniversary of the date of grant of the option), or to permit such option, to the extent it has become or becomes exercisable, to remain exercisable for any period of time (including any period after the Eligible Employee's termination of employment) beyond the period of time specified in such instrument, but not beyond the date of expiration of the option, and
- b. in the case of any restricted shares or restricted units, to cause the restricted period applicable to such restricted shares or restricted units to expire, and the restrictions applicable to such restricted shares or restricted units to lapse, as of any date earlier than the date provided for in such instrument.

However, no waiver or amendment may be authorized or directed by the compensation committee without the consent of such Plan participant if (A) it would adversely affect, to any material extent, any of the rights or obligations of the participant with respect to such award, or (B) it would cause any option intended to be treated as an incentive stock option within the meaning of section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), to fail to be so treated. See *Awards of Options Types of Options*. In addition, no such waiver or amendment may be authorized or directed by the compensation committee with respect to any options, performance shares or performance units awarded to any "Covered Executive," if such waiver or amendment would cause the delivery of shares or the payment of any cash amounts that are made with respect to such award to fail to be deductible for federal income tax purposes pursuant to the applicable provisions of section 162(m) of the Code and the regulations issued thereunder. A Covered Executive is any individual who at the date of grant of an award under the Plan is a "Covered Employee" of the Company for purposes of section 162(m) of the Code. See *Compensation Committee Report on Executive Compensation in Fiscal 2004 \$1,000,000 Limit on Deductible Compensation*. In general, the Company's Covered Executives are the five Named Executive Officers.

*The Chief Executive Officer's Authority and Powers*

With respect to such number of shares as the compensation committee may determine to be available from time to time for the grant of awards in any form to Eligible Employees who are not Elected Officers, the chief executive officer will have the authority

- a. to determine which of such Eligible Employees will receive awards in each form specified by the compensation committee,
- b. to determine the time or times when awards in such form will be made to such Eligible Employees,
- c. to determine the number of shares that will be subject to any option, or the number of restricted shares, restricted units, performance shares or performance units to be included in any award to any such Eligible Employee,
- d. to make all determinations which the compensation committee is authorized to make with respect to any award of performance shares or performance units to any such Eligible Employees, as such determinations are described below under the captions *Awards of Performance Shares and Performance Units*, *Establishment of Performance Goals and Performance Targets*, *Performance Goals for Non-Covered Executives*, and *Adjustment of Award Amounts* (clause a.), and
- e. with respect to any awards made by the chief executive officer to any such Eligible Employees pursuant to his exercise of the powers described in clauses a. through d. above, to exercise all of the authority and powers granted to the compensation committee (1) to establish from time to time guidelines or regulations for the administration of the Plan; (2) to interpret the Plan; (3) to make all determinations the chief executive officer considers necessary or advisable for the administration of the Plan; and (4) to delegate any ministerial or nondiscretionary function for the administration of the Plan to any one or more officers or other employees of the Company or any of its subsidiaries, but only to the extent that any such exercise by the chief executive officer is not inconsistent with any action taken by the compensation committee, or with any determination, decision or interpretation of the Plan made by the compensation committee, or any delegation made by the compensation committee.

In addition to the authority and powers granted to the chief executive officer as described in clauses a. through e. above, the compensation committee may by resolution delegate to the chief executive officer authority with respect to such other aspects of awards made to Eligible Employees who are not Elected Officers as the compensation committee may specify in such resolution.

Except for the specific powers granted to the chief executive officer as described in clauses a. through e. above, or delegated by the compensation committee to the chief executive officer as described in the immediately preceding paragraph, the chief executive officer will not have any of the authority or powers otherwise granted to the compensation committee under any other provisions of the Plan. The compensation committee may revoke or modify any authority so granted or delegated to the chief executive officer at any time.

The compensation committee may delegate any ministerial or nondiscretionary function pertaining to the administration of the Plan to any one or more officers or other employees of the Company or any of its subsidiaries.

## Awards of Options

The compensation committee may grant stock options under the Plan to such Eligible Employees who are Elected Officers, for the purchase of such number of shares at such times, and upon such terms and conditions, as the compensation committee may determine. The chief executive officer of the Company may grant options under the Plan to such Eligible Employees who are not Elected Officers, for the purchase of such number of shares and at such times as the chief executive officer may determine, and upon such terms and conditions as the compensation committee may determine, except for those terms and conditions which the chief executive officer is authorized to determine, either by the specific provisions of the Plan or by authority delegated by the compensation committee to the chief executive officer. See *Administration The Chief Executive Officer's Authority and Powers* above.

There are currently 1,061 employees (including the 15 executive officers) who hold options under the Company's existing option plans, and, as estimated in preliminary discussions among senior management, the compensation committee and Watson Wyatt, there are approximately 260 Company employees (including the 15 executive officers) who could qualify as "eligible employees" for purposes of the Plan. See *Options Granted* below for information as to option holdings of executive officers as a group and all other employees as a group under all existing option plans of the Company at the end of fiscal 2004 (July 31, 2004).

### *Types of Options*

Each option granted under the Plan will be either (i) an option intended to be treated as an incentive stock option within the meaning of section 422 of the Code, or (ii) an option that will not be treated as an incentive stock option.

Incentive stock options granted under the Plan will be subject to the following provisions:

No incentive stock option may be granted under the Plan after November 16, 2014, unless the shareholders of the Company have approved an extension of the period for granting incentive stock options under the Plan beyond that date.

To the extent that the aggregate Fair Market Value of shares with respect to which incentive stock options granted under the Plan and under all other stock option plans maintained by the Company are exercisable for the first time by a Plan participant during any calendar year exceeds \$100,000, the incentive stock options so exercisable will not be treated as incentive stock options. The Fair Market Value of shares as to which any incentive stock option may be exercised will be determined as of the date on which such option is granted. "Fair Market Value" as of any date means the closing price on such date of a share of Common Stock as reported for New York Stock Exchange consolidated transactions or, if such date is not a New York Stock Exchange trading day, on the next trading day preceding such date.

### *Maximum Number of Shares Subject to Options*

The total number of shares with respect to which options may be granted to any individual Eligible Employee during any period of 24 consecutive months may not exceed 300,000 shares, subject to adjustment in such manner as the compensation committee may deem equitable to prevent substantial dilution or enlargement of the rights granted to or available for the Plan participants, if any change should occur in the shares of Common Stock such as a stock dividend, stock split, recapitalization or reorganization.

### *Term of Options*

The term during which an option may be exercised will be such period of time as the compensation committee may determine, but not exceeding ten years from the date of grant of the option. The compensation committee has initially determined that the term of options granted under the Plan will be

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seven years. (The compensation committee has the power to change this determination but has no present intention of doing so.)

### *Exercise of Options*

Each option granted under the Plan will become exercisable, in whole or in part, at such time or times during its term as the instrument evidencing the grant of such option will specify. To the extent that an option has become exercisable, it may be exercised thereafter at any time or from time to time during its term, except as provided in the next paragraph.

### *Termination of Employment*

Except as the instrument evidencing the grant of an option may otherwise provide, the portion of any outstanding option held by an Eligible Employee on the date of his or her termination of employment by the Company or a Company subsidiary that has not become exercisable prior to such date, and the portion of such option which was exercisable but had not been exercised prior to such date, will be forfeited on such date.

### *Exercise Price*

The price at which shares may be purchased upon any exercise of an option will be the price per share determined by the compensation committee and specified in the instrument evidencing the grant of such option, but the exercise price per share may not be less than the Fair Market Value of a share determined as of the date of grant of the option.

### *Payment of Exercise Price*

Payment of the exercise price for shares purchased upon the exercise of an option will be made by one, or by a combination, of any of the following methods: (a) in cash or by wire transfer of funds, in each case in United States dollars; (b) if permitted by the compensation committee and subject to any terms and conditions it may impose on the use of such methods, by (1) the delivery to the Company of other shares of Common Stock owned by the Plan participant, or (2) the surrender to the Company of shares that otherwise would have been delivered to the Plan participant upon exercise of the option; (c) to the extent permissible under applicable law, through any cashless exercise sale and remittance procedure that the compensation committee may from time to time approve; (d) to the extent permissible under applicable law and permitted by the compensation committee, by the execution by the Plan participant and delivery to the Company of a promissory note or other instrument evidencing the Plan participant's agreement to pay part or all of the option exercise price on a deferred or installment payment basis, upon such terms and conditions as the compensation committee may require; or (e) by any other method of payment as the compensation committee may from time to time approve.

For purposes of determining the portion of the exercise price payable upon the exercise of an option that will be treated as satisfied by the delivery or surrender of shares pursuant to clause (b)(1) or (2) in the preceding paragraph, shares so delivered or surrendered shall be valued at their Fair Market Value determined as of the New York Stock Exchange trading day next preceding the date on which the option is exercised.

### **Options Granted**

The table captioned "Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values" on page 11 of this proxy statement sets forth information about options held by the Named Executive Officers under all the Company's existing employee stock option plans as of July 31, 2004, the end of the Company's 2004 fiscal year. On that date, all executive officers of the Company as a group (then 14 persons, including the five Named Executive Officers) held options under all of the Company's option plans to purchase an aggregate of 1,344,125 shares of Common Stock, and all other employees of the Company as a group (1,047 persons, including officers other than executive officers) held options to purchase an aggregate of 4,411,288 shares. Since July 31, 2004, no options have been granted under the Company's option plans.



The compensation committee has not yet taken any action to grant options under the Plan utilizing the 5,000,000 shares which are issuable under the Plan. The compensation committee has, however, decided that in the future options will be granted annually, rather than biennially as in the past. The compensation committee has received and discussed recommendations from Watson Wyatt under which, assuming that expensing of stock options is required beginning in 2005, the 5,000,000 shares authorized under the Plan should meet the Company's stock compensation requirements for approximately four years.

#### **Awards of Restricted Shares and Restricted Units**

Restricted shares or restricted units may be granted (a) to such Eligible Employees who are Elected Officers, at such times and in such amounts as the compensation committee may determine, and (b) to such Eligible Employees who are not Elected Officers, at such times and in such amounts as the chief executive officer may determine.

##### *Restrictions and Restricted Period*

At the time of each grant of restricted shares or restricted units to any Eligible Employee, the compensation committee will establish a period of time within which the restricted shares or restricted units covered by such grant (and the participant's right to receive payment with respect to such restricted units) may not be sold, assigned, transferred (other than a transfer to the participant's beneficiary occurring by reason of the participant's death), made subject to a gift, or otherwise disposed of, mortgaged, pledged or otherwise encumbered, whether voluntarily or by operation of law. A separate restricted period may be prescribed for any specified portion of the restricted shares or restricted units granted pursuant to any award.

##### *Rights While Restricted Shares Remain Subject to Restrictions*

Except for the restrictions to which such shares are subject, and subject to the forfeiture provisions of the Plan upon a Plan participant's termination of employment as described below, a participant will have, with respect to all restricted shares so held for his or her account, all the rights of a shareholder of the Company, including full voting rights and the right to receive currently with respect to the participant's restricted shares all dividends and other distributions payable on the Company's shares. If any dividends or distributions so payable are paid in shares, the shares paid as a dividend or distribution with respect to a participant's restricted shares will be subject to the same restrictions and provisions relating to forfeiture as apply to the restricted shares with respect to which they were paid and will themselves be treated as restricted shares.

If the instrument evidencing the grant of any restricted shares to a Plan participant so provides, all cash dividends and distributions payable generally on the Company's shares that are otherwise payable with respect to the restricted shares granted to the participant will not be paid currently to the participant, but instead will be applied to the purchase of additional shares for the participant's account. The additional shares so purchased shall be subject to the same restrictions and provisions relating to forfeiture as apply to the restricted shares with respect to which they were paid, and will themselves be treated as restricted shares. The purchase of any such additional shares shall be made either (i) through the Company's Dividend Reinvestment Plan, or (ii) in accordance with such other procedure as may be specified in the instrument evidencing the grant of the restricted shares on which such dividends are paid.

##### *Rights While Restricted Units Remain Subject to Restrictions*

No shares will be issued at the time any award of restricted units is made under the Plan. Restricted units granted to a Plan participant will be credited to a bookkeeping account maintained by the Company for such Plan participant.

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Until the restrictions applicable to the restricted units credited upon grant to any such account lapse, additional restricted units will be credited to such account with respect to the restricted units so credited, as of each date on which the Company pays a dividend on the Common Stock ("Dividend Equivalent Units"). The number of additional restricted units to be credited shall be determined by first multiplying (A) the total number of restricted units standing to the participant's credit in such account on the day immediately preceding the dividend payment date, by (B) the per-share dollar amount of the dividend paid on such dividend payment date, and then by dividing the resulting amount by the closing price of a share of Common Stock on such dividend payment date.

### *Lapse of Restrictions and Payment*

When the restricted period expires for any restricted shares or restricted units granted to a Plan participant under the Plan, the restrictions applicable to such restricted shares or restricted units will lapse, and payment with respect to such restricted shares or restricted units (including any related Dividend Equivalent Units) will be made.

In the case of restricted shares, payment will be made by delivery to the Plan participant of a stock certificate for the number of such restricted shares, free and clear of all restrictions to which such shares were subject. Payment for any fractional share will be made in cash.

In the case of restricted units (including related Dividend Equivalent Units),

- a. payment will be made (A) by the issuance and delivery to the Plan participant of a stock certificate for a number of shares equal to the number of whole restricted units and related Dividend Equivalent Units with respect to which the applicable restrictions have lapsed, and (B) by payment in cash for any fractional restricted unit payable.
- b. Alternatively, payment for restricted units (including related Dividend Equivalent Units) with respect to which the applicable restrictions have lapsed will be made solely in cash, in an amount equal to the Fair Market Value of all of such units and any fractional unit, determined as of the date on which such restrictions lapsed, if the instrument evidencing the grant of such restricted units so provides.
- c. If such instrument so permits, payment with respect to any part or all of an Eligible Employee's restricted units (including related Dividend Equivalent Units) may be deferred, at the Eligible Employee's election, upon such terms and conditions as are specified in such instrument.

### *Termination of Employment*

Upon an Eligible Employee's termination of employment for any reason prior to the expiration of the restricted period for any restricted shares or restricted units (and related Dividend Equivalent Units) standing to his or her credit immediately prior to such termination of employment, the Eligible Employee's right to receive payment with respect to such restricted shares, restricted units and Dividend Equivalent Units will be forfeited and cancelled as of the date of such termination of employment, and no payment of any kind will be made with respect to such restricted shares, restricted units and Dividend Equivalent Units, except as otherwise provided in the instrument or instruments evidencing the grant of such or units.

However, if the compensation committee so determines, the instrument evidencing any award of restricted shares or restricted units may provide that if the Eligible Employee's termination of employment prior to the end of the restricted period established for such restricted shares or restricted units occurs as a result of the Eligible Employee's death, "permanent and total disability" as defined in the Code, retirement, or any reason other than discharge by the Company or any of its subsidiaries for "cause" as defined in such instrument, payment will be made with respect to all or a "Pro Rata Portion" of such restricted shares or restricted units and any related Dividend Equivalent Units. In such case, only the

Eligible Employee's right to receive payment with respect to any remaining portion of the restricted shares or restricted units (and related Dividend Equivalent Units) for which such restricted period was established will be cancelled and forfeited. "Pro Rata Portion" means, with respect to any portion of the restricted shares or restricted units granted pursuant to an award made under the Plan to an Eligible Employee, or with respect to any performance shares or performance units included in an award made under the Plan to an Eligible Employee, the percentage determined by dividing (i) the number of months in the period commencing on the first day of the restricted period established for such portion of the restricted shares or restricted units so granted, or the performance period established for the performance shares or performance units so awarded, and ending on the date of the Eligible Employee's termination of employment, by (ii) the total number of months in such restricted period or in such performance period.

#### **Awards of Performance Shares and Performance Units**

Performance shares or performance units may be granted to such Eligible Employees, at such times, in such amounts and upon such terms and conditions, as the compensation committee may determine (with respect to Eligible Employees who are Elected Officers), or as the chief executive officer may determine (with respect to Eligible Employees who are not Elected Officers).

##### *Establishment of Performance Goals and Performance Targets*

In connection with each award of performance shares or performance units, the compensation committee or chief executive officer, as appropriate, will establish in writing, and the instrument evidencing the grant of such award will specify,

- a. the performance goal or goals and the performance period that will apply with respect to such award,
- b. the level or levels of achievement of the performance goal or goals that must be met in order for payment to be made with respect to the award,
- c. the number of performance shares that will be issued and delivered to the recipient of the award, or the percentage of the performance units (and any related Dividend Equivalent Units) credited to the recipient in connection with the award as to which payment will be made, if the performance goal or goals applicable to such award (A) have been fully achieved, (B) have been exceeded, or (C) have not been fully achieved but have been achieved at or beyond any minimum or intermediate level of achievement specified in the instrument evidencing the grant of such award, and
- d. such other terms and conditions pertaining to the award as the compensation committee or the chief executive officer may determine. In connection with any such award made to any Covered Executive, the matters described in the preceding sentence shall be established within such period of time as may be permitted by the regulations issued under section 162(m) of the Code.

##### *Accounts and Dividend Equivalent Units*

No shares will be issued at the time any award of performance units is made under the Plan. Performance units granted to an Eligible Employee will be credited to a bookkeeping account maintained by the Company for such employee. If the instrument evidencing the grant of any award of performance units so provides, Dividend Equivalent Units will be credited with respect to the performance units included in such award on each dividend payment date occurring within the performance period applicable to such award in the same manner as Dividend Equivalent Units are credited with respect to restricted units during the applicable restricted period, as set forth above under the caption *Awards of Restricted Shares and Restricted Units Rights While Restricted Units Remain Subject to Restrictions*.

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### *Limit on Award Amounts*

The total number of shares for which any award of performance shares may be made to any Eligible Employee, and the total number of units for which any award of performance units may be made (exclusive of any Dividend Equivalent Units credited with respect to the performance units awarded to such employee) may not exceed 75,000 shares, or 75,000 units, for each 12-month period included in the performance period established for such award.

### *Performance Goals for Covered Executives*

In the case of any award of performance shares or performance units to any Eligible Employee who is a Covered Executive for purposes of section 162(m) of the Code, the performance goal or goals established in connection with such award shall be based on the attainment of one or more of the following business criteria, as determined by the compensation committee:

specified levels of, or increases in, the Company's after-tax or pretax return on shareholder's equity;

specified levels in the fair market value of the Company's shares;

specified levels of growth in the value of an investment in the Company's shares, assuming that all dividends paid on the Company's Common Stock are reinvested in additional shares;

specified levels of, or increases in, the Company's pre-tax or after-tax earnings, profits, net income, or earnings per share;

specified levels of, or increases in, the Company's earnings before income tax, depreciation and amortization (EBITDA);

specified levels of, or increases in, the Company's net sales, gross revenues or cash flow from operations;

specified levels of, or increases in, the Company's working capital, or in its return on capital employed or invested; and

specified levels of, or decreases in, the Company's operating costs or any one or more components thereof, or in the amount of all or any specified portion of the Company's debt or other outstanding financial obligations.

Any of the above business criteria which the compensation committee establishes as a performance goal may be measured either by the performance of the Company and its subsidiaries on a consolidated basis, or by the performance of any one or more of the Company's subsidiaries, divisions, or other business units, as the compensation committee may determine. The compensation committee may also establish performance goals, based on any of the above business criteria, that require the attainment of a specified level of performance of the Company, or any of its subsidiaries, divisions or other business units, relative to the performance of other specified companies, in order for such goals to be met.

The compensation committee may also include in any performance goal the attainment of which depends on a determination of the net earnings or income of the Company or any of its subsidiaries, divisions or other business units, provisions which require such determination to be made by eliminating the effects of any decreases in or charges to earnings for (A) the effect of foreign currency exchange rates, (B) any acquisitions, divestitures, discontinuances of business operations, restructurings or other special charges, (C) the cumulative effect of any accounting changes, and (D) any "extraordinary items" as determined under generally accepted accounting principles, to the extent that such decreases or charges to earnings are separately disclosed in the Company's annual report for each fiscal year within the applicable performance period.

*Performance Goals for Non-Covered Executives*

In the case of awards of performance shares or performance units made under the Plan to Eligible Employees who are not Covered Executives, the performance goal or goals applicable to such awards will be such corporate or individual goals as the compensation committee may determine (with respect to Eligible Employees who are Elected Officers), or as the chief executive officer may determine (with respect to Eligible Employees who are not Elected Officers).

*Measurement of Performance*

At the end of the performance period established in connection with any award, the compensation committee will determine the extent to which the performance goal or goals established for such award have been attained, and shall determine, on that basis, the number of performance shares or performance units included in such award that have been earned and as to which payment will be made. In the case of any award granted to a Covered Executive, the compensation committee will certify in writing the extent to which it has determined that the performance goal or goals established by it for such award have been attained.

*Adjustment of Award Amounts*

The number of shares or the amount of cash otherwise payable with respect to an award on the basis of the level of attainment of the applicable performance goals as determined by the compensation committee or the chief executive officer will be subject to the following adjustments:

- a. To the extent consistent with the terms of the Plan, and if the instrument evidencing the award so provides, the number of shares or the amount of cash otherwise so payable with respect to an award to an Eligible Employee who is not a Covered Executive may be increased or decreased to the extent determined by the compensation committee (with respect to Eligible Employees who are Elected Officers), or as the chief executive officer may determine (with respect to Eligible Employees who are not Elected Officers), based on their evaluation of the Eligible Employee's individual performance, or to reflect such other events, circumstances or factors as the compensation committee or the chief executive officer, as the case may be, may deem appropriate in determining the extent to which payment should be made with respect to the Eligible Employee's award.
- b. The compensation committee will not have any authority to increase the number of shares or the amount of cash otherwise so payable with respect to any award to a Covered Executive. However, if the instrument evidencing such award so provides, the compensation committee may reduce the number of shares or the amount of cash otherwise so payable with respect to such award
  1. to reflect any decreases in or charges to earnings that were not taken into account pursuant to clause (A), (B), (C), or (D) above under the caption *Performance Goals for Covered Executives*, in determining net earnings or income for purposes of any performance goal established in connection with such award,
  2. to reflect any credits to earnings for extraordinary items of income or gain that were taken into account in determining net earnings or income for such purposes,
  3. to reflect the compensation committee's evaluation of the Covered Executive's individual performance, or
  4. to reflect any other events, circumstances or factors which the compensation committee believes to be appropriate in determining the extent to which payment should be made with respect to the Covered Executive's award.

*Payment of Awards*

Payment with respect to that number of performance shares or performance units subject to any award which the compensation committee has determined to have been earned will be made as follows:

- a. Payment of performance shares will be made by the issuance and delivery to the Plan participant of a stock certificate for the requisite number of such shares. If the instrument evidencing the award of such shares so provides, a cash payment may also be made to the participant, in an amount equal to all of the dividends that would have been paid to the participant upon such earned number of shares if such shares had been issued to the participant as of the date of grant of the award in question.
- b. Payment of performance units (including related Dividend Equivalent Units) will be made (A) by the issuance and delivery to the Plan participant of a stock certificate for a number of shares equal to the total number of such whole performance units and related Dividend Equivalent Units, and (B) by payment in cash for any fractional unit in an amount equal to the Fair Market Value of such fractional unit determined as of the trading day immediately preceding the date as of which payment is to be made. Alternatively, if the instrument evidencing the grant of such performance units so provides,
  1. payment for such performance units (including related Dividend Equivalent Units) will be made solely in cash, in an amount equal to the Fair Market Value of all of such units and any fractional unit, determined as of the trading day immediately preceding the date as of which payment is to be made, and
  2. payment with respect to any part or all of an Eligible Employee's performance units (including any related Dividend Equivalent Units) may be deferred, at the Eligible Employee's election, upon such terms and conditions as are specified in such instrument.

*Termination of Employment*

Upon an Eligible Employee's termination of employment for any reason prior to the end of the performance period established for any award of performance shares or performance units made to the Eligible Employee, such award will be cancelled as of the date of such termination of employment, the Eligible Employee's right to receive payment with respect to any performance shares or performance units included in such award, and any Dividend Equivalent Units that were credited with respect to such performance units, will be forfeited as of such date, and no payment of any kind shall be made with respect to such award, except as otherwise provided in the instrument evidencing the grant of such award.

However, if the compensation committee so determines, the instrument evidencing any award of performance shares or performance units may provide that if the Eligible Employee's termination of employment prior to the end of the performance period established for such award occurs as a result of the Eligible employee's death, "permanent and total disability" as defined in the Code, retirement, or any reason other than discharge by the Company or any of its subsidiaries for "cause" as defined in such instrument, payment will be made with respect to all or a Pro Rata Portion of the number of shares and/or the amount of cash that otherwise would have been payable to the Eligible Employee if the Eligible Employee's termination of employment had not occurred prior to the end of such performance period. In such case, only the Eligible Employee's right to receive payment with respect to any remaining portion of the performance shares or performance units (and related Dividend Equivalent Units) included in such award will be cancelled and forfeited.

## **Annual Award Units to Eligible Directors**

### *Annual Grants*

Annual Award Units will be granted to Eligible Directors annually on January 5 of each calendar year beginning on January 5, 2005, except that if in any year January 5 is not a New York Stock Exchange trading day, the Annual Award Units will be granted on the next day following January 5 of such year that is a trading day. Each person who is elected a director of the Company at an annual meeting of shareholders for the first time and thereby becomes an Eligible Director will automatically be granted 1,000 Annual Award Units on the date of such annual meeting of shareholders.

If this Proposal 2 is approved by the shareholders at the meeting, on January 5, 2005 each Eligible Director, i.e., each of the directors of the Company other than Eric Krasnoff and Marcus Wilson, will automatically be granted 1,000 Annual Award Units (unless the Eligible Director has, by notice to the Company, elected not to receive such Annual Award Units). There are currently ten Eligible Directors.

### *Accounts and Dividend Equivalent Units*

No shares will be issued at the time any Annual Award Units are granted under the Plan. Annual Award Units granted to an Eligible Director will be credited to a bookkeeping account maintained by the Company for the Eligible Director. As of each dividend payment date occurring prior to the date on which payment with respect to an Eligible Director's Annual Award Units is made, Dividend Equivalent Units will be credited to the Eligible Director's account with respect to all Annual Award Units (and all Dividend Equivalent Units credited to such account on all previous dividend payment dates) standing to the Eligible Director's credit in such account immediately prior to such dividend payment date. The number of Dividend Equivalent Units to be so credited will be determined in the same manner as Dividend Equivalent Units are credited with respect to restricted units during the applicable restricted period, as set forth above under the caption *Awards of Restricted Shares and Restricted Units Rights While Restricted Units Remain Subject to Restrictions*.

### *Payment with Respect to Annual Award Units*

If an Eligible Director's board membership terminates for any reason other than removal for cause in accordance with law, the Eligible Director (or if such termination has occurred by reason of death, his or her beneficiary) will be entitled to receive payment with respect to all Annual Award Units and related Dividend Equivalent Units then standing to his or her credit in the account maintained for the Eligible Director. Payment will be made (A) by the issuance and delivery to the Eligible Director (or to his or her beneficiary) of a stock certificate for a number of shares equal to the number of whole Annual Award Units and related Dividend Equivalent Units standing to the Eligible Director's credit immediately prior to such termination of board membership, and (B) by payment in cash for any fractional Annual Award Unit standing to the Eligible Director's credit at such time.

### *Forfeiture of Annual Award Units*

If an Eligible Director's board membership terminates as a result of removal for cause in accordance with law, all Annual Award Units and related Dividend Equivalent Units standing to his or her credit immediately prior to such termination will be cancelled as of the date of such termination of board membership, the Eligible Director's right to receive payment with respect to such Annual Award Units and Dividend Equivalent Units will be forfeited as of such date, and no payment of any kind shall be made with respect to such Annual Award Units and Dividend Equivalent Units.

## Change in Control

A "Change in Control" is defined in the Plan as the occurrence of any of the following:

the tenth day after the first date of public announcement that any person has become an "Acquiring Person," meaning in general any person who or which, together with all such person's affiliates and associates, is the beneficial owner of 20% or more of the Company's Common Stock; or

the tenth business day (or such later date as may be determined by the Company's board of directors prior to such time as any person becomes an Acquiring Person) after either the date on which any person (other than the Company, any subsidiary of the Company or any employee benefit plan of the Company or any of its subsidiaries) commences a tender or exchange offer, or the date of the first public announcement that any such person intends to commence a tender or exchange offer, the consummation of which in either case would result in any person becoming the beneficial owner of shares of Common Stock aggregating 20% or more of the shares of Common Stock then outstanding; or

the occurrence, at any time when there is an Acquiring Person, of a reclassification of securities (including any reverse stock split), or recapitalization or reorganization of the Company or other transaction or series of transactions involving the Company which has the effect, directly or indirectly, of increasing by more than 1% the proportionate share of the outstanding shares of any class of equity securities of the Company or any of its subsidiaries beneficially owned by any Acquiring Person or any affiliate or associate of an Acquiring Person; or

(1) the consolidation of the Company with, or its merger with and into, any other person, or (2) the consolidation of any person with, or its merger with and into, the Company, if in connection with such merger, all or part of the Common Stock will be changed into or exchanged for stock or securities of any other person, or cash or any other property, or (3) a sale or other transfer by the Company or one or more of its subsidiaries, in one or more transactions, of assets or earning power aggregating 50% or more of the assets or earning power of the Company and its subsidiaries taken as a whole to any other person other than the Company or one or more of its wholly-owned subsidiaries; or

the date on which the number of duly elected and qualified directors of the Company who were neither elected by the board of directors nor nominated by the board or its nominating committee for election by the shareholders equals or exceeds one-third of the total number of directors of the Company as fixed by its by-laws.

However, no Change in Control will be deemed to have occurred, and in general no rights arising upon a Change in Control will exist, to the extent that the board of directors so determines prior to the Change in Control.

If a Change in Control should occur, the following will apply:

Each option outstanding under the Plan on the day preceding the date on which the Change in Control occurs will become immediately and fully exercisable on the date of the Change in Control, and will remain fully exercisable, irrespective of Plan participant's subsequent termination of employment for any reason, until the date on which the option otherwise would expire by the passage of time in accordance with its terms.

If a Change in Control would be treated as having occurred but for the determination by the board of directors that no Change in Control has occurred, the board of directors will have the right

- a. to direct that all options then outstanding and